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

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 915

[No. 2007–23]

RIN 3069–AB–34

Financial Interests of Appointive Directors

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is issuing a final regulation that is substantially the same as the proposed rule to clarify the types of financial interests an appointive Federal Home Loan Bank (Bank) director may maintain in a member of the Bank on whose board the director serves. The changes broaden the scope of financial interests an appointive director may have with a holding company that controls one or more members.

DATES: *Effective Date:* The final rule is effective July 19, 2007.

FOR FURTHER INFORMATION CONTACT: Neil R. Crowley, Acting General Counsel, *crowleyn@fhfb.gov* or 202–408–2990; or Thomas Hearn, Senior Attorney-Advisor, Office of General Counsel, *hearnt@fhfb.gov* or 202–408–2512. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Section 7(a) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1427(a)) authorizes the Finance Board to appoint directors to the board of each Bank. Under section 7(a), the individuals appointed to serve as Bank directors may not ''during such Bank director's term of office, serve as an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank, or hold shares, or any other financial interest in, any member of a Bank.'' In the past, the Finance Board generally has applied this statutory restriction on a case-by-case basis. In order to ensure that this prohibition is applied consistently and to provide guidance to the Banks as they identify well qualified individuals as appointive director candidates, the Finance Board published a proposed rule intended to clarify the types of financial interests an appointive Bank director may maintain in a member of the Bank on whose board the director serves. See 72 FR 15627 (Apr. 2, 2007). The Finance Board requested comments from the public and established a 45-day comment period, which expired on May 17, 2007.

The key features of the proposed rule include:

- Incorporating long-standing policy that a financial interest in a Bank member acquired through ownership of shares of a diversified mutual fund is a permissible holding for an appointive director.
- Extending the rationale for permitting mutual funds investments to other types of vehicles and accounts that share certain of the same key features as mutual funds and thus are unlikely to pose a risk of conflict of interest for an appointive director.
- Establishing a threshold under which a financial interest in a holding company that controls one or more members of the Bank on whose board the director serves is a permissible interest if the assets of all such members constitute less than 25 percent of the assets of the holding company, on a consolidated basis.
- Asking whether the rule should extend this rationale to service as a director or officer of a holding company that controls one or more members of the Bank on whose board an appointive director serves.
- Incorporating long-standing policy that loans from or deposits in a member are not a financial interest in the member if the transaction occurs in the normal course of business and on terms that are no more favorable than those available under like circumstances to members of the public.
- Establishing a threshold under which a contractual relationship with a member is a permissible interest if the money paid to a director in a calendar year is 10 percent or less of the director's adjusted gross income in that year.[1]
- Attributing the financial interests of an appointive director's spouse and minor children to the director for purposes of determining compliance.
- Making other technical and conforming changes to part 915.

II. Analysis of Public Comments

In response to the proposed rule, the Finance Board received three comments—two from Banks and one from a trade association. One Bank recommended against finalizing the rule because pending legislation would delete the provision prohibiting an appointive director from holding a financial interest in a member. The other Bank urged the Finance Board to increase the threshold for permissible financial interests in a holding company that controls Bank members from 25 to 50 percent and to apply the same standard to service as an officer or director of such a holding company. The trade association supported finalizing the proposed rule as written.

As stated in the proposed rule, the Finance Board believes that the changes to the regulations are warranted because they provide needed guidance to the Banks and to prospective appointive directors as to the types of relationships with members that are permissible under the current law. The possibility that the law may be amended at some point in the future is not a sufficient reason to decline to proceed with a rule that provides additional clarity to the persons most directly affected by the current law. The final rule also responds to the comments relating to the use of the 25 percent threshold by increasing that percentage, although not as much as suggested by the comment, and by applying it to determine whether service as an officer or director of a holding company is permissible. Other issues raised by the comment letters are described in the discussion of the final rule.

III. Analysis of the Final Rule

With the exception of the provisions concerning holding companies, discussed in detail below, the Finance Board is adopting the proposed rule as

[1] In the preamble to the proposed rule, the Finance Board described how it intended to calculate the amount of income attributed to a director where the contract was with a director's spouse. See 72 FR at 15631.

written, with minor technical changes. The Finance Board also is designating the new text as § 915.10(e), rather than § 915.10(f), in order to replace the temporary provision concerning appointments to director positions that were vacant as of January 1, 2007.

One of the commenters urged the Finance Board not to extend these prohibitions to securities issued by a holding company or to persons who serve solely as an officer or director of the holding company, and who do not serve as an officer or director of the member institution, noting that the statute does not refer to holding companies. Alternatively, the commenter suggested that the Finance Board apply these prohibitions only to those holding companies whose subsidiary members constituted 50 percent or more of the consolidated assets of the holding company. This commenter also suggested that the Finance Board use a single standard for evaluating both investments in securities issued by a holding company and service as an officer or director of a holding company.

As was discussed in the preamble to the proposed rule, the Finance Board has long applied these provisions to holding companies of at least some members, and the current practice is to bar any person who serves as an officer or director of a holding company from also serving as an appointive director. The intent of the proposed rule was to adopt a workable standard that would distinguish those holding companies that are very closely associated with their member (such as a one bank holding company), and thus should be subject to the prohibitions in section 7(a), from those where the connection is considerably more remote, which should not be subject to those prohibitions. Accordingly, the Finance Board has declined to adopt the suggestion that the rule apply only to financial interests in, or service with, the members of a Bank.

The proposed rule would have established a safe harbor for ownership of securities issued by a holding company that controls members if the assets of all members of the Bank the holding company controls constitute less than 25 percent of the total assets of the holding company, on a consolidated basis. The Finance Board has considered the comment suggesting that the threshold be raised and has decided to increase the proposed threshold from 25 to 35 percent of the consolidated assets of the holding company. The Finance Board believes that a limit of 35 percent remains consistent with the previously stated rationale that an investment in such a holding company is predominantly an investment in something other than a member of the Bank. The Finance Board is not prepared, however, to increase the threshold to the 50 percent of assets limit suggested by the commenter, principally because such a high threshold would not be consistent with the above stated rationale.

In the proposed rule, the Finance Board also sought comments with respect to application of these prohibitions to an appointive director's service as an officer or director of a holding company that controls a member of the director's Bank. At the time of the proposed rule, the Finance Board's policy was to prohibit an appointive director from serving as a director or officer of a holding company that controls a member of the director's Bank. The Finance Board proposed no regulatory amendments on this matter, but sought comment on whether it should apply a single standard for both investments in holding company securities and for other types of relationships, such as service as a director or officer of a holding company or contractual relationships with, or receipt of income from, such a company. The only comment received on this issue urged the Finance Board to apply a single standard for assessing all relationships that an appointive director may have with the holding company for a member. The Finance Board is persuaded that a single standard is the better approach and thus has revised the final rule to apply the same 35 percent of assets test in determining whether an appointive director's service as an officer or director of a holding company is permissible, as is used in determining whether a director's investments in securities issued by a holding company are permissible.

With respect to the 35 percent of assets test, the Finance Board emphasizes that this is an ongoing requirement for any appointive director, and is not simply to be applied on a ''snapshot basis'' at a particular point in time. Accordingly, it is possible that during the course of a person's service as an appointive director an investment in securities issued by a holding company that had been permissible at the outset may cease to be permissible if the assets of the members grow beyond the 35 percent threshold. The same also would be true with respect to a person's service as an officer or director of a holding company. The Finance Board expects that the individual appointive directors and their respective Banks will monitor the assets of the particular members and holding companies to ensure that the directors remain in compliance with this requirement. In a similar fashion, the Finance Board expects that any appointive directors with any such financial interests, i.e., investments in members or their holding companies, whether directly or through various vehicles or accounts permitted under this rule, service as an officer or director of a holding company, or contractual relationships with a member or its holding company, will fully disclose those interests to the Finance Board prior to their initial appointment and as part of the annual certification process, as well as to their respective boards of directors. That disclosure requirement is embodied in the final rule through § 915.10(e) (with respect to the Finance Board) and in § 915.11(a)(4) (with respect to the board).

IV. Paperwork Reduction Act

The appointive director application form is part of the information collection entitled ''Federal Home Loan Bank Directors.'' Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has assigned control number 3069–0002, which is due to expire on November 30, 2007. The Finance Board and the Banks use the information contained in the application form to determine whether prospective appointive Bank directors satisfy the statutory and regulatory eligibility requirements and are well qualified to serve as a Bank director. Only individuals meeting these requirements may serve as Bank directors. See 12 U.S.C. 1427. This rule does not make substantive or material modifications to the ''Federal Home Loan Bank Directors'' information collection. Consequently, the Finance Board has not submitted any information to OMB for review.

V. Regulatory Flexibility Act

The rule applies only to the Banks and to individuals who may be willing to serve as Bank appointive directors. Neither the Banks nor individuals come within the meaning of ''small entities'' as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 915

Banks, Banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure,

Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Finance Board amends 12 CFR part 915 as follows:

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT, AND ELECTIONS

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

■ 2. Revise § 915.10(e) to read as follows:

§ 915.10 Selection of appointive directors.

* * * * *

(e) *Financial interests.* Except as otherwise provided in this section, an appointive director may not: own any debt or equity securities issued by, or have any other financial interest in, a member of the Bank on whose board the director serves; serve as an officer or director of any member of the Bank on whose board the director serves; or serve as an officer of any Bank. An appointive director or appointive director candidate must disclose all financial interests to the Finance Board.

(1) *Investment vehicles.* An appointive director's investment in a legally recognized entity that owns debt or equity securities issued by a member is not deemed to be shares or other financial interests in a member if the appointive director neither controls the entity nor plays any role in the purchase or sale of the securities owned by the entity.

(2) *Investment accounts.* Debt or equity securities an appointive director owns through an account managed by an investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*), for which the director pays a fee for advisory services and with respect to which the director has given the investment adviser complete investment discretion to buy and sell all securities in the account, are not deemed to be shares or other financial interests in a member if the director is not affiliated with the investment adviser and has no control over the selection of securities acquired for the account.

(3) *Holding companies.* Debt or equity securities issued by a holding company that controls one or more members of the Bank on whose board an appointive director serves are not deemed to be shares or other financial interest in a member if the assets of all such members constitute less than 35 percent of the assets of the holding company, on a consolidated basis. Service as a director or officer of a holding company that controls one or more members of the Bank on whose board an appointive director serves is not deemed to be service as a director or officer of a member of the Bank if the assets of all such members constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

(4) *Loans and deposits.* Loans obtained from a member and money placed on deposit with a member are not deemed to be a financial interest in a member if the transactions occur in the normal course of business of the member and are on terms that are no more favorable than those that would be available under like circumstances to members of the public.

(5) *Contractual relationships.* Any contractual relationship between an appointive director and one or more members of the Bank on whose board the director serves that includes a contractual right to the payment of money, is presumed not to constitute a financial interest in a member if the amount due to the director under such contracts in any calendar year is less than 10 percent of the director's adjusted gross income for that calendar year. The Finance Board will determine on a case-by-case basis whether a contractual relationship that exceeds the 10 percent threshold constitutes a financial interest in a member.

(6) *Attribution.* The Finance Board will attribute to the appointive director any debt or equity securities owned by the director's spouse or minor children and any contractual relationships between a member and the director's spouse for purposes of determining compliance with this section.

■ 3. Revise § 915.11(a) to read as follows:

§ 915.11 Conflict of interests policy for Bank directors.

(a) *Adoption of conflict of interests* policy. Each Bank shall adopt a written conflict of interests policy that applies to all Bank directors. At a minimum, the conflict of interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower;

(2) Require appointive directors to comply with § 915.10(e) of this part;

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflicts of interest and establish procedures for addressing such conflicts;

(5) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved in accordance with this section; and

(6) Establish procedures to monitor compliance with the conflict of interests policy.

* * * * *

§ 915.16 [Removed]

■ 4. Remove § 915.16.

§ 915.17 [Removed]

■ 5. Remove § 915.17.

Appendix A to Part 915—[Removed]

■ 6. Remove Appendix A to part 915.

Dated: June 13, 2007.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E7–11749 Filed 6–18–07; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28251; Directorate Identifier 2007–CE–049–AD; Amendment 39–15099; AD 2007–12–21]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company) Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2006–26–08, which applies to all Hawker Beechcraft Corporation (HBC) Model 390 airplanes. AD 2006–26–08 currently requires you to repetitively inspect the hydraulic pump outlet tube on both engines and immediately replace the tube if damage is found. AD 2006–26–08 also requires you to incorporate an airplane flight manual (AFM) change that limits operation of an engine with its associated firewall hydraulic shutoff valve closed. If an engine is operated with its firewall hydraulic shutoff valve closed, you must replace the hydraulic pump outlet tube. We issued AD 2006–26–08 as an interim action while we worked with the type certificate holder to develop a design change. HBC has

now developed kits that incorporate design changes for the hydraulic pump outlet tubes and dampener supports so this AD retains the actions of AD 2006–26–08 until the new modification kits required by this AD are installed. We continued to receive additional reports of failures of the hydraulic pump outlet tube. We are issuing this AD to prevent failure of the hydraulic pump outlet tube and consequent leaking of hydraulic fluid. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

DATES: This AD becomes effective on June 20, 2007.

On June 20, 2007, the Director of the Federal Register approved the incorporation by reference of Raytheon Aircraft Company Kit—Dampener Support Improvement, Drawing No. 390–5804 (Kit 390–5804–0001 Field Service Kit) and Raytheon Aircraft Company Kit—Hydraulic Pump Pressure Hose Installation No. 390–5805 (Kit 390–5805–0001 Field Service Kit), as referenced in Hawker Beechcraft Mandatory Service Bulletin 29–3800, Issued May 2007, as listed in this AD.

As of February 2, 2006 (71 FR 5581, February 2, 2006), the Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January 2006; and Raytheon Safety Communique No. 267, dated January 2006, as listed in this AD.

We must receive any comments on this AD by August 20, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

To get the service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67291; telephone: (800) 429–5372 or (316) 676–3140.

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2007–28251; Directorate Identifier 2007–CE–049–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Propulsion Aerospace Engineer, ACE 116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

Reports of left engine hydraulic tube assembly failures prompted us to issue AD 2006–02–51, Amendment 39–14459 (71 FR 5581, February 2, 2006). AD 2006–02–51 required repetitive inspection of the hydraulic tube assembly, correction of the symptomatic clamp to hydraulic tube chafing on the left-hand nacelle, and reporting results to the FAA.

After we issued AD 2006–02–51, we continued to receive additional reports of failures of the hydraulic pump outlet tube, including failures on the right engine on certain HBC Model 390 airplanes. This prompted us to supersede AD 2006–02–51 with AD 2006–26–08, Amendment 39–14866 (71 FR 78051, December 28, 2006).

AD 2006–26–08 currently requires you to repetitively inspect the hydraulic pump outlet tube on both engines and immediately replace the tube if damage is found. AD 2006–26–08 also requires you to incorporate an airplane flight manual (AFM) change that limits operation of an engine with its associated firewall hydraulic shutoff valve closed. If an engine is operated with its firewall hydraulic shutoff valve closed, you must replace the hydraulic pump outlet tube.

We issued AD 2006–26–08 as an interim action while we worked with the type certificate holder to develop a design change. We continued to receive additional reports of failures of the hydraulic pump outlet tube.

HBC has now developed kits that incorporate design changes for the hydraulic pump outlet tubes and dampener supports.

Failure of the hydraulic pump outlet tubes, if not prevented, could cause flammable fluid leakage in the engine nacelle. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

Relevant Service Information

We reviewed Hawker Beechcraft Mandatory Service Bulletin No. 29–3800, issued May 2007. The service information specifies the following actions:

- Incorporating Kit No. 390–5804–0001, which replaces the pulse dampener brackets with stiffer brackets and a spacer on both engines; and
- Incorporating Kit No. 390–5805–0001, which replaces the hydraulic pump outlet tubes with integral firesleeve hoses.

Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January 2006; and Raytheon Safety Communique No. 267, dated January 2006, will be retained for this AD until both kits referenced above are incorporated.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD retains the actions of AD 2006–26–08 and requires incorporating Kit No. 390–5804–0001 and Kit No. 390–5805–0001. Upon incorporating the kits required by this AD, the repetitive inspections and replacement retained from AD 2006–26–08 are no longer necessary. The AFM limitation is still required.

We continue to work with HBC in analyzing the design of the hydraulic system of the Model 390 airplanes. Based on this analysis, we may take future rulemaking action, which could eliminate the need for the current AFM limitation.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and

we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2007–28251; Directorate Identifier 2007–CE–049-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–26–08, Amendment 39–14866 (71 FR 78051, December 28, 2006), and by adding a new AD to read as follows:

2007–12–21 Hawker Beechcraft Corporation (Type Certificate No. A00010WI previously held by Raytheon Aircraft Company): Amendment 39–15099; Docket No. FAA–2007–28251; Directorate Identifier 2007–CE–049–AD.

Effective Date

(a) This AD becomes effective on June 20, 2007.

Affected ADs

(b) This AD supersedes AD 2006–26–08; Amendment 39–14866.

Applicability

(c) This AD affects the following Model 390 airplanes that are certificated in any category:

(1) Serial numbers RB–1 through RB–49 that have Field Service Kit 390–9100 installed; and

(2) Serial numbers RB–50 through RB–209.

Unsafe Condition

(d) This AD is the result of continuing failures of the hydraulic pump outlet tubes and the need to incorporate improved design. We are issuing this AD to prevent failure of the hydraulic pump outlet tube and consequent leaking of hydraulic fluid. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the hydraulic pump outlet tube for evidence of chafing, excessive vibration, wear, deterioration, or hydraulic fluid leakage, as follows: (i) For the left-hand (LH) engine: Remove the clamp, perform the inspection, and replace the clamp with a new one as specified in Raytheon Mandatory Service Bulletin No. SB 29–3771 after each inspection (ii) For the right-hand (RH) engine: Perform the inspection. Removal and replacement of the clamps are not necessary	Initially at whichever of the following occurs first and thereafter at intervals not to exceed 25 hours time-in-service (TIS) until the kits required in paragraph (e)(4) of this AD are incorporated: (A) Within the next 25 hours TIS after December 28, 2006 (the effective date of AD 2006–26–08); or (B) At the next inspection required by AD 2006–02–51.	Inspect following Raytheon Safety Communique No. 267, dated January 2006. Raytheon Safety Communique No. 267, dated January 2006, addresses the LH engine. Use the same inspection procedures for the RH engine hydraulic pump outlet tube (P/N 390–580037). Remove and replace the clamp (LH only) following Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January, 2006.

Actions	Compliance	Procedures
(2) Replace the hydraulic pump outlet tube, part number (P/N) 390–580035 (or FAA-approved equivalent) for the LH engine or P/N 390–580037 (or FAA-approved equivalent) for the RH engine.	Each and every time any of the following occurs until the kits required in paragraph (e)(4) of this AD are incorporated (i) Prior to further flight after any inspection required in paragraph (e)(1) of this AD where evidence of chafing, excessive vibration, wear, deterioration, or hydraulic fluid leakage is found; and (ii) Within 1 hour TIS following identification of an intended or unintended engine operation with the hydraulic shutoff valve closed.	Raytheon Aircraft Premier 1 Model 390 Maintenance Manual, P/N 390–590001–0015.
(3) Incorporate Raytheon Aircraft Company Part Number 390–590001–0003C3TC6, dated September 16, 2006 into the airplane flight manual (AFM).	Within 5 days after December 28, 2006 (the effective date of AD 2006–26–08).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the AFM change requirement of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) Incorporate Kits No. 390–5804–0001 and 390–5805–0001.	At whichever of the following that occurs first: (i) Within the next 25 hours TIS after June 20, 2007 (the effective date of this AD); or (ii) Within the next 45 days after June 20, 2007 (the effective date of this AD.	Follow the instructions in the documents presented below as referenced in Hawker Beechcraft Mandatory Service Bulletin 29–3800, Issued May, 2007: (i) Raytheon Aircraft Company Kit—Dampener Support Improvement, Drawing No. 390–5804 (Kit 390–5804–0001 Field Service Kit). (ii) Raytheon Aircraft Company Kit—Hydraulic Pump Pressure Hose Installation No. 390–5805 (Kit 390–5805–0001 Field Service Kit).

(f) After the actions required in paragraph (e)(4) of this AD are done:

(1) the repetitive inspections and replacement of paragraphs (e)(1) and (e)(2) of this AD are no longer required.

(2) the requirement in paragraph (e)(3) of this AD to incorporate Raytheon Aircraft Company Part Number 390–590001–0003C3TC6, dated September 16, 2006, into the AFM remains valid.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office, FAA, ATTN: James P. Galstad, Propulsion Aerospace Engineer, ACE 116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) AMOCs approved for AD 2006–26–08 are approved for this AD.

Material Incorporated by Reference

(i) You must use Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January, 2006; Raytheon Safety Communique No. 267, dated January 2006; and Raytheon Aircraft Company Kit—Dampener Support Improvement, Drawing No. 390–5804 (Kit 390–5804–0001 Field Service Kit) and Raytheon Aircraft Company Kit—Hydraulic Pump Pressure Hose Installation No. 390–5805 (Kit 390–5805–0001 Field Service Kit), as referenced in Hawker Beechcraft Mandatory Service Bulletin 29–3800, Issued May, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Raytheon Aircraft Company Kit—Dampener Support Improvement, Drawing No. 390–5804 (Kit 390–5804–0001 Field Service Kit) and Raytheon Aircraft Company Kit—Hydraulic Pump Pressure Hose Installation No. 390–5805 (Kit 390–5805–0001 Field Service Kit), as referenced in Hawker Beechcraft Mandatory Service Bulletin 29–3800, Issued May, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 2, 2006 (71 FR 5581, February 2, 2006), the Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January, 2006; and Raytheon Safety Communique No. 267, dated January 2006.

(3) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67291; telephone: (800) 429–5372 or (316) 676–3140.

(4) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 4, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11241 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28449; Directorate Identifier 2007–SW–18–AD; Amendment 39–15103; AD 2007–09–51]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model 369, YOH–6A, 369A, OH–6A, 369H, 369HM, 369HS, 369HE, 369D, 369E, 369F, and 369FF Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2007–09–51, sent previously to all known U.S. owners and operators of the

specified MD Helicopters, Inc. (MDHI), model helicopters by individual letters. This AD requires, before further flight, removing each affected tail rotor blade assembly and inspecting the bore of the tail rotor blade root fitting. If the blade assembly does not have a smooth radius, the AD requires replacing it. The AD also requires identifying each airworthy tail rotor blade assembly with the applicable helicopter model. This amendment is prompted by a report of an accident after the loss of a tail rotor blade. The actions specified by this AD are intended to prevent the failure of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective July 5, 2007, to all persons except those persons to whom it was made immediately effective by Emergency AD 2007–09–51, issued on April 27, 2007, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 2007.

Comments for inclusion in the Rules Docket must be received on or before August 20, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Fax:* 202–493–2251.

You may get the service information identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the web at *http://www.mdhelicopters.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5527) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 27, 2007, the FAA issued Emergency AD 2007–09–51 (EAD) for the specified MDHI model helicopters. The EAD requires, before further flight, removing each affected tail rotor blade assembly and, using a bright light, inspecting the bore of the tail rotor blade root fitting. If the blade assembly does not have a smooth radius, the AD requires replacing it. The AD also requires identifying each airworthy tail rotor blade assembly with the applicable model of helicopter. That action was prompted by a report of an accident after the loss of a tail rotor blade. This condition, if not corrected, could result in the failure of a tail rotor blade and subsequent loss of control of the helicopter.

MDHI has issued Service Bulletin No. SB369H–247, SB369D–204, SB369E–099, and SB369F–084, dated April 26, 2007 (SB), which describes procedures for inspecting the tail rotor blade assembly. The SB states that reports from the field have shown that there are tail rotor blades in operation with a machining defect. The SB further states that these blades have a sharp transition in the tapered end of the root fitting bore that can cause the tail rotor blade root fitting to fail.

Since the unsafe condition described is likely to exist or develop on other MDHI model helicopters of these same type designs, the FAA issued EAD 2007–09–51 to prevent the failure of a tail rotor blade and subsequent loss of control of the helicopter. This AD requires the following, before further flight:

- Remove each affected tail rotor blade assembly. Using a bright light, inspect the bore of the tail rotor blade root fitting.
- Replace each blade assembly that does not have a smooth radius.
- Identify the airworthy tail rotor blade assembly with the applicable model of helicopter.

The actions must be done by following specified portions of the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, removing each affected blade assembly, inspecting the bore of the tail rotor blade root fitting, and replacing each blade assembly that does not have a smooth radius are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest. Good cause existed to make the AD effective immediately by individual letters issued on April 27, 2007, to all known U.S. owners and operators of MD Helicopters, Inc., Model 369 (Army YOH–6A), 369A (Army OH–6A), 369H, 369HM, 369HS, 369HE, 369D, 369E, 369F, and 369FF helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 980 helicopters of U.S. registry and will require about:

- 0.1 work hour to identify a blade,
- 2 work hours to remove, inspect, install and balance the tail rotor blade assemblies on each helicopter,
- $80 per work hour labor rate, and
- $8,862 for each replacement blade plus hardware.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,901,592, assuming 1 out of 10 blades are found defective for an estimated 196 blades that need replacing.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28449; Directorate Identifier 2007–SW–18–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each

substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–09–51 MD Helicopters, Inc.: Amendment 39–15103. Docket No. FAA–2007–28449; Directorate Identifier 2007–SW–28–AD.

Applicability

Model 369, YOH–6A, 369A, OH–6A, 369H, 369HM, 369HS, 369HE, 369D, 369E, 369F, and 369FF helicopters, with a tail rotor blade, part number (P/N) 369A1613, 369D21606, 369D21613, 369D21615, or 421–088, all dash numbers, installed, certificated in any category.

Compliance

Before further flight, unless accomplished previously.

To prevent the loss of a tail rotor blade and subsequent loss of control of the helicopter, do the following:

(a) Inspect each affected tail rotor blade for a smooth radius as follows:

(1) Remove the tail rotor blade assembly by following the Accomplishment Instructions, paragraphs 2.B.(1) through 2.B.(3), Part 2., of MD Helicopters, Inc., Service Bulletin SB369H–247, SB369D–204, SB369E–099, and SB369F–084 dated April 26, 2007 (SB).

(2) Using a bright light, inspect the bore of the tail rotor blade root fitting by following the Accomplishment Instructions, paragraphs 2.B.(4) and 2.B.(5), Part 2, and Figures 1 and 2 of the SB.

(b) Replace each blade assembly that does not have a smooth radius by following the Accomplishment Instructions, paragraphs 2.B.(6) and (7), Part 2, and Figure 2 of the SB.

(c) Identify the airworthy tail rotor blade assembly with the applicable model of helicopter by following the Identification, paragraphs 3.(1) through 3.(4) of the SB.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA; Attn: John Cecil, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5228, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(e) Special flight permits will not be issued.

(f) Inspecting, replacing, and identifying the tail rotor blade assembly shall be done by following the specified portions of MD Helicopters, Inc., Service Bulletin SB369H–247, SB369D–204, SB369E–099, and SB369F–084, dated April 26, 2007. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(g) This amendment becomes effective on July 5, 2007, to all persons except those persons to whom it was made immediately effective by Emergency AD 2007–09–51, issued April 27, 2007, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 5, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–11409 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27678; Airspace Docket No. 07–ACE–3]

Modification of Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Monticello, IA.

DATE: Effective Date: 0901 UTC, July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 16, 2007 (72 FR 27415). The FAA uses the direct final

rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on June 4, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2994 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27677; Airspace Docket No. 07–ACE–2]

Modification of Class E Airspace; Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class D and Class E airspace at Manhattan, KS.

DATES: *Effective Date:* 0901 UTC, July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 16, 2007 (72 FR 27413). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date. Additionally the name is changed to Manhattan Regional Airport.

Issued in Fort Worth, Texas on June 4, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2992 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27679; Airspace Docket No. 07–ACE–4

Modification of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E Airspace at Marshalltown, IA.

DATES: *Effective Date:* 0901 UTC, July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 16, 2007 (72 FR 27416). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas, on June 4, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2995 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27676; Airspace Docket No. 07–AGL–2]

Modification of Class E Airspace; Canby, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Canby, MN.

DATES: *Effective Date:* 0901 UTC, July 5, 2007.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 16, 2007 (72 FR 27412). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on June 4, 2007.

Walter Tweedy,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 07–2993 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 743, 744, 748, 750 and 758

[Docket No. 061205125–7125–01]

RIN 0694–AD75

Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User; Revision of Import Certificate and PRC End-User Statement Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise and clarify U.S. licensing requirements and licensing policy on exports and reexports of items to the People's Republic of China (PRC). BIS published a revised policy and related amendments in proposed form in the **Federal Register** with a request for comments.

This final rule establishes a control, based on knowledge of a ''military end-use,'' on exports and reexports to the PRC of certain items on the Commerce Control List (CCL) that otherwise do not require a license to the PRC. It also includes a revision to the license application review policy for items destined for the PRC that are controlled on the CCL for reasons of national security, and revises the license review policy for items controlled for reasons of chemical and biological weapons proliferation, nuclear nonproliferation, and missile technology for export to the PRC, requiring that applications involving such items be reviewed in conjunction with the revised national security licensing policy. This rule also creates a new authorization for ''validated end-users'' to which specified items may be exported or reexported without a license. Validated end-users will be placed on a list in the EAR after review and approval by the United States Government. The process for such review is also set forth in this final rule. This rule also revises the circumstances in which End-User Statements, issued by the PRC Ministry of Commerce (MOFCOM), must be obtained, requiring them for transactions that both require a license to the PRC for any reason and (for most exports) exceed a total value of $50,000. This final rule also includes other minor corrections and conforming amendments.

DATES: This rule is effective June 19, 2007. Comments may be submitted at any time.

ADDRESSES: Although this is a final rule, BIS welcomes comments, which should be sent by fax to (202) 482–3355, e-mail to *publiccomments@bis.doc.gov,* or by mail to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Please refer to regulatory identification number (RIN) 0694–[AD75 final] in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB) by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: For technology related issues, contact Bernard Kritzer, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; by telephone (202) 482–0092; or by e-mail to *bkritzer@bis.doc.gov.*

For issues related to the Validated End-User authorization, contact Michael Rithmire, Export Administration Intelligence Liaison, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; by telephone (202) 482–6105; or by e-mail to *mrithmir@bis.doc.gov.*

For general questions or a copy of the economic analysis, please contact Sheila Quarterman at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background

It is the policy of the United States Government to facilitate U.S. exports to legitimate civilian end-users in the People's Republic of China (PRC), while preventing exports that would enhance the military capability of the PRC. Consistent with this policy, the Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by revising and clarifying United States licensing requirements and licensing policy on exports and reexports of goods and technology to the PRC.

As the PRC has increased its participation in the global economy, bilateral trade has grown rapidly, and the PRC has emerged as a major market for U.S. exports and investment. This greatly expanded economic relationship is beneficial for both nations, and has increased the prosperity of both the American and Chinese people. The United States therefore seeks to encourage and facilitate exports to legitimate civil end-users in the PRC. At the same time, the United States has a longstanding policy of not permitting exports that would make a direct and significant contribution to the PRC's military capability. Moreover, the United States has an interest in restricting exports of certain dual-use products and technologies that would not otherwise need an export license, if those items are destined for a ''military end-use'' in the PRC.

BIS is therefore amending the EAR to revise and clarify U.S. licensing requirements and licensing policy on exports and reexports of items to the PRC, and to establish a new authorization that is intended to facilitate exports to validated civilian end-users in the PRC. On July 6, 2006, BIS published a proposed rule and requested public comments (71 FR 38313). On October 19, 2006, the original comment period deadline of November 3, 2006 was extended until December 4, 2006 (71 FR 61692). The detailed rationale for the proposed rule's provisions is provided in the preamble to the proposed rule and is not repeated here. In general, however, this rule proposes certain revisions and clarifications to licensing requirements and policies with regard to the PRC to more precisely reflect U.S. foreign policy and national security interests.

Revision of Licensing Review Policy and License Requirements

To strengthen efforts to prevent U.S. exports to the PRC that would enhance the PRC's military capabilities, this rule revises the licensing review policy for items controlled on the Commerce Control List for reasons of national security. Specifically, this rule amends section 742.4(b)(7) to make clear that the overall policy of the United States for exports to the PRC of these items is to approve exports for civil end-uses but generally to deny exports that will make a direct and significant contribution to Chinese military capabilities. BIS makes further revisions to the EAR to clarify that it will review license applications to export or reexport to the PRC items controlled for chemical and biological weapons proliferation, nuclear nonproliferation, and missile technology under sections 742.2, 742.3 and 742.5, respectively, of the EAR, in accordance with the licensing policies in both paragraph (b) of the applicable section and with the revised licensing policy in paragraph 742.4(b)(7) of the EAR, which provides a presumption of denial for license applications to export, reexport, or transfer items that would make a direct and significant

contribution to the PRC's military capabilities such as, but not limited to, the major weapons systems described in new Supplement No. 7 to Part 742 of the EAR.

This rule also implements a new control on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC when the exporter has knowledge, as defined in section 772.1 of the EAR, that such items are destined for ''military end-use'' in the PRC or is informed that such items are destined for such an end-use. The list of items subject to this ''military end-use'' restriction covers approximately 20 products and associated technologies, as described in the entries of 31 full or partial Export Control Classification Numbers (ECCNs). The list was based on a review of public comments and a careful interagency review of items listed on the CCL that currently do not require a license for export to the PRC but have the potential to advance the military capabilities of the PRC. Applications to export, reexport, or transfer items controlled pursuant to the ''military end-use'' control will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer will make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the national security interests of the United States. Other end-use controls in part 744 of the EAR continue to apply.

New Authorization Validated End-User (VEU)

To facilitate legitimate exports to civilian end-users, BIS establishes in this rule a new authorization Validated End-User. The authorization will allow the export, reexport, and transfer of eligible items to specified end-users in an eligible destination, initially the PRC. Validated end-users will be those entities that meet a number of criteria, including a demonstrated record of engaging only in civil end-use activities. This rule outlines clear procedures to request Validated End-User authorization, the procedures and timelines to be used by an interagency committee established to consider such requests, and the criteria for evaluating requests.

Revision of End-User Statement Requirements

To strengthen implementation of the April 2004 end-use visit understanding between the Vice Minister of Commerce of the PRC and the U.S. Under Secretary of Commerce for Industry and Security, this rule requires exporters to obtain PRC End-User Statements from the Ministry of Commerce of the PRC for all exports of items on the CCL requiring a license to the PRC over a specific value, which for most exports will be a new, higher threshold of $50,000. BIS anticipates that this change will facilitate BIS's ability to conduct end-use checks on exports or reexports of controlled goods and technologies to the PRC, consistent with the existing end-use visit understanding with the Government of the PRC, without resulting in an overall annual increase in the number of such statements required from U.S. exporters. The facilitation of end-use checks should, in turn, facilitate increased U.S. exports to the PRC.

Comments and Responses

BIS received 57 public comments, amounting to more than 1000 pages of comments on the proposed rule. Summaries of those comments and BIS responses appear below by topic. Similar comments are consolidated.

Revised License Review Policy for Items Controlled for National Security Reasons to the PRC

Comment 1: A number of commenters asserted that the ''material contribution to military capability'' standard used in the proposed rule with respect to BIS's review of license applications involving items controlled for national security is too broad. In addition, certain commenters stated that the concept of ''material contribution to military capability'' is largely subjective, and best left to military experts in the Government. Moreover, they asserted that the proposed definition of ''military end-use'' goes far beyond even the broad scope of the ''material contribution to military capability'' standard used elsewhere in the proposed rule and that it is unlikely that this problem can be resolved by revising that definition.

Response: BIS has considered the public comments received regarding the appropriate license review standard to apply to license applications involving items controlled for national security (NS) reasons. BIS had proposed revising section 742.4(b)(7) of the EAR to establish a policy of reviewing applications involving items controlled for NS reasons to determine if the items would make a ''material contribution'' to the PRC's military capabilities. This proposal would have changed the review standard in the EAR, in place since 1983, which provided that BIS would conduct an extended review or deny applications to export or reexport items that would make a ''direct and significant contribution'' to a series of listed PRC military activities. Having reviewed public comments, BIS and its interagency partners have decided to maintain the ''direct and significant'' standard and not to adopt a new ''material contribution'' standard. BIS agreed with commenters that the ''material contribution'' standard was too broad for a review of NS-controlled items. Although the ''direct and significant'' standard is being retained, BIS has decided to apply it to PRC military capabilities as a whole, rather than a limited list of military activities. To update and better inform exporters of this license application review policy, and to add clarity to the term ''military capabilities,'' BIS is adding new Supplement No. 7 to Part 742 of the EAR, which provides an illustrative list of weapons systems that could constitute PRC military capabilities. BIS developed this illustrative list in conjunction with its interagency partners.

Military End-Use License Requirement for Certain Exports and Reexports to the PRC

Comment 2: Many commenters claimed that, due to widespread foreign availability, including production of such items in the PRC, the export, reexport, or transfer to the PRC of the listed items to which the proposed ''military end-use'' license requirement for the PRC would apply (set forth in Supplement No. 2 to Part 744) would not make an impact on the military capability of the PRC. Some of those commenters claimed that many of the items subject to the new ''military end-use'' license requirement have been exempted from most export restrictions and national security controls because they were deemed not useful for ''military end-use'' purposes.

Response: BIS reviewed each comment received regarding the list of ECCNs proposed for the new ''military end-use'' control. In response to these comments, BIS conducted a thorough review and analysis of each proposed ECCN, considering the following factors: (1) The military applicability of each item; (2) the relative foreign availability of each item; and (3) the level of U.S. commercial exports of each item to the PRC. Each ECCN was evaluated individually against all three criteria, with no one criterion being solely determinative. Greatest weight was given to the military applicability of each item, based on an evaluation of the contribution the items covered by the ECCN could make to a military capability if used in a ''military end-use,'' as defined in this final rule. With regard to foreign availability, indigenous

availability within the PRC was given greater weight than evidence of foreign availability from countries that cooperate with the United States in multilateral export control regimes, though all evidence of foreign availability was considered. When BIS found significant evidence of foreign availability and a high level of commercial exports, but limited military applicability, the ECCN was removed from the proposed list. When BIS found limited evidence of foreign availability and significant military applicability, the item remained on the proposed list, even if it was a major commercial export. As a result of this analysis, BIS determined that it was appropriate to reduce the number of ECCNs subject to the ''military end-use'' licensing requirement from 47 to 31 full and partial ECCNs. For certain items, the list in Supplement No. 2 to part 744 includes particular commodities, as well as the software and technology associated with such commodities. Thus, the resulting list of full and partial ECCNs covers approximately 20 distinct product areas, including items such as aircraft and aircraft engines, underwater systems, lasers, depleted uranium, certain composite materials, airborne communications systems and inertial navigation systems, and certain highly specialized telecommunications equipment useful for electronic warfare, space communications, or air defense. The final list published with this rule clearly identifies those items that have the potential to contribute to the military end-uses that this final rule is intended to control, consistent with overall U.S. policy toward the PRC.

Comment 3: A number of commenters asserted that imposing the ''military end-use'' control on 47 ECCNs would have a commercial impact that extended beyond these items. Several commenters noted that, as proposed, the ''military end-use'' control extended to items classified under ECCNs 5A992 and 5D992, items that have never been controlled for export or reexport to the PRC. At the same time, items with higher-level encryption functionality would be eligible for export to the PRC under License Exception ENC. The commenters asserted that this would create an incentive for exporters to add cryptography to their items in order to be exempt from the ''military end-use'' licensing requirement.

Response: As noted in response to Comment 2, this final rule has been amended such that ECCNs 5A992 and 5D992 are no longer subject to the ''military end-use'' control. As a result, any such incentive that might have been present is no longer present.

Comment 4: A number of commenters asserted that the ''military end-use'' license requirement will be unilateral because some European members of the Wassenaar Arrangement have stated that they do not plan to implement the Wassenaar Arrangement Statement of Understanding on Control of Non-Listed Dual-Use Items to the PRC.

Response: The United States is committed to maintaining and implementing trade controls decided on a multilateral basis with like minded countries, such as other member countries of the Wassenaar Arrangement. To that end, this rule is consistent with U.S. commitments as a Participating State in the Wassenaar Arrangement. At the December 2003 Wassenaar Arrangement Plenary, Wassenaar Arrangement members agreed in a Statement of Understanding on Control of Non-Listed Dual-Use Items to adopt and implement measures controlling exports of dual-use items destined for ''military end-use'' in a country subject to a United Nations or relevant regional arms embargo. Commenters are correct that some Wassenaar Arrangement members have stated that they would not implement similar ''military end-use'' controls on dual-use exports to the PRC. However, other Wassenaar Arrangement members have said that they would consider such controls. The revisions made by this final rule are intended to align U.S. export controls with overall U.S. national security and foreign policy interests, consistent with our multilateral commitments but also recognizing the unique nature of U.S. military and security interests in the Asia-Pacific region.

Comment 5: Some commenters asserted that the ''military end-use'' license requirement will be burdensome to U.S. exporters and would be difficult to comply with, as proposed, because the definition of ''military end-use'' was overly broad and vague. They argued that the breadth of the definition would result in encompassing more items and transactions than those that potentially could enhance the military capabilities of the PRC. Some commenters argued that terms such as ''deployment'' and ''support'' were too vague to be readily understood by exporters screening their transactions, while other commenters noted that the definition of ''military end-use'' did not use well-understood terms from the EAR.

Response: To address the commenters' argument that the definition of ''military end-use,'' as proposed, may have been insufficiently precise, BIS, in conjunction with its interagency partners, has revised the definition of ''military end-use'' in section 744.21(f) of the EAR to add additional clarity and specificity. The revised definition draws extensively on the definition of military end-use already contained in section 744.17 of the EAR, which restricts certain exports and reexports of general purpose microprocessors for ''military end-use'' and to ''military end-users.'' Like the proposed rule, this final rule continues to define ''military end-use'' as including incorporation into a military item described on the U.S. Munitions List, International Munitions List, and items listed under ECCNs ending in ''A018'' on the CCL. However, it clarifies that ''military end-use'' also means for the ''use'', ''development,'' or ''production'' (each as defined in part 772 of the EAR) of such items, and that it means for the ''deployment'' only of those items covered under ECCN 9A991 as described in Supplement No. 2 to Part 744. In addition, for purposes of this ''military end-use'' control, in a new note to section 744.21(f), BIS has provided definitions for ''operation,'' ''installation,'' ''maintenance,'' and ''deployment.'' These are terms not previously defined in the EAR, and BIS intends such definitions to clarify the scope of the military end-use control.

Comment 6: Some commenters asserted that the license application review standard related to the ''military end-use'' control also was overly broad and vague. They argued that this, too, would result in the rule encompassing more items and transactions than those that potentially could enhance the military capabilities of the PRC. They pointed out that the ''military end-use'' control would apply to items previously removed from control by agreement of various multilateral regimes, and commented that the concept of ''material contribution'' was imprecise.

Response: In response to comments received, BIS reviewed the breadth and clarity of the license review standard set forth in proposed section 744.21(e). This section provided that license applications involving the ''military end-use'' control would be reviewed on a case-by-case basis to determine whether they would make a ''material contribution'' to the military capabilities of the PRC and would result in advancing the country's military activities contrary to U.S. national security interests. This final rule reflects BIS's continued belief that this standard is the appropriate basis through which it will review such license applications. Items subject to the ''military end-use'' control were determined to be more sensitive when destined for a ''military end-use'' than when they are simply

controlled for national security reasons, and therefore BIS determined that they are more appropriately subject to a different licensing review standard, consistent with U.S. foreign and related export control policies for the PRC. (BIS's consideration of ''material contribution'' is also discussed in response to Comment 1.) In addition, in reviewing public comments, BIS determined that the license review standard set forth in the proposed rule did not specify how BIS would treat a license application if it were determined that the criteria set forth in the standard were satisfied. In this final rule, BIS is revising the proposed license review standard to specify that when it is determined that these criteria are met, the license application will be denied.

Comment 7: A number of commenters stated that U.S. exporters, especially those exporting to distributors, would experience an undue burden and an increase in liability because they do not always have accurate information on the specific end-use of their products. Commenters further stated that it is difficult to know about customers' intentions with respect to resale, especially after reincorporation into a new product. They argued that the lack of clarity as to the expected degree of due diligence for complying with the ''military end-use'' control would exacerbate this problem, particularly because knowledge of a ''military end-use'' is determined using the existing standard of knowledge in the EAR instead of an actual and positive knowledge standard. In this context, some commenters also argued that the high costs of compliance U.S. exporters would experience would place them at a competitive disadvantage in the PRC market.

Response: BIS has reviewed the comments received regarding the knowledge standard set forth in the proposed ''military end-use'' control. Applying the EAR's existing knowledge standard provides exporters and reexporters with a familiar standard for screening or evaluating intended exports, reexports or transfers of items subject to the ''military end-use'' control. Under the EAR, exporters and reexporters already are responsible for ensuring that they do not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is restricted by part 744 of the EAR. The term ''knowledge'' used throughout part 744 (as defined in section 772.1 of the EAR) encompasses both actual knowledge and reason to know. Therefore, BIS believes that most exporters and reexporters already have screening procedures or internal controls in place to address the ramifications of having or gaining knowledge of an unauthorized end-use. The comments received did not provide evidence to support assertions that exporters will incur high costs of compliance related to the new ''military end-use'' control, nor was evidence provided to demonstrate that compliance burdens would be any greater than those currently required by provisions in part 744 of the EAR, which require exporters to apply for licenses based on their ''knowledge'' of the intended end-user or end-use of an item. Moreover, because this final rule reduces the number of ECCNs subject to the ''military end-use'' licensing requirement and further clarifies the definition of ''military end-use,'' BIS believes that the overall scope of the control has narrowed in a way that will minimize any additional burden of complying with these requirements.

Comment 8: Some commenters recommended that a better approach to the ''military end-use'' control would be for BIS to publish a list, similar to the Unverified List or Entity List in the EAR, which would name specific prohibited military end-users in the PRC. Commenters argued that such a publication would shift the burden from the U.S. exporters to the U.S. Government.

Response: BIS agrees that the EAR should provide exporters with as much clarity as possible regarding specific end-users of concern and end-users that merit greater scrutiny, as well as end-users that have been validated as legitimate civilian customers. As a result of this rule, BIS anticipates publishing the names of validated end-users. Another proposed rule, published on June 5, 2007 (72 FR 31005), would expand the criteria by which BIS could place end-users on the Entity List to include military end-users, thereby alerting exporters to the need for licenses. Yet even as BIS takes steps to identify for exporters customers of concern as well as legitimate civilian customers, BIS believes it remains critical for exporters to know their customers and perform due diligence to ensure that certain items destined for a ''military end-use'' in the PRC are reviewed by BIS. With regard to the suggestion that BIS publish a list of military end-users, it is important to recall that this rule controls certain items based on their end-use, not on the end-user. The control depends on the circumstances of how the item will be used, not necessarily by whom it will be used. Therefore, BIS does not believe that a special list of military end-users in the PRC is appropriate for this rule. BIS has other end-user controls and other lists to identify end-users of concern.

Comment 9: One commenter suggested that BIS clarify the relationship between existing License Exceptions available for the PRC and the proposed military end-use control.

Response: BIS has revised section 744.21(c) to state more clearly that certain provisions of License Exception GOV are available for items requiring a license as a result of the military end-use control. Absent such a license requirement or another relevant license requirement set forth elsewhere in the EAR (*e.g.*, for a proliferation end-use restricted under part 744), items listed in Supplement No. 2 to Part 744 would be exported to the PRC without a license.

Comment 10: Some commenters stated that because the ''military end-use'' control will have a significant impact, it should have been determined to be a ''major rule'' for purposes related to requirements of the Congressional Review Act (CRA) and that BIS's analysis of the projected impact of the rule should be made public.

Response: Under the CRA, the OMB determines whether a rule is a ''major rule.'' OMB has determined, without regard to whether the proposed rule may have been major, that this final rule is not major because its annual effect on the economy is well below the $100 million threshold provided in the CRA.

BIS's analysis for this final rule demonstrates that the changes to the EAR (End-User Statement (EUS) requirement; Validated End-User (VEU) authorization; and ''military end-use'' control) that have the potential to have an annual effect on the economy will actually have little overall effect.

The EUS requirement will result in little, if any additional cost to U.S. exporters. EUSs are now required for all license exports exceeding $50,000 in value (except for computers subject to the provisions of section 748.10(b)(3) or to items classified under ECCN 6A003). While this changes the distribution of license applications requiring EUSs, the higher dollar threshold triggering the need for an EUS will keep the overall number of license applications that require EUSs about the same as it was before this revision. The VEU authorization will actually reduce costs of U.S. exporters because it will eliminate the need for individual export licenses to specified customers in the PRC. Eliminating export license applications could save U.S. exporters as much as several million dollars annually. While the rule does establish reporting requirements on U.S.

companies that export without a license under the VEU authorization, these requirements are not appreciably more than existing recordkeeping requirements and should be far less than the cost of license applications avoided by the U.S. exporters.

Finally, the ''military end-use'' control established by this rule covers a small set of items. U.S. exporters should already be screening these exports, as well as all items subject to the EAR (items numbering in the thousands) for reasons of control that are set forth in part 744 of the EAR (including weapons of mass destruction end-uses and involvement of persons denied export privileges). The most direct potential cost of the ''military end-use'' control would be export license applications now required when previously they were not. Based on existing data, this control could result in additional export licenses for approximately $5,000,000 worth of goods annually, with a cost, using a very high estimate, of $500,000. Commenters did not provide data to allow BIS to evaluate what increased compliance costs, if any, entities would incur with this additional screening requirement.

Thus, the overall annual effect on the economy of this rulemaking, using a very high estimate, will not be more than about several million dollars, which is well below the $100 million threshold required for a major rule.

Comment 11: Two commenters asserted that BIS does not have the statutory authority to promulgate this regulation. In particular, one commenter asserted that BIS does not have authority to amend the EAR to impose unilateral national security controls on exports to China.

Response: Although the EAA has been in lapse since August 21, 2001, BIS amends the EAR under the authority conferred by Executive Order 13222 of August 17, 2001, as extended most recently by the Notice of August 3, 2006 (71 FR 44551 (Aug. 7, 2006)). Therein, the President, by reason of the expiration of the EAA, invoked his authority, including authority under the International Emergency Economic Powers Act, to continue in effect the system of controls that had been maintained under the EAA. In addition, as noted in response to Comment 4, BIS is imposing this ''military end-use'' control consistent with U.S. commitments as a Participating State in the Wassenaar Arrangement, under the Arrangement's policy of national discretion in implementation. Moreover, other Participating States are considering their own measures to implement those commitments.

Comment 12: Two commenters asserted that, in drafting the final version of this rule, BIS should include a provision for contract sanctity in order to avoid adverse effects on existing business contracts. In particular, one commenter stated that BIS should allow exports under open, unshipped orders or contracts and allow companies to continue to satisfy warranty obligations for spare parts, service and maintenance, as well as non-warranty obligations for machines that are already installed.

Response: BIS recognizes that exporters and reexporters may have ongoing contractual obligations to service items previously shipped to the PRC. This is the case whenever BIS issues a rule that imposes a new license requirement. Accordingly, BIS has a practice of including contract sanctity language in the Saving Clause section of such rules, and has included such language in this rule. This language provides that there is a thirty-day delay between publication of this rule and the rule's effective date.

Expansion of End-User Statement Requirement for the PRC

Comment 13: Many commenters stated that an expansion of the End-User Certificate (EUC) requirement to encompass items that require a license for any reason to the PRC and exceed $5,000 would pose a substantial burden for exporters and reexporters because it would increase the number of EUCs required for exports of items to the PRC. Currently, they argued, U.S. exporters experience delays in obtaining EUCs from the PRC's Ministry of Commerce (MOFCOM). They further argued that having to obtain additional EUCs from MOFCOM would protract these delays because MOFCOM does not have sufficient resources to accommodate such an increase in requests. In this context, some commenters also asserted that BIS should not implement the expanded EUC requirement until the government of the PRC agrees to provide the certificates in a timely manner.

Response: As an initial matter, BIS notes that to conform with nomenclature that is recognized by MOFCOM, BIS is amending the EAR to label documents previously described as PRC End-User Certificates as End-User Statements (EUSs). This change was implemented in response to commenters' requests that BIS increase its coordination and cooperation with MOFCOM regarding EUSs. In this rule, this amendment to the EAR is being made in sections 748.9, 748.10 and 748.12.

Like the proposed rule, this final rule continues to provide in section 748.10(a) that it applies to transactions involving items controlled for reasons of national security that are destined for any country identified in section 748.9(b)(2) of the EAR and that, in the case of the PRC, it applies to transactions involving all items that require a license to the PRC for any reason. Based on public comments, however, BIS has reassessed the value threshold at which an EUS will be required for the PRC. As compared to the proposed rule, this final rule, in section 748.10(b)(4), increases the threshold at which an EUS will be required for most items from $5,000 to $50,000. In recent years, exporters and reexporters to the PRC have obtained between 500 and 600 EUSs each year. BIS selected the $50,000 threshold so that the number of EUSs obtained would remain approximately the same, thereby addressing commenters' concerns regarding the burden of obtaining an increased number of EUSs and the burden on MOFCOM of processing an increased number of requests for EUSs. While some exporters (those that export items controlled for reasons other than national security, especially in the chemical sector) will face a new requirement to obtain EUSs, other exporters (those exporting items controlled for reasons of national security valued under $50,000) will have a reduced burden. In raising this threshold, BIS has acted to provide some relief from burdens commenters state that exporters experience with paperwork and the EUS requirement for applicable transactions above $5,000. The new $50,000 threshold will not apply to items classified under ECCN 6A003 (cameras) or to exports to the PRC of computers subject to section 748.10(b)(3). BIS's analysis of licensing data revealed that nearly all transactions for items controlled under ECCN 6A003 are valued at below $50,000. Because BIS believes there is a continued national security need to require EUSs to conduct end-use checks on the sensitive commodities covered by ECCN 6A003, BIS left the $5,000 threshold in place for these commodities. Items classified under ECCN 6A003 are controlled for national security reasons; as a result, this action does not result in imposing a new requirement but simply maintains an existing one. Excluding computers subject to section 748.10(b)(3) from the $50,000 threshold also maintains an existing requirement. As to any delay in the PRC's implementation of this new EUS requirement, as noted above, the U.S.

Government and the Government of the PRC continue a dialogue to address obstacles that may impede the timely processing of requests for EUSs.

Comment 14: Some commenters argued that the $5,000 threshold for the EUC requirement is too low.

Response: As noted in response to Comment 13, above, BIS is raising the EUC threshold for most items to $50,000. The response to Comment 13 provides BIS's rationale for raising this threshold.

Comment 15: Commenters also argued that the expansion of the EUC requirement would protract delays in export licensing because of the lack of sufficient U.S. Government personnel in the PRC to conduct end-use visits and because the Department of Commerce would use the expanded EUC requirement as a basis to increase the number of end-use visits in the PRC.

Response: As noted in the response to Comment 13, BIS does not expect this final rule to result in any significant increase in the number of EUSs required per year. The application of the EUS requirement to items other than those controlled for NS reasons is intended to broaden the variety of situations in which end-use visits may be performed (to include end-use visits concerning items controlled for chemical or biological weapons proliferation reasons, for example). The increased dollar threshold is intended to substantially minimize any increase in the overall number of such visits.

Comment 16: Some commenters stated that the issuance of EUCs depends on the cooperation of senior officials of the government of the PRC. These commenters contend that expanding this requirement would harm the bilateral economic relationship, as well as significant political, military, and foreign policy relationships, between the United States and the PRC, thereby disrupting the necessary cooperation.

Response: As noted in the response to Comment 13, this final rule will require EUSs in circumstances where they were not previously required, but because of the higher dollar threshold this amendment to the EAR is not expected to result in an overall increase in the number of EUSs required. The fact that the Governments of the United States and the PRC are currently engaged in productive dialogue to facilitate end-use visits counters the notion that the changes to the EUS requirement would harm the bilateral relationship.

Comment 17: Some commenters stated that the consequence of the expanded EUC requirement would be a decrease in the volume of U.S. exports to the PRC because customers in the PRC would look to non-U.S. suppliers that do not maintain a similar requirement. They argue that this outcome would be contrary to the purpose of facilitating end-use visits and increased U.S. exports to the PRC, which was explained in the proposed rule.

Response: As explained in the response to Comment 13, the effect of the change to the EUS requirement is not expected to result in a great impact either in terms of costs to the exporter or reexporter or in terms of compliance burden. As a result, BIS does not anticipate that this amendment to the EAR would cause customers in the PRC to turn to non-U.S. suppliers.

Comment 18: Some commenters argued that BIS should exempt companies that are granted Validated End-User status from the EUC requirement.

Response: Section 748.10 of the EAR requires that EUSs be obtained in situations in which a license is required. As Validated End-User authorization eliminates a license requirement, eligible items exported, reexported or transferred under that authorization will not need EUSs.

Comment 19: One commenter stated that the proposed rule should be clarified to indicate whether the expanded EUC requirement covered exports of technology.

Response: Section 748.9(a)(7) provides that exports and reexports of software and technology are exempt from support documentation requirements; BIS proposed no change to this exemption and has made none in this final rule.

Comment 20: One commenter asserted that the EUC requirement constitutes a non-tariff barrier to trade with the PRC. Another commenter asserted that, given the difficulty of obtaining EUCs and the inconsistent information and lack of transparency of MOFCOM in issuing EUCs, U.S. exporters may be required to increase their Foreign Corrupt Practices Act (FCPA) compliance costs to ensure that no prohibited payments are made.

Response: The need for an EUS has been a long standing requirement in the Export Administration Regulations. As noted in response to Comment 13, this final rule merely widens the scope of circumstances in which an EUS is required without increasing the number of EUSs that must be obtained. In addition, BIS notes that the requirement for U.S. exporters to obtain an EUS stems from the Chinese determination that EUSs are required for end-use checks. BIS does not agree that EUSs pose a non-tariff barrier to trade, and without concrete information has no basis to assess possible FCPA-compliance issues raised by this commenter.

Comment 21: Some commenters asserted that the expansion of the EUS requirement implicates requirements of the Paperwork Reduction Act of 1955 (44 U.S.C. 3501 *et seq.*) (PRA).

Response: The impact of the revision of the EUS requirement has been addressed above in the response to Comment 13. BIS prepared a PRA package in connection with the EUS element of this rule.

Authorization Validated End-User (VEU)

Comment 22: Several commenters claimed that the VEU authorization may benefit exporters that have a small customer base, but would not benefit exporters that sell to a large number of customers in the PRC that will in turn act as resellers, distributors, or retailers of those products in the Chinese market to a wide variety of customers.

Response: VEU authorization is intended to facilitate exports by removing the requirement for an individual license for end-users that meet the criteria for VEU authorization. BIS has set no limit on how many customers may apply to receive exports under VEU authorization, and has not precluded resellers from receiving VEU status.

Comment 23: Some commenters asserted that the VEU authorization presents an additional administrative burden because of the associated VEU certification, recordkeeping and reporting requirements, which are similar to the requirements associated with Special Comprehensive Licenses (SCLs).

Response: Authorization VEU is voluntary and therefore does not present an additional administrative burden for any entity that does not choose to avail itself of the authorization. Exporters or customers who believe the VEU requirements are too burdensome may continue to apply for individual licenses if they so choose. Nevertheless, following our review of comments, in this final rule, BIS has established procedures for applying for VEU status that were designed to be as straightforward and present as little burden as possible, consistent with the requirements of national security. VEU status would provide significant benefits for end-users, as well as entities that export or reexport to validated end-users. In addition, BIS believes that the requirements for recordkeeping and reporting associated with VEU status are

less burdensome than those currently in effect for other authorizations such as special licenses that are available under the EAR to companies that meet specified criteria.

Comment 24: Several commenters claimed that the VEU authorization would be burdensome because it would require a complex internal control commitment from Chinese customers or end-users. Those end-users would require assistance from exporters or reexporters in order to request the authorization.

Response: End-users will wish to evaluate the benefit of holding a VEU authorization, and exporters, similarly, will want to consider for themselves the benefits of working with their customers to apply for such authorization. As noted in response to Comment 23, VEU authorization is entirely voluntary, but those that meet its criteria will be afforded the significant benefit of receiving certain items without the need for an individual license for each transaction. Also as noted in response to Comment 23, BIS has established procedures for applying for VEU status that were designed to be as straightforward and present as little burden as possible, consistent with the requirements of national security. BIS offers assistance for exporters and end-users in complying with the EAR, and anticipates conducting additional outreach to clarify the procedures and benefits of the VEU authorization.

Comment 25: Several commenters questioned whether the VEU authorization offers a benefit. They asserted that U.S. exporters would go through an administratively burdensome and costly process of preparing and submitting a request for VEU authorization only to have their Chinese customers made public on the BIS Web site. This would result in the exporters losing competitive advantage as their competitors would have access to their customers.

Response: See responses to Comments 23 and 24. In developing the VEU authorization, BIS reviewed an extensive amount of licensing data, which indicated that many Chinese end-users are served by multiple U.S. exporters, all of whom would benefit if the end-user were to be granted VEU status. BIS believes that identifying Chinese customers as validated end-users will help to expand high-technology trade and U.S. exports by making clear to all potential U.S. exporters that there is a universe of end-users in the PRC that may receive certain items on the CCL without the administrative burden of receiving an individual license.

Comment 26: Several commenters stated that BIS should ensure that no violations of Section 12(c) of the Export Administration Act of 1979, as amended (EAA), occur when BIS publishes information related to the VEU authorization or information about end-users who are granted VEU authorization.

Response: BIS agrees that it is critical to protect information covered by Section 12(c) of the EAA. BIS conscientiously protects all proprietary information, and will continue to ensure that the requirements of Section 12(c) are met in its administration of VEU authorization.

Comment 27: Some commenters asserted that VEU authorization would present problems for companies in the PRC unwilling to submit to U.S. legal jurisdiction because of possible penalties under the laws of the PRC. They argued that the Government of the PRC might discourage companies from applying for VEU authorization, and further claimed that MOFCOM would refuse to allow end-use checks to be conducted on such companies.

Response: BIS designed the VEU authorization program to correspond to existing requirements of the EAR and to impose as little additional burden as possible on exporters, reexporters and Chinese end-users that currently use individual licenses or SCLs. BIS notes that Chinese end-users currently receiving items under individual licenses or SCLs are already (and have long been) required by the EAR to maintain certain records and to comply with certain license conditions. These activities are similar to the activities required of validated end-users in section 748.15 of the EAR. Hence, the VEU program will not substantially add compliance responsibilities for companies in China whose activities are subject to the EAR. BIS will continue to explain the VEU authorization to the Government of the PRC, and to encourage that Government's cooperation with the program. However, it is important to note that decisions regarding export licenses and export authorizations for items subject to the EAR are made solely by the United States Government.

Comment 28: Some commenters asserted that the potential benefit or usefulness of VEU authorization is reduced because vetted end-users would not be allowed to receive all products and technology under all ECCNs under the EAR.

Response: Authorization VEU is not intended to eliminate the requirement that exporters or others comply with applicable provisions of law or the EAR. By statute, BIS must require a license for items controlled for missile technology or crime control reasons that will be exported or reexported to the PRC. While BIS recognizes that entities designated as validated end-users would like to be exempt from all EAR licensing requirements, BIS has designed the VEU authorization to ensure that exports under VEU are relevant to the validated end-user's business. It would not be appropriate, for example, to permit exports under authorization VEU of semiconductor manufacturing equipment to a chemical factory, or of aircraft parts to a plant producing computers. For that reason, BIS will require applicants for VEU authorization to identify those ECCNs that they wish to receive under the authorization, and will decide whether those items are appropriate based on the circumstances of the case.

Comment 29: Many commenters asserted that there would be negative consequences for companies who apply for and do not receive VEU authorization, implicitly creating a ''black list,'' thus posing a risk of application that most U.S. exporters would be unwilling to take. Commenters further stated that BIS should make clear that applying for and not obtaining VEU authorization would not be considered a ''red flag'' for a transaction. In addition, one commenter stated that BIS should delete language regarding possible ''other actions,'' in addition to removal from the VEU list, as a penalty for non-compliance with VEU requirements.

Response: Based on these comments, BIS has specifically noted in the chapeau to section 748.15 that if an application for VEU authorization for a particular end-user is not granted, no new license requirement is triggered and the end-user is not rendered ineligible for license approvals from BIS. Moreover, VEU status is pertinent only to transactions in which licenses would otherwise be required. Accordingly, lack of approval of a VEU request would neither add to nor take away from the licensing requirements applicable to exports or reexports to an end-user that is not validated. Actions taken in the context of VEU authorization, including non-compliance with VEU requirements, that violate the EAA, the EAR, or any order, license, or authorization issued thereunder may form the basis for enforcement action.

Comment 30: Many commenters claimed that the selection process for granting VEU authorization is unclear and the evaluation factors are too extensive and ill-defined. The

commenters further stated that providing illustrative examples of evaluation factors, such as an example of the factor ''party's relationships with U.S. and foreign companies,'' might increase exporters' understanding of the VEU process. Several commenters further asserted that a published model VEU request would provide U.S. exporters and potential VEUs guidance on BIS's expectations.

Response: BIS agrees that it is important to be explicit about the type of criteria that BIS and its interagency partners will consider in evaluating VEU candidates, as well as the process that BIS and its interagency partners will use in making such determinations. As a result, in this final rule, BIS has attempted to explain in great detail how VEU authorizations will be administered by the U.S. Government. Section 748.15(a)(1) provides that BIS will accept applications from exporters, reexporters, or end-users and identifies the address to which such applications must be submitted. Section 748.15(a)(2) of this rule specifies that, in determining which end-users will be approved for VEU status, BIS will consider a range of information, including such factors as: the entity's record of exclusive engagement in civil end-use activities; the entity's compliance with U.S. export controls; the need for an on-site review prior to approval; the entity's capability of complying with the requirements of authorization VEU; the entity's agreement to on-site reviews to ensure adherence to the conditions of the VEU authorization by representatives of the U. S. Government; and the entity's relationships with United States and foreign companies. Section 748.15(a)(2) also specifies that when evaluating the eligibility of an end-user, agencies will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination. In addition, new Supplement No. 8 to Part 748 provides details as to the specific information that must be submitted to BIS in a VEU authorization request. Finally, new Supplement No. 9 to Part 748 provides details as to the decision-making process of the End-User Review Committee (ERC), including timeframes for decision-making. The ERC is composed of representatives of the Departments State, Defense, Energy, and Commerce and other agencies, as appropriate. All of these changes are intended to address public comments encouraging BIS to explain the VEU authorization process in as much detail as possible. In addition, BIS plans to conduct extensive outreach to explain to exporters and potential VEU candidates the procedures and requirements for applying for this authorization, and will consider sample or model requests as part of this outreach and education.

Comment 31: Some commenters stated that BIS should identify a time limit for approving or rejecting VEU requests.

Response: BIS agrees that it is important to establish specific time deadlines for approving or rejecting VEU applications. Supplement No. 9 to Part 748, paragraph 4, provides that the ERC will make determinations whether to grant VEU authorization to each VEU candidate no later than 30 calendar days after the candidate's complete application is circulated to all ERC agencies. Prior to or during its review of an application, BIS or the Committee may determine that it is appropriate to request additional information from the applicant or potential validated end-user. When BIS or the ERC requests such information, the 30-day clock is put on hold while the ERC is waiting for additional information.

Comment 32: One commenter stated that BIS should: expressly limit audits associated with VEU authorization to activities that occur under the authorization; not extend such audits to other areas of compliance; identify which U.S. Government agency would conduct VEU visits; and specify how frequently such visits will occur. In this context, the commenter stated that visits should occur no more than three times per year, and that advance notice should be provided—preferably 14 days in advance of the visit.

Response: In this rule, based on public comments, BIS clarifies that reviews for purposes of administering and enforcing the provisions of authorization VEU are not financial audits, as the term may have been interpreted. As BIS implements the VEU authorization, BIS will continue to consider the recommendation that reviews should occur no more than three times per year and with 14 days advance notice. Visits will be conducted and led by personnel of the Commerce Department, in coordination with the U.S. Embassy, and may include representatives of other U.S. Government agencies, as appropriate.

Comment 33: Some commenters stated that BIS should clarify whether BIS's reference to ''items'' in the VEU authorization includes technology and hardware.

Response: As stated in section 772.1 of the EAR, ''item'' means ''commodities, software, and technology.'' As such, commodities, software, and technology are eligible items under authorization VEU.

Comment 34: Some commenters stated that BIS should clarify whether the knowledge standard set forth in the EAR applies to exporters' actions under the VEU authorization.

Response: As provided in section 764.2(e) of the EAR, no person may take certain actions with respect to any item subject to the EAR with knowledge that a violation of the EAA, EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item. The term ''knowledge'' is defined in section 772.1. Authorization VEU is an authorization covered by section 764.2(e), and the knowledge standard set forth in section 772.1 applies to actions under the VEU authorization.

Comment 35: Some commenters recommended that BIS extend the VEU authorization program to other destinations such as India and Taiwan.

Response: The United States Government believes that authorization VEU could be a valuable tool to facilitate exports to civilian end-users in other destinations, and is actively considering making additional destinations eligible for authorization VEU.

Comment 36: Some commenters advised that the VEU authorization should apply to subsidiaries, subcontractors, and multiple facilities of the same end-user.

Response: BIS agrees that it may be appropriate for VEU authorization to cover multiple facilities of the same end-user. Such entities are free to request authorization for multiple locations or facilities. If so, pursuant to the requirements of Supplement No. 9 to Part 748, paragraph 1, they must provide with their applications the physical addresses of each location in the eligible destination. BIS will consider requests to cover multiple facilities according to the criteria and procedures listed in new Supplements 8 and 9 to Part 748. In particular, as described in Supplement No. 8 to Part 748, BIS requires that VEU applications provide an overview of the structure, ownership and business of the prospective validated end-user, which should include subsidiaries and joint-venture projects. Applicants must also provide the physical address(es) of the location(s) where the item(s) will be used, if this address is different from the address of the prospective validated end-user.

Comment 37: Some commenters requested that BIS allow a more

permissive VEU certification process for subsidiaries of U.S. companies.

Response: BIS believes that it is important to maintain the same procedure for all applicants for VEU authorization. Subsidiaries of U.S. companies are certainly eligible to apply for VEU authorization; their applications will be reviewed against the criteria listed in section 748.15(a)(2).

Comment 38: One commenter suggested that the U.S. Government, on its own, identify companies to be granted VEU status.

Response: BIS agrees that it is important for the U.S. Government to be able to identify possible VEU candidates. As such, Supplement No. 9 to Part 748, paragraph 3, specifies that the ERC will consider candidates for VEU authorization that are identified by the U.S. Government.

Comment 39: Some commenters suggested that end-users under the Special Comprehensive License (SCL) program should be given special consideration in obtaining VEU authorization and that the SCL approval process for end-users should warrant ''de facto'' authorization for VEU status.

Response: BIS will consider all applicants for VEU status, and status as an SCL consignee or end-user will be taken into account if such consignees or end-users are VEU candidates. The SCL approval process will not, however, be ''de facto'' VEU authorization because SCL status and VEU authorization are materially different from one another, and consequently the criteria BIS uses to evaluate applicants for SCL status (set forth in Part 752 of the EAR) and VEU authorization (set forth in section 748.15 of the EAR and in Supplement No. 8 to Part 748) are different. Because these differing sets of criteria are tailored toward the distinct and differing features of SCL and VEU status, respectively, BIS has made the decision not to grant special consideration to VEU applications from SCL end-users or consignees. Such applications will be evaluated on the basis of the criteria set forth in section 748.15 and Supplement No. 8 to Part 748 of the EAR.

Comment 40: One commenter argued that there is a significant disconnect between the VEU authorization and BIS's deemed exports licensing policy. This commenter urged that BIS allow authorization VEU to cover exports of technology to foreign national employees of authorized companies normally employed inside the United States, if the employees are nationals of a country eligible for VEU status. Similarly, another commenter argued that BIS should confirm in this final rule that authorization VEU will allow the release of technology to PRC nationals in the United States if the PRC national is a full-time employee of an entity with approved VEU status.

Response: If a validated end-user is approved to receive specific eligible technology, part of that VEU authorization is the authorization for Chinese employees of that validated end-user to receive the same technology, including through a transfer inside the United States.

Comment 41: One commenter argued that BIS should clarify the impact of this rule on deemed exports. In particular, this commenter stated that this rule should not apply to technical information that flows between affiliated entities, particularly with respect to Chinese subsidiaries of U.S. parent corporations.

Response: Under the new ''military end-use'' control, a license is now required for any deemed export covered by section 744.21 of the EAR. In addition, the revised licensing policy for items controlled for national security reasons will apply to license applications involving deemed exports. The intersection between the VEU authorization and transfers of technology inside the United States is discussed above in response to Comment 39. Under the current regulations, the deemed export rule does not regulate the flow of information between exporters in the U.S. and affiliated entities overseas that the commenter describes as a deemed export transaction. The deemed export rule regulates the transfer of controlled technology to foreign nationals working in the United States. Under the EAR, unless a License Exception applies, an export license is required if technology that requires a license is to be released to an affiliated entity overseas.

Comment 42: Some commenters stated that BIS should publish in Chinese the names of entities that receive VEU authorization. These commenters also recommended that the Entity List and Unverified Parties List be published in Chinese.

Response: BIS agrees that it is important to provide as much information as possible to exporters and reexporters regarding U.S. export controls. However, the **Federal Register**, which officially publishes all U.S. Government regulations, only publishes documents in the English language. In addition, BIS's limited resources do not allow such information to be published on the BIS Web site at this time. BIS will continue to consider this recommendation as part of its outreach effort to educate exporters and customers in the United States and the PRC.

Comment 43: One commenter argued that instead of the VEU authorization, BIS should consider a ''gold card'' license for certain exporters that would allow those exporters to export a pre-identified range of products to any qualified customer in the PRC.

Response: The VEU accomplishes the same goal as that proposed by the commenter. It allows U.S. exporters to export a pre-identified range of products to qualified customers. For national security reasons, however, the U.S. Government must retain the ability to determine who is a ''qualified customer'' for controlled items exported by any exporter, no matter how ''gold.'' The VEU program facilitates civilian high-technology trade, in a way that will be neither overly burdensome nor intrusive. The VEU program creates positive, market-based incentives and rewards for companies that act responsibly with sensitive products. Firms with established civilian credentials and a good record of handling such products will enjoy better access to controlled technology than their competitors, and U.S. exporters will be able to sell more efficiently to their best civilian customers.

Comment 44: Some commenters argued that instead of the VEU authorization, companies in the PRC should be allowed to provide certificates to BIS in which they agree to end-use checks.

Response: A VEU authorization will take the place of individual licenses. Consequently, there are a number of factors to be considered, in addition to willingness to host on-site reviews, in determining whether a customer in the PRC will be approved as a VEU. As set forth in section 748.15, these factors include the entity's record of exclusive engagement in civil end-use activities, the entity's compliance with U.S. export controls, the need for an on-site review prior to approval, and the entity's capability of complying with the requirements of authorization VEU, as well as an agreement to accept on-site reviews. Moreover, on-site reviews by U.S. Government officials are to verify the end-user's compliance with the conditions of the VEU authorization. Thus, VEU on-site reviews are separate and distinct from End-Use Visits as defined in the End-Use Visit Understanding established between the Governments of the U.S. and the PRC.

Comment 45: Some commenters argued that BIS should provide another opportunity for industry to comment on the VEU authorization before it becomes effective.

Response: BIS has considered the 57 public comments received, many of which included statements regarding the VEU authorization. Having thoroughly reviewed these comments, BIS believes it has a basis to move forward with the VEU authorization program. However, BIS accepts comments on an ongoing basis, as noted in the **ADDRESSES** section of this Action. BIS is always considering how to improve the EAR, and will consider any such comments received as it goes forward with the VEU program.

Changes from the Proposed Rule

After considering the public comments and consulting with its interagency partners, BIS is implementing the proposed rule, with the modifications described below.

1. Amendments To License Review Policy and License Requirements With Respect to the PRC

With respect to the license review policy for items controlled for national security reasons destined for the PRC, the proposed rule provided that there would be a presumption of denial for items that would make a ''material contribution'' to the military capabilities of the PRC. This amendment would have modified Section 742.4(b)(7) of the EAR, which previously provided that applications involving items destined for the PRC that are controlled for national security reasons received extended review or denial if they would make a ''direct and significant contribution'' to certain specified aspects of PRC military development. BIS is retaining its ''direct and significant contribution'' standard in this final rule, but has amended the list of PRC military capabilities. An illustrative list of PRC military capabilities is presented in new Supplement No. 7 to Part 742 of the EAR (Description of Major Weapons Systems).

BIS also is implementing the ''military end-use'' control set forth in the proposed rule. BIS has reviewed the proposed list of items covered by this new control, which are set forth in Supplement No. 2 to Part 744 of the EAR, and determined that rather than the 47 ECCNs identified in the proposed rule, this final rule will apply the ''military end-use'' control to items covered under 31 ECCNs, entirely or in part, covering commodities, software, and technology for approximately 20 distinct product groups. All of the 31 full or partial ECCNs included in this final rule were also included in the proposed rule.

With respect to the ''military end-use'' control, BIS is also changing the definition of ''military end-use'' that was set forth in Section 744.21(f) of the proposed rule. In this final rule ''military end-use'' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items listed under ECCNs ending in ''A018'' on the CCL in Supplement No. 1 to part 774 of the EAR; or for the ''use'', ''development'', ''production'', or deployment of military items described on the USML or the IML, or items listed under ECCNs ending in ''A018'' on the CCL. For purposes of section 744.21, deployment applies only to commodities covered under ECCN 9A991 as described in Supplement No. 2 to Part 744 of the EAR. In connection with the definition of ''military end-use,'' BIS is also amending the EAR to include a note to section 744.21(f) that defines, for purposes of the ''military end-use'' control, the terms, ''operation,'' ''installation,'' ''maintenance,'' and ''deployment.''

2. Revision of End-User Statement Requirements

BIS is amending the EAR to provide that what were previously described as ''End-User Certificates'' are now properly termed ''End-User Statements'' (EUSs) with respect to the PRC. This amendment affects sections 748.9, 748.10 and 748.12. In the proposed rule, BIS originally stated that it planned to expand the requirement for EUSs to items that require a license for any reason to the PRC and exceed a total value of $5,000. In this final rule, BIS has raised the threshold dollar amount for required EUSs for the PRC in section 748.10 of the EAR to $50,000 for most items. The raised threshold will not apply to items classified under ECCN 6A003 (cameras) and exports to the PRC of computers subject to section 748.10(b)(3). The threshold amount for items classified under ECCN 6A003 remains $5,000, as set forth in the proposed rule. Also in this final rule, BIS has raised the threshold dollar amount for required Import Certificates for items controlled for national security reasons to any destination listed in section 748.9(b)(2) from the $5,000 specified in the proposed rule to $50,000. Finally, BIS is amending Supplement No. 4 to Part 748 to provide the correct name of the branch of the Government of the PRC that issues EUSs.

3. Authorization Validated End-User (VEU)

BIS is adding Authorization Validated End-User (VEU) to the EAR, in new section 748.15. With this final rule, BIS amends the EAR to provide detailed information to the exporting community regarding the VEU authorization. Information required to be submitted with VEU authorization applications is set forth in new Supplement No. 8 to Part 748 of the EAR (Information Required for Requests for Validated End-User Authorization). In addition, section 748.15 establishes the End-User Review Committee, which is responsible for making determinations on VEU candidates. New Supplement No. 9 to Part 748 sets forth the membership of the Committee and the procedures that the Committee will follow.

In connection with these amendments to the EAR regarding VEU authorization, BIS is also making conforming changes. BIS is adding new paragraph (3) to section 743.1 (Wassenaar Arrangement), which informs exporters of the Wassenaar Arrangement of reporting requirements related to VEU authorization; new paragraph (b) to section 750.2 (Processing of Classification Requests and Advisory Opinions), which informs exporters of the timeframe in which VEU applications will be considered; and new paragraph (b)(5) to section 758.1 (The Shipper's Export Declaration (SED) or Automated Export System (AES) record), which informs exporters that shipping documentation must be filed with the U.S. Government for all exports under VEU authorization.

Saving Clause

Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport on June 19, 2007, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before July 19, 2007. Any such items not actually exported or reexported before midnight on July 19, 2007 require a license in accordance with this rule.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains collections of information subject to the requirements of the PRA. These collections have been approved by OMB under Control Numbers 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748, and 0694–0093, ''Import Certificates and End-User Certificates (End-User Statements when referring to the PRC),'' which carries a burden of 15 minutes per submission. This rule also contains a revision to the existing collection under Control Number 0694–0088 for recordkeeping, reporting and review requirements, which would be required in connection with authorization Validated End-User and would carry an estimated burden of 30 minutes per submission. An amendment to the existing collection under Control Number 0694–0088 reflecting this revision has been submitted to OMB for approval. This rule is not expected to result in a significant increase in license applications or other documentation submitted to BIS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this regulation involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. This regulation is issued in final form. Although the formal comment period closed on December 4, 2006, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Parts 748, 750 and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 743, 744, 748, 750 and 758 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 25, 2005, 71 FR 64109 (October 31, 2006).

■ 2. Amend § 742.2 by adding paragraph (b)(4) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7).

* * * * *

■ 3. Amend § 742.3 by adding paragraph (b)(4) to read as follows:

§ 742.3 Nuclear nonproliferation.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined to the People's Republic of China, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7).

* * * * *

■ 4. Amend § 742.4 by revising paragraph (b)(7) to read as follows:

§ 742.4 National security.

* * * * *

(b) * * *

(7) For the People's Republic of China (PRC), there is a general policy of approval for license applications to export, reexport, or transfer items to civil end-uses. There is a presumption of denial for license applications to export, reexport, or transfer items that would make a direct and significant contribution to the PRC's military capabilities such as, but not limited to, the major weapons systems described in Supplement No. 7 to Part 742 of the EAR.

* * * * *

■ 5. Amend § 742.5 by adding paragraph (b)(4) to read as follows:

§ 742.5 Missile technology.

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China, will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7).

* * * * *

■ 6. Supplement No. 7 to Part 742 is added to read as follows:

SUPPLEMENT NO. 7 TO PART 742—DESCRIPTION OF MAJOR WEAPONS SYSTEMS

(1) Battle Tanks: Tracked or wheeled self-propelled armored fighting vehicles with high cross-country mobility and a high-level of self protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimeters caliber.

(2) Armored Combat Vehicles: Tracked, semi-tracked, or wheeled self-propelled vehicles, with armored protection and cross-country capability, either designed and

equipped to transport a squad of four or more infantrymen, or armed with an integral or organic weapon of a least 12.5 millimeters caliber or a missile launcher.

(3) Large-Caliber Artillery Systems: Guns, howitzers, artillery pieces combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a caliber of 75 millimeters and above.

(4) Combat Aircraft: Fixed-wing or variable-geometry wing aircraft designed, equipped, or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons, or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defense or reconnaissance missions. The term ''combat aircraft'' does not include primary trainer aircraft, unless designed, equipped, or modified as described above.

(5) Attack Helicopters: Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armor, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft that perform specialized reconnaissance or electronic warfare missions.

(6) Warships: Vessels or submarines armed and equipped for military use with a standard displacement of 750 metric tons or above, and those with a standard displacement of less than 750 metric tons that are equipped for launching missiles with a range of at least 25 kilometers or torpedoes with a similar range.

(7) Missiles and Missile Launchers:

(a) Guided or unguided rockets, or ballistic, or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometers, and those items that are designed or modified specifically for launching such missiles or rockets, if not covered by systems identified in paragraphs (1) through (6) of this Supplement. For purposes of this rule, systems in this paragraph include remotely piloted vehicles with the characteristics for missiles as defined in this paragraph but do not include ground-to-air missiles;

(b) Man-Portable Air-Defense Systems (MANPADS); or

(c) Unmanned Aerial Vehicles (UAVs) of any type, including sensors for guidance and control of these systems.

(8) Offensive Space Weapons: Systems or capabilities that can deny freedom of action in space for the United States and its allies or hinder the United States and its allies from denying an adversary the ability to take action in space. This includes systems such as anti-satellite missiles, or other systems designed to defeat or destroy assets in space.

(9) Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR): Systems that support military commanders in the exercise of authority and direction over assigned forces across the range of military operations; collect, process, integrate, analyze, evaluate, or interpret information concerning foreign countries or areas; systematically observe aerospace, surface or subsurface areas, places, persons, or things by visual, aural, electronic, photographic, or other means; and obtain, by visual observation or other detection methods, information about the activities and resources of an enemy or potential enemy, or secure data concerning the meteorological, hydrographic, or geographic characteristics of a particular area, including Undersea communications. Also includes sensor technologies.

(10) Precision Guided Munitions (PGMs), including ''smart bombs'': Weapons used in precision bombing missions such as specially designed weapons, or bombs fitted with kits to allow them to be guided to their target.

(11) Night vision equipment: Any electro-optical device that is used to detect visible and infrared energy and to provide an image. This includes night vision goggles, forward-looking infrared systems, thermal sights, and low-light level systems that are night vision devices, as well as infrared focal plane array detectors and cameras specifically designed, developed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes specifically designed, developed, modified, or configured for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application.

PART 743—[AMENDED]

■ 7. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.* Pub. L. 106–508; 50 U.S.C. 1701 *et seq.* Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 8. Paragraph (b)(3) is added to § 743.1 to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(b) * * *

(3) Exports authorized under the Validated End-User authorization (see § 748.15 of the EAR).

* * * * *

PART 744—[AMENDED]

■ 9. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

■ 10. Section 744.21 is added to read as follows:

§ 744.21 Restrictions on certain military end-uses in the People's Republic of China (PRC).

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any item listed in Supplement No. 2 to Part 744 to the PRC without a license if, at the time of the export, reexport, or transfer, you know, meaning either:

(1) You have knowledge, as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a ''military end-use,'' as defined in paragraph (f) of this section, in the PRC; or

(2) You have been informed by BIS, as described in paragraph (b) of this section, that the item is or may be intended, entirely or in part, for a ''military end-use'' in the PRC.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers of any item because there is an unacceptable risk of use in or diversion to ''military end-use'' activities in the PRC. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License exception.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export items subject to the EAR under the provisions of License Exception GOV set forth in §§ 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' section of the BIS–748P ''Multipurpose Application'' or its electronic equivalent that ''this application is submitted because of the license requirement in

§ 744.21 of the EAR (Restrictions on Certain Military End-uses in the People's Republic of China).'' In addition, either in the additional information section of the application or in an attachment to the application, you must include all known information concerning the military end-use of the item(s). If you submit an attachment with your license application, you must reference the attachment in the ''additional information'' section of the application.

(e) *License review standards.* (1) Applications to export, reexport, or transfer items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the national security interests of the United States. When it is determined that an export, reexport, or transfer would make such a contribution, the license will be denied.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4) and 742.5(b)(4) of the EAR, if the end-use may involve certain proliferation activities.

(3) Applications for items requiring a license for other reasons that are destined to the PRC for a military end-use also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) In this section, ''military end-use'' means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into a military item described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); incorporation into items listed under ECCNs ending in ''A018'' on the CCL in Supplement No. 1 to part 774 of the EAR; or for the ''use'', ''development'', or ''production'' of military items described on the USML or the IML, or items listed under ECCNs ending in ''A018'' on the CCL. ''Military end-use'' also means ''deployment'' of items classified under ECCN 9A991 as set forth in Supplement No. 2 to Part 744.

Note to paragraph (f) of this section: As defined in Part 772 of the EAR, ''*use*'' means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing; *''development''* is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts; and *''production''* means all production stages, such as: product engineering, manufacturing, integration, assembly (mounting), inspection, testing, quality assurance.

For purposes of this section, *operation* means to cause to function as intended; *installation* means to make ready for use, and includes connecting, integrating, incorporating, loading software, and testing; *maintenance* means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; and *deployment* means placing in battle formation or appropriate strategic position.

■ 11. Supplement No. 2 to Part 744 is added to read as follows:

SUPPLEMENT NO. 2 TO PART 744—LIST OF ITEMS SUBJECT TO THE MILITARY END-USE LICENSE REQUIREMENT OF § 744.21

The following items, as described, are subject to the military end-use license requirement in § 744.21.

(1) Category 1—Materials, Chemicals, Microorganisms, and Toxins

(i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

(ii) 1C990 Limited to fibrous and filamentary materials other than glass, aramid or polyethylene not controlled by 1C010 or 1C210, for use in ''composite'' structures and with a specific modulus of 3.18x106m or greater and a specific tensile strength of 7.62x104m or greater.

(iii) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the characteristics in the List of Items Controlled.

(iv) 1D993 ''Software'' specially designed for the ''development'', ''production'', or ''use'' of equipment or materials controlled by 1C210.b, or 1C990.

(v) 1D999 Limited to specific software controlled by 1D999.b for equipment controlled by 1B999.e that is specially designed for the production of prepregs controlled in Category 1, n.e.s.

(vi) 1E994 Limited to ''technology'' for the ''development'', ''production'', or ''use'' of fibrous and filamentary materials other than glass, aramid or polyethylene controlled by 1C990.

(2) Category 2—Materials Processing

(i) 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573K (300 °C).

(ii) 2B991 Limited to ''numerically-controlled'' machine tools having ''positioning accuracies'', with all compensations available, less (better) than 9μ along any linear axis; and machine tools controlled under 2B991.d.1.a.

(iii) 2B992 Non-''numerically controlled'' machine tools for generating optical quality surfaces, and specially designed components therefor.

(iv) 2B996 Limited to dimensional inspection or measuring systems or equipment not controlled by 2B006 with measurement uncertainty equal to or less (better) than (1.7 + L/1000) micrometers in any axes (L measured Length in mm).

(3) Category 3—Electronics Design, Development and Production

(i) 3A292.d Limited to digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at greater than 2.5 giga-samples per second.

(iii) 3A999.c All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers.

(ii) 3E292 Limited to ''technology'' according to the General Technology Note for the ''development'', ''production'', or ''use'' of digital oscilloscopes and transient recorders with sampling rates greater that 2.5 giga-samples per second, which are controlled by 3A292.d.

(4) Category 4—Computers

(i) 4A994 Limited to computers not controlled by 4A001 or 4A003, with an Adjusted Peak Performance (''APP'') exceeding 0.5 Weighted TeraFLOPS (WT).

(ii) 4D993 ''Program'' proof and validation ''software'', ''software'' allowing the automatic generation of ''source codes'', and operating system ''software'' not controlled by 4D003 that are specially designed for real time processing equipment.

(iii) 4D994 Limited to ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 4A101.

(5) Category 5—(Part 1) Telecommunications

(i) 5A991 Limited to telecommunications equipment designed to operate outside the temperature range from 219K (–54 °C) to 397K (124 °C), which is controlled by 5A991.a., radio equipment using Quadrature-amplitude-modulation (QAM) techniques, which is controlled by 5A991.b.7., and phased array antennae, operating above 10.5 Ghz, except landing systems meeting ICAO standards (MLS), which are controlled by 5A991.f.

(ii) 5D991 Limited to ''software'' specially designed or modified for the ''development'', ''production, or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f., or of ''software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

(v) 5E991 Limited to ''technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., or 5A991.f., or of ''software'' specially designed or modified for the

''development'', ''production'', or ''use'' of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

(6) Category 6—Sensors and Lasers

(i) 6A995 ''Lasers'', not controlled by 6A005 or 6A205.

(ii) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a ''beat length'' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by ''mole fraction.''

(7) Category 7—Navigation and Avionics

(i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

(ii) 7B994 Other equipment for the test, inspection, or ''production'' of navigation and avionics equipment.

(iii) 7D994 ''Software'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication and other avionics.

(iv) 7E994 ''Technology'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication, and other avionics equipment.

(8) Category 8—Marine

(i) 8A992 Limited to underwater systems or equipment, not controlled by 8A001, 8A002, or 8A018, and specially designed parts therefor.

(ii) 8D992 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(iii) 8E992 ''Technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(9) Category 9—Propulsion Systems, Space Vehicles and Related Equipment

(i) 9A991 Limited to ''aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101.

(ii) 9D991 ''Software'', for the ''development'' or ''production'' of equipment controlled by 9A991 or 9B991.

(iii) 9E991 ''Technology'', for the ''development'', ''production'' or ''use'' of equipment controlled by 9A991 or 9B991.

PART 748—[AMENDED]

■ 12. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 13. Section 748.3 is amended by adding paragraph (c)(3) to read as follows:

§ 748.3 Classification requests, advisory opinions, and encryption review requests.

* * * * *

(c) * * *

(3) Requests for Validated End-User authorization should be submitted in accordance with the provisions set forth in § 748.15 and Supplement Nos. 8 and 9 to this part.

* * * * *

■ 14. Section 748.9 is amended:
■ a. By revising paragraph (b)(1) introductory text;
■ b. By revising paragraph (b)(2) introductory text before the list of countries;
■ c. By revising paragraph (b)(2)(i);
■ d. By revising paragraph (c) introductory text; and
■ e. By revising paragraph (c)(1).

The revisions read as follows:

§ 748.9 Support documents for license applications.

* * * * *

(b) * * *

(1) Does your transaction involve items controlled for national security reasons? Does your transaction involve items destined for the People's Republic of China (PRC)?

* * * * *

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.) If your item is destined for the PRC, does your transaction involve items that require a license to the PRC for any reason?

* * * * *

(i) If *yes,* your transaction may require an Import Certificate or End-User Statement. If your transaction involves items destined for the PRC that are controlled to the PRC for any reason, your transaction may require a PRC End-User Statement. Note that if the destination is the PRC, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Statement when the item to be exported (*i.e.*, replacement parts and sub-assemblies) is for servicing previously exported items and is valued at $75,000 or less.

* * * * *

(c) *License applications requiring support documents.* License applications requiring support by either a Statement by the Ultimate Consignee and Purchaser or an Import Certificate or End-User Statement must indicate the type of support document obtained in Block 6 or 7 on your application with an ''X'' in the appropriate box. If the support document is an Import Certificate or End User Statement, you must also identify the originating country and number of the Certificate or Statement in Block 13 on your application. If a license application is submitted without either the correct Block or Box marked on the application or the required support document, the license application will be immediately returned without action unless the satisfactory reasons for failing to obtain the document are supplied in Block 24 or in an attachment to your license application.

(1) *License applications supported by an Import Certificate or End-User Statement.* You may submit your license application upon receipt of a facsimile or other legible copy of the Import Certificate or End-User Statement, provided that no shipment is made against any license issued based upon the Import Certificate or End-User Statement prior to receipt and retention of the original statement by the applicant.

* * * * *

■ 15. Section 748.10 is amended:
■ a. By revising the section heading;
■ b. By revising paragraph (a);
■ c. By revising the heading and introductory text for paragraph (b);
■ d. By revising paragraph (b)(4);
■ e. By revising paragraph (c); and
■ f. By revising paragraph (g).

The revisions read as follows:

§ 748.10 Import Certificates and End-User Statements.

(a) *Scope.* There are a variety of Import Certificates and End-User Statements currently in use by various governments. The control exercised by the government issuing the Import Certificate or End-User Statement is in addition to the conditions and restrictions placed on the transaction by BIS. The laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of an Import Certificate or End-User Statement. This section describes exceptions and relationships true for both Import Certificates and End-User Statements, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part. In the case of the PRC, this section applies to transactions involving all items that require a license to the PRC for any reason.

(b) *Import Certificate or End-User Statement.* An Import Certificate or End-User Statement must be obtained, unless your transaction meets one of the exemptions stated in § 748.9(a) of this part, if:

* * * * *

(4) Your license application involves the export of commodities and software

classified in a single entry on the CCL, and your ultimate consignee is in any destination listed in § 748.9(b)(2), and the total value of your transaction exceeds $50,000. Note that this $50,000 threshold does not apply to exports to the PRC of computers subject to the provisions of § 748.10(b)(3) or to items classified under ECCN 6A003.

(i) Your license application may list several separate CCL entries. If *any* individual entry including an item that is controlled for national security reasons exceeds $50,000, then an Import Certificate must be obtained covering all items controlled for national security reasons on your license application. If the total value of entries on a license application that require a license to the PRC for *any* reason listed on the CCL exceeds $50,000, then a PRC End-User Statement covering all such controlled items that require a license to the PRC on your license application must be obtained;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons (or, for the PRC, for any reason) in a single ECCN exceeding $50,000, an Import Certificate, or a PRC End-User Statement, as appropriate, must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under $50,000. You also may be specifically requested by BIS to obtain an End-User Statement for a transaction valued under $50,000 or for a transaction that requires a license to the PRC for reasons in the EAR other than those listed on the CCL.

(c) *How to obtain an Import Certificate or End-User Statement.* (1) Applicants must request that the importer (*e.g.*, ultimate consignee or purchaser) obtain the Import Certificate and that it be issued covering only those items that are controlled for national security reasons. Exporters should not request that importers obtain Import Certificates for items that are controlled for reasons other than national security. Note that in the case of the PRC, applicants must request that the importer obtain an End-User Statement for all items on a license application that require a license to the PRC for any reason listed on the CCL. Applicants must obtain original Import Certificate or End-User Statements from importers.

(2) The applicant's name must appear on the Import Certificate or End-User Statement submitted to BIS as either the applicant, supplier, or order party. The Import Certificate may be made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country.

(3) If your transaction requires the support of a PRC End-User Statement, you must ensure that the following information is included on the PRC End-User Statement signed by an official of the Department of Mechanic, Electronic and High Technology Industries, Export Control Division I, of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it:

(i) Title of contract and contract number (optional);

(ii) Names of importer and exporter;

(iii) End-User and end-use;

(iv) Description of the item, quantity and dollar value; and

(v) Signature of the importer and date.

Note to paragraph (c) of this section: You should furnish the consignee with the item description contained in the CCL to be used in applying for the Import or End-User Statement. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the item is new.

* * * * *

(g) *Submission of Import Certificates and End-User Statements.* Certificates and Statements must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and should not be submitted with the license application. For more information on what Import Certificate and End-User Statement information must be included in license applications, refer to § 748.9(c) of the EAR. In addition, as set forth in § 748.12(e), to assist in license reviews, BIS will require applicants, on a random basis, to submit specific original Import Certificate and End-User Statements.

§ 748.12 [Amended]

■ 16. Section 748.12 is amended by removing and reserving paragraph (a).

■ 17. Section 748.15 is added to read as follows:

§ 748.15 Authorization Validated End-User (VEU).

Authorization Validated End-User (VEU) permits the export, reexport, and transfer to validated end-users of any eligible items that will be used in a specific eligible destination. Validated end-users are those who have been approved in advance pursuant to the requirements of this section. To be eligible for authorization VEU, exporters, reexporters, and potential validated end-users must adhere to the conditions and restrictions set forth in paragraphs (a) through (f) of this section. If a request for VEU authorization for a particular end-user is not granted, no new license requirement is triggered. In addition, such a result does not render the end-user ineligible for license approvals from BIS.

(a) *Eligible end-users.* The only end-users to whom eligible items may be exported, reexported, or transferred under VEU are those validated end-users identified in Supplement No. 7 to Part 748, according to the provisions in this section and those set forth in Supplement Nos. 8 and 9 to this part that have been granted VEU status by the End-User Review Committee (ERC) according to the process set forth in Supplement No. 9 to this part.

(1) Requests for authorization must be submitted in the form of an advisory opinion request, as described in § 748.3(c)(2), and should include a list of items (items for purposes of authorization VEU include commodities, software and technology, except as excluded by paragraph (c) of this section), identified by ECCN, that exporters or reexporters intend to export, reexport or transfer to an eligible end-user, once approved. To ensure a thorough review, requests for VEU authorization must include the information described in Supplement No. 8 to this part. Requests for authorization will be accepted from exporters, reexporters or end-users. Submit the request to: The Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230; or to The Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044. Mark the package sent to either address ''Request for Authorization Validated End-User.''

(2) In evaluating an end-user for eligibility under authorization VEU, the ERC will consider a range of information, including such factors as: the entity's record of exclusive engagement in civil end-use activities; the entity's compliance with U.S. export controls; the need for an on-site review prior to approval; the entity's capability of complying with the requirements of authorization VEU; the entity's agreement to on-site reviews to ensure adherence to the conditions of the VEU authorization by representatives of the U.S. Government; and the entity's relationships with U.S. and foreign companies. In addition, when evaluating the eligibility of an end-user, the ERC will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

(3) The VEU authorization is subject to revision, suspension or revocation entirely or in part.

(4) Information submitted in a VEU request is deemed to constitute continuing representations of existing facts or circumstances. Any material or substantive change relating to the authorization must be promptly reported to BIS, whether VEU authorization has been granted or is still under consideration.

(b) *Eligible destinations.* Authorization VEU may be used for the following destinations:

(1) The People's Republic of China.

(2) [Reserved]

(c) *Item restrictions.* Items controlled under the EAR for missile technology (MT) and crime control (CC) reasons may not be exported or reexported under this authorization.

(d) *End-use restrictions.* Items obtained under authorization VEU may be used only for civil end-uses and may not be used for any activities described in part 744 of the EAR. Exports, reexports, or transfers made under authorization VEU may only be made to an end-user listed in Supplement No. 7 to this part if the items will be consigned to and for use by the validated end-user. Eligible end-users who obtain items under VEU may only:

(1) Use such items at the end-user's own facility located in an eligible destination or at a facility located in an eligible destination over which the end-user demonstrates effective control;

(2) Consume such items during use; or

(3) Transfer or reexport such items only as authorized by BIS.

Note to paragraph (d): Authorizations set forth in Supplement No. 7 to this part are country-specific. Authorization as a validated end-user for one country specified in paragraph (b) of this section does not constitute authorization as a validated end-user for any other country specified in that paragraph.

(e) *Certification and recordkeeping.* Prior to an initial export or reexport to a validated end-user under authorization VEU, exporters or reexporters must obtain certifications from the validated end-user regarding end-use and compliance with VEU requirements. Such certifications must include the contents set forth in Supplement No. 8 to this part. Certifications and all records relating to VEU must be retained by exporters or reexporters in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

(f) *Reporting and review requirements.* —(1)(i) *Reports.* Exporters and reexporters who make use of authorization VEU are required to submit annual reports to BIS. These reports must include, for each validated end-user to whom the exporter or reexporter exported or reexported eligible items:

(A) The name and address of each validated end-user to whom eligible items were exported or reexported;

(B) The eligible destination to which the items were exported or reexported;

(C) The quantity of such items;

(D) The value of such items; and

(E) The ECCN(s) of such items.

(ii) Reports are due by February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Reports must be sent to: Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 2705, Washington, DC 20230. Mark the package ''Authorization Validated End-User Reports''.

(2) *Reviews.* Records related to activities covered by authorization VEU that are maintained by exporters, reexporters, and validated end-users who make use of authorization VEU will be reviewed on a periodic basis. Upon request by BIS, exporters, reexporters, and validated end-users must allow review of records, including on-site reviews covering the information set forth in paragraphs (e) and (f)(1) of this section.

■ 18. Supplement No. 4 to Part 748, is amended by revising the heading and the entry for ''China, People's Republic of'', to read as follows:

Supplement No. 4 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-User Statement Systems in Foreign Countries.

Country	IC/DV authorities	System administered
*	*	*
China, People's Republic of	Export Control Division I, Department of M, E & HT I, No. 2 Dong Chang An Street, Beijing Phone: 8610–6519–7366, Fax: 8610–6519–7926.	PRC, End-User Statement.
*	*	*

■ 19. Supplement No. 7 to Part 748 is added and reserved to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ELIGIBLE ITEMS AND ELIGIBLE DESTINATIONS [RESERVED]

■ 20. Supplement No. 8 to Part 748 is added to read as follows:

SUPPLEMENT NO. 8 TO PART 748—INFORMATION REQUIRED IN REQUESTS FOR VALIDATED END-USER (VEU) AUTHORIZATION

VEU authorization applicants must provide to BIS certain information about the prospective validated end-user. This information must be included in requests for authorization submitted by prospective validated end-users, or exporters or reexporters who seek to have certain entities approved as validated end-users. BIS may, in the course of its evaluation, request additional information.

Required Information for Validated End-User Authorization Requests

(1) Name of proposed VEU candidates, including all names under which the candidate conducts business; complete company physical address (simply listing a post office box is insufficient); telephone number; fax number; e-mail address; company Web site (if available); and name of individual who should be contacted if BIS has any questions. If the entity submitting the application is different from the prospective validated end-user identified in the application, this information must be submitted for both entities. If the candidate has multiple locations, all physical addresses located in the eligible destination must be listed.

(2) Provide an overview of the structure, ownership and business of the prospective validated end-user. Include a description of the entity, including type of business activity, ownership, subsidiaries, and joint-venture projects, as well as an overview of any business activity or corporate relationship that the entity has with either government or military organizations.

(3) List the items proposed for VEU authorization approval and their intended end-uses. Include a description of the items; the ECCN for all items, classified to the subparagraph level, as appropriate; technical parameters for the items including performance specifications; and end-use description for the items. If BIS has previously classified the item, the

Commodity Classification Automated Tracking System (CCATS) number may be provided in lieu of the information listed in the foregoing provisions of this paragraph.

(4) Provide the physical address(es) of the location(s) where the item(s) will be used, if this address is different from the address of the prospective validated end-user provided in paragraph (1) of this supplement.

(5) If the prospective validated end-user plans to reexport or transfer the item, specify the destination to which the items will be reexported or transferred.

(6) Specify how the prospective validated end-user's record keeping system will allow compliance with the recordkeeping requirements set forth in § 748.15(e) of the EAR. Describe the system that is in place to ensure compliance with VEU requirements.

(7) Include an original statement on letterhead of the prospective validated end-user, signed and dated by a person who has authority to legally bind the prospective validated end-user, certifying that the end-user will comply with all VEU requirements. This statement must include acknowledgement that the prospective end-user:

(i) Has been informed of and understands that the item(s) it may receive as a validated end-user will have been exported in accordance with the EAR and that use or diversion of such items contrary to the EAR is prohibited;

(ii) Understands and will abide by all authorization VEU end-use restrictions, including the requirement that items received under authorization VEU will only be used for civil end-uses and may not be used for any activities described in part 744 of the EAR;

(iii) Will comply with VEU recordkeeping requirements; and

(iv) Agrees to allow on-site reviews by U.S. Government officials to verify the end-user's compliance with the conditions of the VEU authorization.

■ 21. Supplement No. 9 to Part 748 is added to read as follows:

SUPPLEMENT NO. 9 TO PART 748—END-USER REVIEW COMMITTEE PROCEDURES

(1) The End-User Review Committee (ERC), composed of representatives of the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for determining whether to add to, to remove from, or otherwise amend the list of validated end-users and associated eligible items set forth in Supplement No. 7 to this part. The Department of Commerce chairs the ERC.

(2) Unanimous vote of the Committee is required to authorize VEU status for a candidate or to add any eligible items to a pre-existing authorization. Majority vote of the Committee is required to remove VEU authorization or to remove eligible items from a pre-existing authorization.

(3) In addition to requests submitted pursuant to § 748.15, the ERC will also consider candidates for VEU authorization that are identified by the U.S. Government. When the U.S. Government identifies a candidate for VEU authorization, relevant parties (*i.e.*, end-users and exporters or reexporters, when they can be identified) will be notified, before the ERC determines whether VEU authorization is appropriate, as to which end-users have been identified as potential VEU authorization candidates. End-users are not obligated to accept the Government's nomination.

(4) The ERC will make determinations whether to grant VEU authorization to each VEU candidate no later than 30 calendar days after the candidate's complete application is circulated to all ERC agencies. The Committee may request additional information from an applicant or potential validated end-user related to a particular VEU candidate's application. The period during which the ERC is waiting for additional information from an applicant or potential validated end-user is not included in calculating the 30 calendar day deadline for the ERC's determination.

(5) If an ERC agency is not satisfied with the decision of the ERC, that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). The procedures and time frame for escalating any such matters are the same as those specified for license applications in Executive Order 12981, as amended by Executive Orders 13020, 13026 and 13117 and referenced in § 750.4 of the EAR.

(6) A final determination at the appropriate decision-making level to amend the VEU authorization list set forth in Supplement No. 7 to this part operates as clearance by all member agencies to publish the amendment in the **Federal Register**.

(7) The Deputy Assistant Secretary of Commerce for Export Administration will communicate the determination on each VEU request to the requesting party and the end-user.

PART 750—[AMENDED]

■ 22. The authority citation for 15 CFR part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 23. Paragraph (b) of § 750.2 is revised to read as follows:

§ 750.2 Processing of Classification Requests and Advisory Opinions.

* * * * *

(b) *Advisory Opinion requests.* All advisory opinions submitted in accordance with procedures described in § 748.3(a) and (c) of the EAR will be answered within 30 calendar days after receipt. Requests to obtain Validated End-User authorization will be resolved within 30 calendar days as described in Supplement No. 9 to Part 748 of the EAR.

PART 758—[AMENDED]

■ 24. The authority citation for 15 CFR to part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 25. Section 758.1 is amended:

■ a. By removing the conjunction ''or'' from the end of paragraph (b)(3) and placing ''or'' and a semicolon at the end of paragraph (b)(4); and

■ b. By adding paragraph (b)(5) to read as follows:

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

* * * * *

(b) * * *

(5) For all items exported under authorization Validated End-User (VEU).

Dated: June 12, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7–11588 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2007–0026]

RIN 0960–AG51

Extension of the Expiration Date for Several Body System Listings

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We use the Listing of Impairments (the listings) at the third step of the sequential evaluation process when we evaluate your claim for benefits based on disability under title II and title XVI of the Social Security Act (the Act). This final rule extends until July 1, 2008, the date on which the listings for eight body systems will no longer be effective. Other than extending the effective date of the listings, we have made no revisions to the listings; they remain the same as they now appear in the Code of Federal Regulations. This extension will ensure that we continue to have the medical evaluation criteria in the listings to adjudicate disability claims involving these body systems at the third step of the sequential evaluation process.

DATES: This final rule is effective on June 19, 2007.

FOR FURTHER INFORMATION CONTACT: Jim Julian, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4015. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit out Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

We use the listings in appendix 1 to subpart P of part 404 at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs. The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B. If you are an individual under age 18, we first use the criteria in part B of the listings. Part B contains criteria that apply only to individuals who are under age 18. If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the effects of the impairment(s) in children. (See §§ 404.1525 and 416.925.)

Explanation of Changes

In this final rule, we are extending until July 1, 2008, the date on which the listings for the following eight body systems will no longer be effective:

Growth Impairment (100.00).
Respiratory System (3.00 and 103.00).
Digestive System (5.00 and 105.00).
Hematological Disorders (7.00 and 107.00.
Endocrine System (9.00 and 109.00).
Neurological (11.00 and 111.00).
Mental Disorders (12.00 and 112.00).
Immune System (14.00 and 114.00).

As a result of medical advances in disability evaluation and treatment, and our program experience, we periodically review and update the listings. We intend to publish proposed and final rules to update the listings as expeditiously as possible. However, we will not be able to publish final rules revising the listings for these body systems by July 2, 2007, the current expiration date. Therefore, we are extending the current expiration date for the listings as indicated above.

In final rules published on June 16, 2005 (70 FR 35028), we extended to July 2, 2007, the date on which the listings for the following eight body systems would no longer be effective: Growth Impairment; Special Senses and Speech; Respiratory System; Hematological Disorders; Endocrine System; Neurological; Mental Disorders; and Immune System.

In final rules published on May 05, 2006 (71 FR 26411), we extended to July 2, 2007, the date on which the listings for the Digestive System would no longer be effective.

Not all listings require effective date extensions at this time. The following chart shows the listings that do not require effective date extensions and are not affected by this final rule.

Listing	Revised	Date no longer effective unless extended or revised and promulgated again
Musculoskeletal System 1.00 and 101.00	November 19, 2001, 66 FR 58010	February 19, 2009, 66 FR at 58037.
Special Senses and Speech 2.00 and 102.00	November 20, 2006 (visual disorders) 71 FR 67037.	February 20, 2015, 71 FR at 67039.
Cardiovascular System 4.00 and 104.00	January 13, 2006, 71 FR 2312	January 13, 2011, 71 FR at 2313.
Genitourinary Impairments 6.00 and 106.00	July 05, 2005, 70 FR 38582	September 06, 2013, 70 FR at 38584.
Skin Disorders 8.00 and 108.00	June 09, 2004, 69 FR 32260	July 09, 2012, 69 FR at 32262.
Multiple Body Systems 10.00 and 110.00	August 30, 2005, 70 FR 51252	October 31, 2013, 70 FR at 51254.
Malignant Neoplastic Diseases 13.00 and 113.00.	November 15, 2004, 69 FR 67018	December 15, 2009, 69 FR at 67019.

Regulatory Procedures

Justification for Final Rule

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), we follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for this rule. Good cause exists because this final rule only extends the date on which these body system listings will no longer be effective. It makes no substantive changes to those listings. The current regulations expressly provide that listings may be extended, as well as revised and promulgated again. Therefore, we have determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d)(3). As explained above, we are not making any substantive changes in these body system listings. Without an extension of the expiration dates for these listings, we will lack the medical evaluation criteria needed for assessing impairments in these body systems at the third step of the sequential evaluation process. In order to ensure that we continue to have these listings in our rules, we find that it is in the public interest to make this final rule effective on the date of publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, OMB did not review it. We have also determined that this final rule meets the plain language requirement of Executive Order 12866, as amended.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule imposes no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: June 12, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, part 404, subpart P, chapter III of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Appendix 1 to subpart P of part 404 is amended by revising items 1, 4, 6, 8, 10, 12, 13, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

1. Growth Impairment (100.00): July 1, 2008.

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4. Respiratory System (3.00 and 103.00): July 1, 2008.

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6. Digestive System (5.00 and 105.00): July 1, 2008.

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8. Hematological Disorders (7.00 and 107.00): July 1, 2008.

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10. Endocrine System (9.00 and 109.00): July 1, 2008.

* * * * *

12. Neurological (11.00 and 111.00): July 1, 2008.

13. Mental Disorders (12.00 and 112.00): July 1, 2008.

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15. Immune System (14.00 and 114.00): July 1, 2008.

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[FR Doc. E7–11752 Filed 6–18–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 1995C–0286 (formerly Docket No. 95C–0286)]

Listing of Color Additives Subject to Certification; D&C Black No. 3

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Black No. 3 (bone black, subject to FDA batch certification) as a color additive in eyeliner, eye shadow, mascara, and face powder. This action is in response to a petition filed by Ebonex Corp.

DATES: This rule is effective July 20, 2007. Submit written or electronic objections and requests for a hearing by July 19, 2007. See section VIII of the **SUPPLEMENTARY INFORMATION** section of this document for information on the filing of objections.

ADDRESSES: You may submit written or electronic objections and requests for a hearing, identified by Docket No 1995C–0286, by any of the following methods:

Electronic Submissions

Submit electronic objections in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written objections in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of objections, FDA is no longer accepting objections submitted to the agency by e-mail. FDA encourages you to continue to submit electronic objections by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All objections received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or objections received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1071.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 1, 1995 (60 FR 45724), FDA announced that a color additive petition (CAP 5C0247) had been filed by the Ebonex Corp., P.O. Box 3247, Melvindale, MI 48122. The petition proposed to amend the color additive regulations to provide for the safe use of bone black as a color additive in cosmetics, including cosmetics intended for use in the eye area. The petitioner subsequently narrowed the proposed uses of bone black to eyeliner, eye shadow, mascara, and face powder.

During its review of the petition, the agency determined that the color additive, bone black, will require batch certification by FDA. The agency intends to give each certified batch of the subject color additive the name D&C Black No. 3. Therefore, this color additive will be identified as D&C Black No. 3.

The requested use of D&C Black No. 3 includes cosmetics for use in the area of the eye. The term ''area of the eye'' is defined in § 70.3(s) (21 CFR 70.3(s)) as ''the area enclosed within the circumference of the supra-orbital ridge and the infra-orbital ridge, including the

eyebrow, the skin below the eyebrow, the eyelids and the eyelashes, and conjunctival sac of the eye, the eyeball, and the soft areolar tissue that lies within the perimeter of the infra-orbital ridge.''

Section 70.5(a) (21 CFR 70.5(a)) states that ''No listing or certification of a color additive shall be considered to authorize the use of any such color additive in any article intended for use in the area of the eye unless such listing or certification of such color additive specifically provides for such use.''

II. Identity and Specifications

D&C Black No. 3 is a black pigment made from calcined cattle bones. The bones are heated twice to temperatures in excess of 700°C for at least 6 hours each time. The twice burned char is then washed. The carbon content is approximately 8 percent to 10 percent and most of the remaining composition is tricalcium phosphate (as calcium hydroxyapatite).

As explained under section III.B of this document, D&C Black No. 3 may contain low levels of potentially carcinogenic polycyclic aromatic hydrocarbon (PAH) impurities. To limit the amounts of these impurities in the color additive, FDA is setting a specification for total PAHs and is requiring that D&C Black No. 3 be from a batch of bone black certified by FDA.

To limit the amounts of heavy metals in the color additive, which may be derived from the source of the color and the manufacturing process, the agency also is setting specifications for arsenic and lead. To ensure purity of the color additive, the agency also is setting specifications for carbon, calcium hydroxyapatite, moisture, and silica. To be used lawfully in cosmetics in the United States, all batches of bone black must meet the specifications identified in the regulation.

III. Safety Evaluation

A. Determination of Safety

Under section 721(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379e(b)(4)), the ''general safety standard'' for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establishes that the color additive is safe for that use. FDA's color additive regulations (§ 70.3(i)) define safe as ''convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.''

The anticancer clause of the color additive amendments (section 721(b)(5)(B) of the act), also known as the Delaney clause) provides that for any use of a color additive which will or may result in ingestion of all or part of such additive, the color additive shall be deemed to be unsafe and shall not be listed if the additive is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal (section 721(b)(5)(B)(i) of the act). Further, under section 721(b)(5)(B)(ii) of the act, for any use of a color additive which will not result in ingestion of any part of such additive, the color additive shall be deemed to be unsafe and shall not be listed if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it is found to induce cancer in man or animal.

Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v.*FDA*, 728 F.2d 322 (6th Cir. 1984)).

B. Safety of Petitioned Use of the Additive

Because D&C Black No. 3 is made from cattle bones, one potential safety concern is the risk from using cattle materials in the preparation of bone black that could be infected with the agent that causes Bovine Spongiform Encephalopathy (BSE). To address the potential risk of BSE, FDA prohibits the use of certain cattle materials in human food and cosmetics. FDA also requires that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials (21 CFR 189.5 and 700.27). FDA's regulatory measures to prevent BSE contamination of U.S. food and cosmetics ensure that cattle materials that carry the highest risk of transmitting the agent that causes BSE are excluded from being used as a source to produce D&C Black No. 3 for use in cosmetics. Therefore, FDA concludes that D&C Black No. 3 prepared in compliance with these measures is safe with respect to the potential concern from using cattle materials.

Toxicity studies provided by the petitioner, including a dermal irritation study, an ocular irritation study, a delayed-contact hypersensitivity study, and a bioavailability study, demonstrate the color additive itself is safe for the proposed cosmetic uses. However, the color additive has been shown to contain several impurities in trace amounts, including carcinogenic PAHs. To minimize exposure to PAH impurities, the agency is setting a limit for total PAHs in D&C Black No. 3 of not more than 5 milligrams (mg)/kilogram (kg) (5 parts per million). As discussed in the next three paragraphs, the limit for total PAHs for D&C Black No. 3 will provide a reasonable certainty that no harm will result from the intended use of the color additive.

Current data have shown that benzo(a)pyrene (B[*a*]P) is one of the most potent carcinogens of the PAH family. To assess the risk from exposure to PAHs, FDA used toxic equivalency factors (TEFs) to express the comparative toxicity of individual PAHs as fractions of the toxicity of B[*a*]P. This approach expresses the amount of PAHs present in terms of B[*a*]P equivalents and estimates the risk for a mixture of PAHs as if it were comprised of one chemical compound. Under this methodology, B[*a*]P was assigned a TEF of 1. In estimating the exposure of B[*a*]P equivalents from the petitioned uses of the color additive, FDA normalized the residue levels of the individual PAHs to yield a total PAH concentration of approximately 5 mg/kg (the limit for total PAHs set by the regulation). Multiplying the normalized residue level for each PAH by the TEF for that PAH and summing the results yields a B[*a*]P-equivalent PAH concentration of approximately 1.2 mg/kg. Data from a bioavailability study presented in the petition show that B[*a*]P is not absorbed in appreciable amounts from cosmetic matrices (4 percent to 6 percent absorption) (Refs. 1 and 2). However, as a conservative assumption based on the chemical composition of the additive, the agency concluded that up to 50 percent of the total PAHs were likely to be extracted from the additive under typical use conditions, and thus available for absorption by the body (i.e., not bound to the cosmetic formulation).

The agency used data from a carcinogenesis bioassay on B[*a*]P (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to B[*a*]P equivalents resulting from the

petitioned uses of the color additive. This bioassay reported treatment-related benign forestomach tumors or esophageal tumors in male rats exposed to B[*a*]P. Using a linear-at-low-dose extrapolation method and tumor incidence data from the bioassay, FDA estimated the carcinogenic unit risk for B[*a*]P to be 1.75 (mg/kg body weight/day)$^{-1}$. Using this unit risk and an estimated daily exposure of 5 x 10^{-8} mg of B[*a*]P equivalents/kg body weight/day, FDA estimates the upper-bound lifetime human risk from the petitioned uses of the color additive to be 8.8 x 10^{-8} (Ref. 1).

Because conservative assumptions were used to estimate exposure, an individual's actual exposure to PAHs is expected to be substantially less than the estimated exposure. The agency concludes that there is reasonable certainty that no harm from exposure to PAHs would result from the petitioned use of the color additive[1] (Ref. 4).

The agency also considered the potential risk from benzaldehyde, benzonitrile, biphenyl, isoquinoline, pyridine and quinoline, which are additional impurities produced in trace amounts in the color additive from the manufacturing process. The agency concludes that none of these substances is present in the color additive at levels that raise any safety concerns, and that no specifications are necessary to control the amount of these substances as impurities in the color additive (Ref. 4).

IV. Conclusions

Based on data in the petition and other relevant considerations discussed previously, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Black No. 3 as a color additive in eyeliner, eye shadow, mascara, and face powder. The agency also concludes that the color additive will achieve its intended technical effect, and thus, is suitable for this use. The agency further concludes that, in accordance with 21 CFR 71.20(b), batch certification of D&C Black No. 3 is necessary to protect the public health because of the need to limit the level of PAH impurities, some of which have been shown to be carcinogenic. Therefore, 21 CFR part 74 should be amended as set forth in this document.

[1] FDA also estimated the upper-bound lifetime risk to PAHs using the worst-case assumption that PAHs are present at the maximum allowable limit of 5 mg/kg, and that all PAHs present have carcinogenic potency equivalent to B[*a*]P. Based on this very conservative approach, the upper-bound limit of lifetime human risk from the petitioned uses of the additive is 3.7 x 10^{-7} (Ref. 1).

V. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition will be made available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

This rule is effective as shown in the ''**DATES**'' section of this document; except as to any provisions that may be stayed by the filing of proper objections. Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Folmer, Division of Petition Review, Chemistry Review Team, to Kidwell, Division of Petition Review, July 6, 2005.

2. Memorandum from Yourick, Cosmetics Toxicology Branch, Division of Cosmetics and Compliance, to Kidwell, Division of Petition Review, May 13, 2005.

3. Brune, H., R.P. Deutsch-Wenzel, M. Habs, et al., ''Investigation of the Tumorigenic Response to Benzo[*a*]pyrene in Aqueous Caffeine Solution Applied Orally to Sprague-Dawley Rats,'' *Journal of Cancer Research and Clinical Oncology*, 102:153–157, 1981.

4. Memorandum from Carlson, Division of Petition Review, Toxicology Review Group I, to Kidwell, Division of Petition Review, February 15, 2006.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

■ 1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 2. Section 74.2053 is added to subpart C to read as follows:

§ 74.2053 D&C Black No. 3.

(a) *Identity.* The color additive D&C Black No. 3 is a washed bone char prepared from calcined cattle bones. The bones are twice heated in excess of 700°C for at least 6 hours.

(b) *Specifications.* D&C Black No. 3 shall conform to the following specifications and shall be free from impurities other than those named, to the extent that such other impurities may be avoided by current good manufacturing practices:

(1) Calcium hydroxyapatite (CaO and P_2O_5), not less than 75 percent and not more than 84 percent;

(2) Elemental carbon, not less than 7 percent;

(3) Moisture, not more than 7 percent;

(4) Silica (SiO_2), not more than 5 percent;

(5) Arsenic, not more than 3 milligrams (mg)/kilogram (kg) (3 parts per million (ppm));

(6) Lead, not more than 10 mg/kg (10 ppm); and

(7) Total polycyclic aromatic hydrocarbons (PAHs), not more than 5 mg/kg (5 ppm).

(c) *Uses and restrictions*. Cosmetics containing D&C Black No. 3 must comply with § 700.27 of this chapter with respect to prohibited cattle materials in cosmetic products. D&C Black No. 3 may be safely used for coloring the following cosmetics in amounts consistent with current good manufacturing practice: Eyeliner, eye shadow, mascara, and face powder.

(d) *Labeling*. The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification*. All batches of D&C Black No. 3 shall be certified in accordance with regulations in part 80 of this chapter.

Dated: June 11, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11801 Filed 6–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 1997N–0484T]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting as a final rule, without change, the provisions of the interim final rule that amended certain regulations regarding the screening and testing of donors of human cells, tissues, and cellular and tissue-based products (HCT/Ps), and related labeling. FDA is taking this action to complete the rulemaking initiated with the interim final rule.

DATES: This rule is effective June 19, 2007.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 25, 2005 (70 FR 29949), FDA issued an interim final rule on Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling (hereinafter referred to as the interim final rule). These regulations became effective upon the date of publication in the **Federal Register**. We issued the interim rule to assure that the changes became effective concurrently with the Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products final rule (69 FR 29786, May 25, 2004) and the Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Product Establishments; Inspection and Enforcement final rule (69 FR 68612, November 24, 2004) on May 25, 2005. In this way, establishments were not required to take steps to comply with the provisions in part 1271 (21 CFR part 1271) that were replaced by the changes set out in the interim final rule, and certain HCT/Ps would continue to be available.

II. Comments on the Interim Final Rule and FDA Responses

We received several comments on the interim final rule. To make it easier to identify comments and our responses, the word ''Comment,'' in parentheses, will appear before the comment's description, and the word ''Response,'' in parentheses, will appear before our response. We have also numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received.

(Comment 1) A comment appreciated and applauded the change to § 1271.370(b)(4) to allow labeling with warning(s) to accompany the HCT/P when the HCT/P container is too small to accommodate the warning(s) on the label. Another comment expressed concern that the accompanying labeling could be ignored or lost.

(Response) We acknowledge and appreciate the supportive comment. This requirement addresses the situation where it is not physically possible to include warnings directly on the HCT/P label, either because the container is too small or the HCT/P is cryopreserved, which may interfere with adherence of label materials. In these situations, the warnings must accompany the HCT/P.

We acknowledge the comment's concern that it is better to provide information on the HCT/P's label. However, we permit other important information, such as the summary of records, to accompany the HCT/P; such important information is not present on the HCT/P label. We believe that consignees are generally careful to make sure information accompanying HCT/Ps is not ignored or lost, and we believe that the accompanying information will be available. Necessity compels this authorization for certain information to accompany an HCT/P when it is not possible to include it on the label, and we conclude that it is adequate to provide such information in accompanying documents when it is necessary to do so.

(Comment 2) A comment noted that § 1271.55(a)(1) requirements (i.e., affixing a distinct identification code to the HCT/P container) were clearly designed to maintain donor anonymity. However, the comment asked if fertility clinics could write in information about the recipient (e.g., name, account number) because by the time a donor's HCT/P is collected, a specific recipient has already been identified. The comment stated that fertility clinics, for example, never collect anonymously donated oocytes without already having a recipient identified and ready to receive the donation.

(Response) The requirements in § 1271.55(a)(1) are focused on protecting the identity of the donor in the interest of confidentiality. We note that this provision prescribes how an establishment must label the HCT/P before releasing it for distribution, but does not prohibit the addition of the recipient's name once the donor eligibility determination is completed and the reproductive HCT/P is released for distribution. For an oocyte donation, the release determination is likely to be completed very soon after collection.

(Comment 3) A few comments suggested changes to the timing of the specimen collection in § 1271.80(b). In particular, a comment noted that § 1271.80(b)(1) permits testing on oocyte donors up to 30 days before recovery, while § 1271.80 seems to maintain a 7-day testing window for semen donors, whose spermatozoa will combine with the oocytes to create an embryo for a

gestational carrier cycle, and stated that both these donors should have a 30-day testing window.

Another comment stated that testing donors of sperm, oocytes, and embryos at the time of donation is ''superior'' but noted that the American Association of Tissue Banks guidelines for accredited tissue banks recommend that all donors be tested within 7 days of collection. The comment recommended that FDA go back to 7-day testing. One comment recommended that any individual intending to cryopreserve his/her HCT/P be tested 7 to 10 days prior to cryopreservation or within a short period after cryopreservation.

(Response) The interim final rule modified the timing of blood specimen collection for oocyte donors to permit the determination of donor eligibility before the donor's conditioning regimen begins. We did not change the timing of blood specimen collection for semen donors, because they do not undergo any conditioning regimen.

Collecting blood specimens from donors of semen, oocytes, and embryos at the time of donation is sometimes impractical because of the time it takes to obtain the test results. We have made exceptions to the requirement for testing within 7 days in situations where the donor has to undergo conditioning in advance. This is also the case where the recipient undergoes myeloablative treatment and there is a need to determine the eligibility of the donor before the recipient's treatment. Establishments are welcome to establish more restrictive testing criteria as noted in the American Association of Tissue Banks standards.

(Comment 4) A comment responded to FDA's solicitation for comments on the effectiveness of § 1271.90(a)(4), (a new exception from the donor-eligibility determination requirement for certain cryopreserved embryos) to enhance the availability of embryos, and the potential benefits, risks, and any other direct or indirect effects of this change. The comment pointed out that cryopreserved embryos (and HCT/Ps) are often exposed to liquid nitrogen, and research articles have reported that hepatitis B and bovine hepatitis virus can be transmitted through liquid nitrogen contamination. Therefore, cryopreserved embryos from untested semen and oocyte donors, commingling with cryopreserved embryos from tested donors, may place recipients, cryostorage centers, and assisted reproductive technology facilities at risk. Simply having warning(s) appear on the label of the cryopreserved HCT/P specimen from an untested donor, under revised §§ 1271.90(b)(2) and (b)(3), or having the warning(s) accompany such HCT/Ps, under revised § 1271.370(b)(4), would not eliminate the risks and may even result in an increased number of tort cases.

(Response) We decline to require separate storage for tested and untested HCT/Ps, though establishments may choose to utilize physically separated areas for tested and untested HCT/Ps. To reduce risk of contamination/cross-contamination from HCT/Ps that are untested or determined ineligible because of a reactive screening test, reproductive establishments could verify or validate that the cryocontainers (vials or straws) meet specifications and are not subject to breakage at the temperatures and conditions at which they are stored. Verification could be accomplished by the establishment that uses the cryocontainers or by the vendor that supplies the cryocontainers.

(Comment 5) A comment recommended a quarantine period of 6 months for any reproductive HCT/P from directed donors and anonymous donors, including anonymous donors whose identity might be disclosed. The comment also recommended mandatory retesting of oocyte donors (for donated embryos created using a donor oocyte) and embryo donors (semen and oocyte donors) prior to transfer of the donated HCT/P.

(Response) In the Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products final rule (69 FR 29786 at 29800), we explained why quarantine and retesting are required for anonymous semen donors but not for other reproductive donors. We considered comments concerning decreased pregnancy success rates for cryopreserved semen from directed donors and for cryopreserved embryos. In addition, techniques for the successful cryopreservation of oocytes are still being developed. Accordingly, we have declined to increase quarantine requirements for oocyte and embryo donations.

(Comment 6) A comment requested clarification on the use of the warning ''FOR AUTOLOGOUS USE ONLY'' under § 1271.90(b)(1), and particularly, FDA's definition of ''autologous'' for certain circumstances related to in vitro fertilization.

(Response) We define ''autologous'' in § 1271.3(a) as meaning the implantation, transplantation, infusion, or transfer of human cells or tissue back into the individual from whom the cells or tissue were recovered. Transfer of an embryo into the woman who contributed the oocytes would not be considered autologous because the embryo is formed by gametes from two individuals. This means that in the circumstances related to in vitro fertilization, use of a label ''FOR AUTOLOGOUS USE ONLY'' would not be appropriate for labeling a cryopreserved embryo. Other labeling requirements listed in § 1271.90(b) would apply based on the test status of the gamete donors.

(Comment 7) We received several comments that, although they relate to significant issues, are not relevant to the interim final rule. These comments concerned: (1) A request that donors with a curable communicable disease be eligible to donate reproductive HCT/Ps after receiving treatment and retesting negative for the communicable disease; (2) the definition of ''responsible person'' under § 1271.3(t); (3) certification or registration requirements, other than those applicable under the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. 263a), for a clinical laboratory to perform donor screening; and (4) issues associated with the storage of embryos and other HCT/Ps, but unrelated to the potential for transmission of communicable disease (e.g., abandonment, legal responsibility, and nonpayment).

(Response) These comments are on matters outside the scope of the interim final rule and this final rule. Relevant communicable disease agent or disease was addressed in previously finalized portions of part 1271, subpart C. The definitions in § 1271.3 were not discussed or addressed in the interim final rule. Registration requirements applicable to testing laboratories are addressed in part 1271, subparts A and B, and certification requirements are discussed in part 1271, subpart C. FDA expects that the contractual agreement between the cryostorage facility and the individual(s) storing the HCT/P will address financial and legal issues unrelated to the potential for communicable disease transmission.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The analysis of

costs and benefits of available regulatory alternatives contained in the interim final rule (70 FR 29949 at 29951) is adopted without change in this final rule. By now reaffirming that interim final rule, FDA has not imposed any new requirements. Therefore, there are no additional costs and benefits associated with this final rule.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule does not make any changes to the interim final rule or our analysis included therein, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. The Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 1271

Biological Drugs, Communicable diseases, HIV/AIDS, Human cells, tissues, and cellular and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1271 is amended as follows:

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED-PRODUCTS

■ Accordingly, the interim final rule amending 21 CFR part 1271 which was published at 70 FR 29949 on May 25, 2005, is adopted as a final rule without change.

Dated: May 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11795 Filed 6–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AC15

[Public Notice 5824]

Exchange Visitor Program—Trainees and Interns

AGENCY: United States Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department is hereby revising its regulations regarding, Trainees and Interns to, among other things, eliminate the distinction between ''non-specialty occupations'' and ''specialty occupations,'' establish a new internship program, and modify the selection criteria for participation in a training program. The new regulations also require sponsors to screen, vet, and enter into written agreements with third parties who assist them in recruiting, selecting, screening, orienting, placing, training, or evaluating foreign nationals who participate in training and internship programs. Sponsors must fully complete and secure signatures on a Form DS–7002, Training/Internship Placement Plan (T/IPP) for each trainee and intern prior to issuing a Form DS–2019. The Department adopts no changes to existing flight training regulations.

DATES: This rule becomes effective July 19, 2007.

The Department will accept comments from the public up to 30 days from June 19, 2007.

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

- Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, Office of Exchange Coordination and Designation, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547.
- *E-mail: jexchanges@state.gov.* You must include the RIN (1400–AC15) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; 202–203–5096 or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of State designates U.S. government, academic, and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act), 22 U.S.C. 2451 *et seq.*; the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(J); the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT) (Pub. L. 107–56), Sec. 416; the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173; and other statutory enactments, Reorganization Plans, and Executive Orders. Under those authorities, designated program sponsors facilitate the entry into the United States of more than 300,000 exchange participants each year, of which approximately 27,000 are trainees.

The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the U.S. Department of State, have promulgated regulations governing the Exchange Visitor

Program. Those regulations appear at 22 CFR part 62. Regulations specifically governing training programs appear at 22 CFR 62.22. These regulations largely have remained unchanged since 1993, when the USIA undertook a major regulatory reform of the Exchange Visitor Program. Since then, the Department and the Government Accountability Office (GAO) have reviewed the implementation of these regulations. While training programs overall have been highly successful in meeting the goals of the Fulbright-Hays Act, both the Department and the GAO have found there have been occasions where training programs were being misused by some sponsors (e.g.; trainees were actually being used as ''employees'' and the J visa was being used in lieu of the H visa or as a stepping stone for another longer-term non-immigrant or immigrant classification that may have been unavailable at the time of visa application).

In particular, the GAO Report (''Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Categories of the Exchange Visitor Program,'' Report GAO–06–106, October 2005) found that ''the potential exists for the Trainee Program to be misused as an employment program. Regulations strictly prohibit the use of the trainee category for ordinary employment purposes, stating in particular that sponsors must not place trainee participants in positions that are filled or would be filled by full-time or part-time employees.'' (GAO Report, p. 20). The Department agrees with the GAO on this point. At the same time, the Department recognizes that work is an essential component of on-the-job training, and that in many respects there are no conceptual or legal distinctions between an employee and a trainee. These two perspectives are not inconsistent. While a trainee is performing work as a component of his/her training experience, the work is only a part of the learning program that is designed to enhance the trainee's skills in his/her occupational specialty through exposure to American techniques, methodologies, and expertise.

By the same token, the Fulbright-Hays Act and the Exchange Visitor Program regulations were not meant to supply U.S. employers with employees under the guise of being trainees. The legislative and regulatory intent was, and continues to be, that trainees enter the United States, are exposed to American techniques, methodologies, and expertise, gain a better understanding of American culture and society, and then return to their homelands to share that learning with their countrymen. Trainees (and the new sub-category Interns) are not meant to fill positions that are or could be occupied by American workers on a full- or part-time or temporary or permanent basis. Thus, the new regulations contain provisions that will permit the Department more closely to monitor training programs to ensure that they are consistent with the purposes and intent of the Fulbright-Hays Act and are not subject to abuses similar to those it and the GAO found with respect to certain training programs.

Also, the 1993 overhaul of the Exchange Visitor Program regulations included a provision governing training programs that distinguished among training in ''specialized'' occupations, ''non-specialized'' occupations, and ''unskilled'' occupations. Time has proven that the distinctions among these three occupational categories are conceptually artificial and do not adequately describe the types of training that the Department desires to promote in the national interest. In that regard, the Department has concluded that it is more *the amount* of prior experience that the trainee has acquired, rather than some artificial categorization of *the type* of training, that should be determinative as to whether the trainee should be permitted to enter the United States for further training. Accordingly, the regulations will require that to be eligible to participate in a training program, trainees must have either (1) a degree or professional certificate from a post-secondary academic institution outside the United States and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. This provision ensures that prospective participants have an established connection with their home country at the time of application for participation in a training program.

In order to ensure that trainees and interns are sufficiently fluent in English to benefit from and comprehend fully the training being undertaken, the regulations require that they have verifiable English language skills sufficient to function on a day-to-day basis in the training environment. Trainees' and interns' English language skills must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through a documented interview conducted by program sponsors or a third party in person, by videoconferencing, or by web camera.

The Department will designate training and internship programs in the following occupational categories: Agriculture, Forestry, and Fishing; Arts and Culture; Aviation (subject to the Statement of Policy set forth at 71 **Federal Register** 3913, January 24, 2006); Construction and Building Trades; Education, Social Sciences, Library Science, Counseling and Social Services; Health Related Occupations; Hospitality and Tourism; Information Media and Communications; Management, Business, Commerce and Finance; Public Administration and Law; and the Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations; and such other occupational categories that the Department may from time to time include in training and internship programs. Regulations are being developed that will establish a subcategory of Student Intern within the College and University Students category (§ 62.23) for use by U.S. post-secondary academic institutions.

The regulations the Department adopted in 1993 required the completion of structured training plans for trainees [22 CFR 62.22(f) and (g)]. The Department's experience since then, however, has shown that the regulations regarding the content and use of such training plans have not been effective and do not adequately assist the Department in determining whether real training is being provided to the trainee or whether a ''boilerplate'' structured training plan is truly descriptive of what the individual trainee is actually doing in the workplace. Accordingly, the Department is replacing the existing training plan regulations with new regulations for both training and internship placement plans, which are located at 22 CFR 62.22(i), *Training/Internship Placement Plan (T/IPP)—Form DS–7002.*

The Department also recognizes that foreign nationals who are current students at or recent graduates of degree- or certificate-granting post-secondary academic institutions and who have not yet had the opportunity to acquire experience in their academic field may also be interested in pursuing training in the United States. This sub-set of participants has in the past been the source of discussions regarding eligibility and regulatory compliance as the existing training plan requirements and selection criteria do not readily accommodate the inclusion of this significant portion of the population. The Department has concluded that it is in furtherance of the goals of the

Fulbright-Hays Act that such current students and recent graduates be permitted and, indeed, encouraged to enter the United States to participate in the Exchange Visitor Program. Accordingly, these regulations create a new intern sub-category within the regulations governing trainees.

It is imperative that the new internship program be a true learning experience for the participant, one that is an integral part of the on-going education of the participant and one that is in harmony with what the Congress intended when it enacted the Fulbright-Hays Act. To that end, and based upon the requirements for participation in the training program, the new intern regulations require sponsors to permit foreign nationals who (1) are currently enrolled in and pursuing studies at a degree-or certificate-granting post-secondary academic institution or (2) graduated from such an institution no more than 12 months prior to their exchange visitor program begin date to participate in an internship program. Sponsors must ensure that interns have verifiable English language skills sufficient to function on a day-to-day basis in their program environment. Interns may remain in the United States as a participant in a designated internship program for a maximum of 12 months. The training and internship program will also be subject to a number of other sections of the Exchange Visitor Program regulations, including the General Provisions. 22 CFR 62.1 through 62.17.

Training programs in the field of agriculture and in the ''Hospitality and Tourism'' occupational category will be limited to 12 months. The Department is of the view that 12 months is sufficient time to train a person in these occupational fields or categories, especially in light of the fact that, before entering the United States to participate in a training program, trainees must already have either (1) a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. However, the new regulations also provide that the duration of a training program in the field of agriculture may be up to 18 months if at least six months of the program is classroom participation and studies. Moreover, the Department also recognizes there are training programs in the field of agriculture or in the ''Hospitality and Tourism'' occupational category that are, in reality, management programs (*e.g.*, hotel or restaurant management, turf grass management). Such management programs may last up to 18 months. The new regulations give the Department the flexibility to classify such programs under the occupational code of ''Management, Business, Commerce, and Finance,'' as opposed to ''Agriculture'' or ''Hospitality and Tourism'' occupational codes. Training programs in all other occupational categories will have a maximum duration of 18 months.

The new regulations also provide that trainees may return to the United States for additional training. Should a trainee wish to enter the United States for advanced training or for training in a different field, they may do so as long as they meet the selection criteria and have been absent from the United States for no less than two years after the completion of their initial training program.

The new regulations substantially change the former provisions dealing with the obligations of program sponsors and any third parties—either domestic or overseas—with whom sponsors contract to assist them in recruiting, selecting, screening, orienting, placing, training, or evaluating foreign nationals who participate in training and internship programs. The regulations require sponsors to enter into a written agreement with third parties outlining the full relationship between the parties on all matters involving the Exchange Visitor Program. Third parties must provide a Dun & Bradstreet identification number. At the recommendation of industry comments, the Department is also changing its regulations to require sponsors to screen and vet all third parties.

Sponsors often contract with third parties operating outside the United States to recruit, select, or screen program participants. The regulations require sponsors to vet such third parties to ensure that they are legitimate businesses in the context of their home country.

A wide range of U.S. businesses and governmental or non-governmental entities host participants in training and internship programs on behalf of sponsors. These regulations set baseline standards to which sponsors are required to adhere to ensure that such host organizations are legitimate entities, are appropriately registered or licensed to conduct their activities in their jurisdiction, and possess and maintain the ability and resources to provide structured and guided work-based experience according to individualized T/IPPs. In some instances, sponsors also will be required to conduct a site visit of the host organization's training location. The goal of the sponsor in vetting host organizations is to collect sufficient evidence to support a finding that participants are properly placed with host organizations that meet these standards.

Finally, the regulations prohibit sponsors from placing trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, or in any kind of position that involves patient care or contact. Further, sponsors must not place trainees or interns in positions that involve more than 20 per cent clerical work during their programs.

Analysis of Comments

The Department received a total of 1,591 comments on the proposed trainee and intern regulations set forth at 22 CFR 62.22 and published in the **Federal Register** on April 7, 2006. Of this total, 1,332 responses were identical form letters encouraged through writing campaigns directed by either the Alliance for International Educational and Cultural Exchange or by German and French academic institutions and organizations with ties to the Exchange Visitor Program. The remaining 259 responses were from Exchange Visitor Program sponsors and the general public. The commenting parties addressed the following issues:

Section 62.22(d)(2) received 1,580 comments, of which all were opposed to the change and recommended that the Department allow post-secondary students to participate in the Intern category. The Department concurs and has amended the definition of an Intern to include post-secondary students.

Section 62.22(d)(3) received 705 comments, of which all were opposed to the change. Due to the difficulty limiting testing and tying a score to one type of English proficiency test, the Department has eliminated the TOEFL requirement and amends the regulations to require sponsors to conduct a thorough screening of potential trainees or interns, including a documented interview in-person, by videoconference, or by web camera.

Section 62.22(e) and (e)(1) received three comments, of which all were opposed to the change with the opinion that trainees and interns receive stipends and do not need the additional screening. The Department has determined that the financial screening of an applicant and having a Training/Internship Placement Plan in place is

critical to a successful program and therefore upholds the requirement as outlined in Section (e).

Section 62.22(f)(1)(ix) received four comments, of which all were opposed to the change which required certification by agricultural programs to meet the Fair Labor Standards Act. The Department adopts this change and has incorporated the certification on the Training/Internship Placement Plan (Form DS–7002).

Section 62.22(f)(2) received 426 comments, of which all were opposed to the change. Several parties, however, recommended allowing a Third Party to conduct the interview. The Department has reviewed the comments and agrees to allow a third party to conduct the initial screening as identified in a third-party agreement with the sponsor.

Section 62.22(f)(2)(v) received 662 comments, of which all were opposed to the three year experience requirement for trainees. The Department has reviewed all comments and has redefined the experience requirements for trainees and interns.

Section 62.22(g)(1) received 389 comments, of which all were opposed to the change, but, however, recommended implementation of careful vetting requirements by sponsors. The Department adopts the requirement for site visits to host organizations; however amends the requirement to host organizations that have not previously participated successfully in the sponsor's training or internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue.

Section 62.22(g)(2) received 377 comments, of which all were opposed to the change and recommended elimination of this requirement. The Department concurs and eliminates this requirement.

Section 62.22(g)(4) received six comments, of which all were opposed to the change and recommended clarification of the arrival date versus program begin date. The Department amends this requirement to require training and internship sponsors to ensure that trainees and interns are appropriately selected, placed, oriented, supervised and evaluated.

Section 62.22(j)(2) received two comments, both of which were opposed to the change and recommended that the Department not define a percentage of time. The Department upholds and adopts this requirement.

Section 62.22(k) received 392 comments, of which all were opposed to the change regarding the duration of training and internship programs in the occupational fields of agriculture and hospitality. The Department is of the view that 12 months is sufficient time to train a person in these occupational fields or categories, especially in light of the fact that, before entering the United States to participate in a training program, trainees must already have either (1) a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or (2) five years of work experience outside the United States in their occupational field. Therefore, the Department adopts the duration of program participation as outlined in 62.22(k).

Section 62.22(l) received one favorable comment.

Section 62.22(n) received 22 comments, of which all were opposed to the repeat participation requirement. The Department has taken the comments into consideration and has amended the section to permit interns to participate in additional internship programs as long as they maintain student status or begin a new internship program within 12 months of graduation. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following their initial training program.

Section 62.22(o) received six comments, of which all were opposed to the change and recommended rewriting this section. The Department has decided not to make any changes to this section at this time.

Section 62.22 received eight comments requesting elimination of the requirement that Internships be directly related to an Intern's field of study. The Department has reviewed the comments and upholds the requirement as defined.

Section 62.22 received ten comments stating that the proposed regulations will negatively impact U.S. students. The Department has reviewed all comments and finds that the new definition of an Intern, as defined in this Interim Final Rule, will help alleviate the negative impact on U.S. students abroad.

Section 62.22 received six comments requesting the reinstatement of ''Counseling and Social Services'' in the list of occupational categories. The elimination of the occupational categories of Counseling and Social Services in the proposed rule was an oversight and has been reinstated in the Interim Final Rule.

The Department recognizes the concerns regarding eligibility and monitoring of trainees and interns and therefore adopted several of the suggested changes as appropriate.

Administrative Procedure Act, Unfunded Mandates Reform Act of 1995, and Small Business Regulatory Enforcement Fairness Act of 1996

The Department originally published this rulemaking as a Proposed Rule, with a 60-day comment period (See: 71 **Federal Register** 177768, April 7, 2006). Some 1,591 comments were received and analyzed and a number of the suggestions made in the comments have been incorporated in this Interim Final Rule. This rule is issued on an interim final basis as an accommodation to the Department's designated sponsor community. This approach will provide the opportunity for straightforward amendment of regulatory language, if necessary, but will also permit this rule to be implemented in a timely manner.

This rulemaking process has been conducted without prejudice to whether it involves a foreign affairs function of the United States exempt from the requirements of 5 U.S.C. 553 and without prejudice to whether the Department may invoke that exemption in other contexts.

This Interim Rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not have a substantial effect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it has been determined that the Interim Final Rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

Regulatory Flexibility Act/Executive Order 13272: Small Business

In its April 7, 2006 promulgation of the Proposed Rule, 71 **Federal Register** 177768, the Department certified that the proposed changes to the regulations were not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, and Executive Order 13272, section 3(b). By letter dated May 30, 2006, the Office of Advocacy of the Small Business Administration opined that the Department's certification lacked a factual basis in that the Proposed Rule, if adopted as written, could have significant impact on a substantial number of small entities, in particular, nine flight training schools that utilize the J visa.

After receiving and analyzing the aforementioned 1,591 comments and after consultation with affected stakeholders, a number of changes have been made to the proposed regulation. With respect to the flight training schools, the Department has decided to make no changes to existing regulations governing flight training in this Interim Final Rule. Therefore, the changes proposed in this Rule do not impact such schools. After revising the Proposed Rule, the Department again reviewed the regulations being promulgated in this Interim Final Rule in order to determine if they would potentially have a significant economic impact on any other small entities utilizing the J visa. Other than those comments received from flight training sponsors, no other comments asserted potential significant economic impact on small entities. Accordingly, the Department has determined and hereby certifies that the Interim Final Rule is not expected to have an economic impact on a substantial number of small entities.

In cases where a rulemaking involves a foreign affairs function, the rulemaking is not subject to 5 U.S.C. 553, and therefore is not subject to sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. sections 601 through 612, or section 3(b) of Executive Order 13272. In this case, the Department's certification concerning impact on small entities is made without prejudice to whether this rulemaking involves a foreign affairs function of the United States exempt from the Regulatory Flexibility Act and without prejudice to whether the Department may invoke that exemption in any other contexts.

Executive Order 12866

The Department of State does not consider this Interim Final Rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the Interim Final Rule to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

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

Paperwork Reduction Act

The information collection requirements contained in this rulemaking (Form DS–7002) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35, under OMB Control Number 1405–0170, expiration date: 07/31/2009. The Proposed Rule for Trainees and Interns, published 4/07/2006, stated in its PRA section that the Department would develop and publish a new form (Form DS–7002—Training/Internship Placement Plan). This form was designed and developed and a Notice of request for public comment was published. The proposed data collection and Form DS–7002 published in the **Federal Register** on 06/01/2006. The Notice directed that all comments and questions be directed to OMB. Final approval of the form and data collection was issued on 07/31/2006.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

■ Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

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

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258, 1372 (2001), 1701–1775 (2002); 22 U.S.C. 1431–1442, 2451–2460; 6501 (1998); 5 U.S.C. app. § 1–11 (1977); Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

■ 2. Section 62.2 is amended by removing the definitions for ''Non-specialty occupation'' and ''Specialty occupation'' and by adding the following definitions for ''Clerical'', ''Host Organization'', ''Intern'', ''Internship Program'', ''Staffing Agency'', ''Trainee'', and ''Training Program'', to read as follows:

§ 62.2 Definitions

* * * * *

Clerical—means routine administrative work generally performed in an office or office-like setting, such as data entry, filing, typing, mail sorting and distribution, and other general office tasks.

* * * * *

Host Organization—means a in the United States that conducts training or internship programs on behalf of designated program sponsors pursuant to an executed written agreement between the two parties.

Intern—means a foreign national who either

(1) Is currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or

(2) Graduated from such an institution no more than 12 months prior to his/her exchange visitor program begin date, and who enters the United States to participate in a structured and guided work-based internship program in his/her specific academic field.

Internship Program—means a structured and guided work-based learning program as set forth in an individualized Training/Internship Placement Plan (T/IPP) that reinforces a student's or recent graduate's academic study, recognizes the need for work-based experience, provides on-the-job exposure to American techniques, methodologies, and expertise, and enhances the Intern's knowledge of American culture and society.

* * * * *

Staffing/Employment Agency—means a U.S. business that hires individuals for the express purpose of supplying workers to other businesses. Typically, the other businesses with which workers are placed pay an hourly fee per employee to the Staffing/Employment Agency, of which the worker receives a percentage.

Trainee—means a foreign national who has either:

(1) A degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in his/her occupational field acquired outside the United States, or

(2) Five years of work experience outside the United States in his/her occupational field, and who enters the United States to participate in a structured and guided work-based training program in his/her specific occupational field.

Training Program—means a structured and guided work-based learning program set forth in an individualized Trainee/Internship Placement Plan (T/IPP) that enhances both a trainee's understanding of American culture and society and his/her skills in his/her occupational field through exposure to American techniques, methodologies, and expertise.

■ 3. Section 62.22 is revised to read as follows:

§ 62.22 Trainees and interns.

(a) *Introduction.* These regulations govern Exchange Visitor Programs under which foreign nationals have the opportunity to receive training in the United States. These regulations also establish a new internship program under which foreign nationals who:

(1) Are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or

(2) Graduated from such an institution no more than 12 months prior to their exchange visitor program begin date may enter the United States to obtain work-based learning to build on their academic experience by developing practical skills. Regulations dealing with training opportunities for certain foreign students who are studying at post-secondary accredited educational institutions in the United States are located at § 62.23 (''College and University Students''). Regulations governing alien physicians in graduate medical education or training are located at § 62.27 (''Alien Physicians'').

(b) *Purpose.* (1)(i) The primary objectives of the programs offered under these regulations are to enhance the skills and expertise of exchange visitors in their academic or occupational fields through participation in structured and guided work-based training and internship programs and to improve participants' knowledge of American techniques, methodologies, and expertise. Such training and internship programs are also intended to increase participants' understanding of American culture and society and to enhance Americans' knowledge of foreign cultures and skills through an open interchange of ideas between participants and their American associates. A key goal of the Fulbright-Hays Act, which authorizes these programs, is that participants will return to their home countries and share their experiences with their countrymen.

(ii) Exchange Visitor Program training and internship programs must not be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. The requirements in these regulations for trainees are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted. The requirements in these regulations for interns are designed to distinguish between a period of work-based learning in the intern's academic field, which is permitted, and unskilled labor, which is not.

(2) In addition, a specific objective of the new internship program is to provide foreign nationals who are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date a period of work-based learning to allow them to develop practical skills that will enhance their future careers. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience are major goals in educational institutions around the world. By providing training opportunities for current foreign students and recent foreign graduates at formative stages of their development, the U.S. Government will build partnerships, promote mutual understanding, and develop networks for relationships that will last through generations as these foreign nationals move into leadership roles in a broad range of occupational fields in their own societies. These results are closely tied to the goals, themes, and spirit of the Fulbright-Hays Act.

(c) *Designation.* (1) The Department may, in its sole discretion, designate as sponsors entities meeting the eligibility requirements set forth in Subpart A of 22 CFR Part 62 and satisfying the Department that they have the organizational capacity successfully to administer and facilitate training and internship programs.

(2) Sponsors must provide training and internship programs only in the occupational category or categories for which the Department has designated them as sponsors. The Department will designate training and internship programs in any of the following occupational categories:

(i) Agriculture, Forestry, and Fishing;

(ii) Arts and Culture;

(iii) Aviation;

(iv) Construction and Building Trades;

(v) Education, Social Sciences, Library Science, Counseling and Social Services;

(vi) Health Related Occupations;

(vii) Hospitality and Tourism;

(viii) Information Media and Communications;

(iv) Management, Business, Commerce and Finance;

(x) Public Administration and Law; and

(xi) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations.

(d) *Selection Criteria.* (1) In addition to satisfying the general requirements set forth in § 62(10)(a), sponsors must ensure that trainees and interns have verifiable English language skills sufficient to function on a day-to-day basis in their training environment. English language proficiency must be verified by a recognized English language test, by signed documentation from an academic institution or English language school, or through an interview conducted by the sponsor, or an in-person, by videoconference, or by web camera.

(2) Sponsors of training programs must verify that all potential trainees are foreign nationals who have either a degree or professional certificate from a foreign post-secondary academic institution and at least one year of prior related work experience in their occupational field acquired outside the United States or five years of work experience outside the United States in their occupational field.

(3) Sponsors of internship programs must verify that all potential interns are foreign nationals who are currently enrolled in and pursuing studies at a degree-or certificate-granting post-secondary academic institution outside the United States or graduated from such an institution no more than 12 months prior to their exchange visitor program begin date.

(e) *Issuance of Forms DS–2019.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

(1) They do not issue Forms DS–2019 to potential participants in training and internship programs until they secure placements for trainees or interns and complete and secure requisite signatures on Form DS–7002, Training/Internship Placement Plan (T/IPP or Forms DS–7002);

(2) Trainees and interns have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses; and

(3) The training and internship programs expose participants to American techniques, methodologies, and expertise and expand upon the participants' existing knowledge and skills. Programs must not duplicate the participants' prior work experience or training received elsewhere.

(f) *Obligations of Training and Internship Program Sponsors.* (1) Sponsors designated by the Department to administer training and internship programs must:

(i) Ensure that trainees and interns are appropriately selected, placed, oriented, supervised, and evaluated;

(ii) Be available to trainees and interns (and host organizations, as appropriate) to assist as facilitators, counselors, and information resources;

(iii) Ensure that training and internship programs provide a balance between the trainees' and interns' learning opportunities and their contributions to the organizations in which they are placed;

(iv) Ensure that the training and internship programs are full-time (minimum of 32 hours a week); and

(v) Ensure that any host organizations and third parties involved in the recruitment, selection, screening, placement, orientation, evaluation for, or the provision of training and internship programs are sufficiently educated on the goals, objectives, and regulations of the Exchange Visitor Program and adhere to all regulations set forth in this Part as well as all additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose.

(2) Sponsors must ensure that they or any host organization acting on the sponsor's behalf:

(i) Have sufficient resources, plant, equipment, and trained personnel available to provide the specified training and internship program;

(ii) Provide continuous on-site supervision and mentoring of trainees and interns by experienced and knowledgeable staff;

(iii) Ensure that trainees and interns obtain skills, knowledge, and competencies through structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences, and similar learning activities, as appropriate in specific circumstances;

(iv) Conduct periodic evaluations of trainees and interns, as set forth in § 62.22(l);

(v) Do not displace full-or part-time or temporary or permanent American workers or serve to fill a labor need and ensure that the positions that trainees and interns fill exist solely to assist trainees and interns in achieving the objectives of their participation in training and internship programs; and

(vi) Certify that training and internship programs in the field of agriculture meet all the requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(3) Sponsors or any third parties acting on their behalf must conduct a thorough screening of potential trainees or interns, including a documented interview in-person, by videoconference, or by web camera.

(4) Sponsors must retain all documents referred to in § 62.22(f) for at least three years following the completion of all training and internship programs. Documents and any requisite signatures may be retained in either hard copy or electronic format.

(g) *Use of Third Parties*— (1) *Sponsors Use of Third Parties.* Sponsors may engage third parties (including, but not limited to host organizations, partners, local businesses, governmental entities, academic institutions, and other foreign or domestic agents) to assist them in the conduct of their designated training and internship programs. Such third parties must have an executed written agreement with the sponsor to act on behalf of the sponsor in the conduct of the sponsor's program. This agreement must outline the full relationship between the sponsor and third party on all matters involving the administration of their exchange visitor program. A sponsor's use of a third party does not relieve the sponsor of its obligations to comply with and to ensure third party compliance with Exchange Visitor Program regulations. Any failure by any third party to comply with the regulations set forth in this Part or with any additional terms and conditions governing Exchange Visitor Program administration that the Department may from time to time impose will be imputed to the sponsor.

(2) *Screening and Vetting Third Parties Operating Outside the United States.* U.S. sponsors must ascertain that third parties operating outside the United States are legitimate entities within the context of their home country environment. For third parties that operate as businesses, sponsors must obtain relevant home country documentation, such as business registration or certification, and Dun & Bradstreet identification numbers. Written agreements between sponsors and third parties operating outside the United States must include an annually updated price list for training and internship programs offered by each third party, and must ensure that such overseas third parties are sufficiently trained in all aspects of the programs they represent, including the regulations set forth in this Part.

(3) *Screening and Vetting Host Organizations.* Sponsors must adequately screen all potential host organizations at which a trainee or intern will be placed by obtaining the following information:

(i) The Dun & Bradstreet identification number (unless the host organization is an academic institution, government entity, or family farm);

(ii) Employer Identification Number (EIN) used for tax purposes;

(iii) Verification of telephone number, address, and professional activities via advertising, brochures, Web site, and/or feedback from prior participants; and

(iv) Verification of Workman's Compensation Insurance Policy.

(4) *Site Visits of Host Organizations.* Sponsors must conduct site visits of host organizations that have not previously participated successfully in the sponsor's training and internship programs and that have fewer than 25 employees or less than three million dollars in annual revenue. Placements at academic institutions or at federal, state, or local government offices are specifically excluded from this requirement. The purpose of the site visits is for the sponsors to ensure that host organizations possess and maintain the ability and resources to provide structured and guided work-based learning experiences according to the individualized T/IPPs and that host organizations understand and meet their obligations set forth in this Part.

(h) *Host Organization Obligations.* Sponsors must ensure that:

(1) Host organizations sign a completed Form DS–7002 to verify that all placements are appropriate and consistent with the objectives of the trainees or interns as outlined in their program applications and as set forth in their T/IPPs. All parties involved in internship programs should recognize that interns are seeking entry-level training and experience. Accordingly, all placements must be tailored to the skills and experience level of the individual intern; (i) Host organizations notify sponsors promptly of any concerns about, changes in, or deviations from T/IPPs during training and internship programs and contact sponsors immediately in the event of any emergency involving trainees or interns; (ii) Host organizations abide by all Federal, State, and Local occupational health and safety laws; and (iii) Host organizations abide by all program rules and regulations set forth by the sponsor, including the completion of all mandatory program evaluations.

(i) *Training/Internship Placement Plan (Form DS–7002).* (1) Sponsors must fully complete and obtain requisite signatures for a Form DS–7002 for each trainee or intern before issuing a Form DS–2019. Sponsors must provide each signatory an executed copy of the Form DS–7002. Upon request, trainees and interns must present their fully

executed Form DS–7002 to a Consular Official during their visa interview.

(2) To further distinguish between bona fide training for trainees or work-based learning for interns, which are permitted, and ordinary employment or unskilled labor which are not, all T/IPPs must

(i) State the specific goals and objectives of the training and internship program (for each phase or component, if applicable);

(ii) Detail the knowledge, skills, or techniques to be imparted to the trainee or intern (for each phase or component, if applicable); and

(iii) Describe the methods of performance evaluation and the supervision for each phase or component, if applicable.

(3) A T/IPP for trainees must be divided into specific and various phases or components, and for each phase or component must

(i) Describe the methodology of training and

(ii) Provide a chronology or syllabus.

(4) A T/IPP for interns must:

(i) Describe the role of the intern in the organization and, if applicable, identify various departments or functional areas in which the intern will work and

(ii) Identify the specific tasks and activities the intern will complete.

(j) *Program Exclusions.* Sponsors designated by the Department to administer training and internship programs must not:

(1) Place trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, or in clinical or any other kind of work that involves patient care or contact, including any work that would require trainees or interns to provide therapy, medication, or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education);

(2) Place trainees or interns in positions, occupations, or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(3) Engage or otherwise cooperate or contract with a Staffing/Employment Agency to recruit, screen, orient, place, evaluate, or train trainees or interns, or in any other way involve such agencies in an Exchange Visitor Program training and internship program.

(4) Designated sponsors must ensure that the duties of trainees or interns as outlined in the T/IPPs will not involve more than 20 per cent clerical work, and that all tasks assigned to trainees or interns are necessary for the completion of training and internship program assignments.

(5) Sponsors must also ensure that all ''Hospitality and Tourism'' training and internship programs of six months or longer contain at least three departmental or functional rotations.

(6) Place interns in the field of aviation.

(k) *Duration.* The duration of a trainee's or intern's participation in a training and internship program must be established before a sponsor issues a Form DS–2019. Except as noted below, the maximum duration of a training program is 18 months, and the maximum duration of an internship programs is 12 months. For training programs in the field of agriculture and in the ''Hospitality and Tourism'' occupational category, the maximum duration is 12 months. Training programs in the field of agriculture are permitted to last a total of 18 months, if in development of the T/IPP the additional six months of the program consists of classroom participation and studies. Program extensions are permitted within maximum durations as long as the need for an extended training and internship program is documented by the full completion and execution of a new Form DS–7002.

(l) *Evaluations.* In order to ensure the quality of training and internship programs, sponsors must develop procedures for evaluating all trainees and interns. All required evaluations must be completed prior to the conclusion of a training and internship program, and both the trainees and interns and their immediate supervisors must sign the evaluation forms. For programs exceeding six months' duration, at a minimum, midpoint and concluding evaluations are required. For programs of six months or less, at a minimum, concluding evaluations are required. Sponsors must retain trainee and intern evaluations (electronic or hard copy) for a period of at least three years following the completion of each training and internship program.

(m) *Issuance of Certificate of Eligibility for Exchange Visitor (J–1) Status.* Sponsors must not deliver or cause to be delivered any Certificate of Eligibility for Exchange Visitor (J–1) Status (Form DS–2019) to potential trainees or interns unless the individualized Form DS–7002 required by § 62.22(i) has been completed and signed by all requisite parties.

(n) *Additional Training and Internship Program Participation.* Foreign nationals who enter the United States under the Exchange Visitor Program to participate in training and internship programs are eligible to participate in additional training and internship programs under certain conditions. For both trainees and interns, additional training and internship programs must address the development of more advanced skills or a different field of expertise. Interns may participate in additional internship programs as long as they maintain student status or begin a new internship program within 12 months of graduation. Trainees are eligible for additional training programs after a period of at least two years residency outside the United States following their initial training program. Participants who have successfully completed internship programs and no longer meet the selection criteria for internship programs may participate in a training program after a two-year period of residency outside the United States following their internship program. As long as participants meet the selection criteria and fulfill these conditions, there is no limit to the number of times they may participate in a training and internship program.

(o) *Flight Training.* (1) The Department will consider the application for designation of a flight training program if such programs comply with the above regulations, and, additionally:

(i) Is, at the time of making said application, a Federal Aviation Administration certificated pilot school pursuant to title 14 CFR part 141; and

(ii) At the time of making said application is accredited as an flight training program by an accrediting agency which is listed in the current edition of the U.S. Department of Education's ''Nationally Recognized Accrediting Agencies and Associations,'' or is accredited as a flight training program by a member of the Council on Postsecondary Accreditation; or

(iii) At the time of making said application has formally commenced the accreditation process with an accrediting agency which is listed in the current edition of the U.S. Department of Education's ''Nationally Recognized Accrediting Agencies and Associations,'' or with a member of the Council on Postsecondary Accreditation. If the application for designation is approved, such designation will be for up to 12 months duration, with continued designation thereafter conditioned upon completion of the accreditation process.

(2) Notwithstanding the provisions of § 62.22(k), the maximum period of participation for exchange visitors in

designated flight training programs must not exceed 24 months total. Any request for extension of time in excess of that authorized under this subsection must be made in accordance with § 62.43.

(3) For purposes of meeting the evaluation requirements set forth in § 62.22(m), sponsors and/or third parties conducting the training may utilize the same training records as are required by the Federal Aviation Administration to be maintained pursuant to 14 CFR 141.101.

Dated: March 12, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–11703 Filed 6–18–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 75

[DoD–2007–OS–0047]

Conscientious Objectors

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes part 75, ''Conscientious Objectors'' presently in Title 32 of the Code of Federal Regulations. The document on which this part was based has been revised and is limited only to DoD personnel management matters, affects only DoD military personnel, and has no impact on the public.

DATES: *Effective Date:* June 19, 2007.

FOR FURTHER INFORMATION CONTACT: CDR Lesa J. Kirsch, 703–697–4959.

SUPPLEMENTARY INFORMATION: This part 75 is removed as a part of a DoD exercise to remove CFR parts no longer required to be codified. The corresponding DoD Instruction 1300.06 is available at *http://www.dtic.mil/whs/directives.*

List of Subjects in 32 CFR Part 75

Conscientious objectors, Military personnel.

PART 75—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 75 is removed.

Dated: June 11, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2985 Filed 6–18–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–031]

RIN 1625–AA08

Special Local Regulations for Marine Events; York River, Yorktown, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the ''Watermen's Heritage Festival Workboat Races'', a marine event to be held July 15, 2007 on the waters of the York River, Yorktown, Virginia. 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 York River during the event.

DATES: This rule is effective from 9 a.m. to 5:30 p.m. on July 15, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–07–031) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; York River, Yorktown, VA in the **Federal Register** (72 FR 18422). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, spectator craft, and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations, and area newspapers.

Background and Purpose

On July 15, 2007, the Watermen's Museum of Yorktown, VA will sponsor ''Watermen's Heritage Festival Workboat Races'' on the York River, immediately adjacent and north of the shoreline at Yorktown River Cliffs. The event will consist of approximately 40 traditional Chesapeake Bay deadrise workboats racing along a marked straight line race course in heats of 2 to 4 boats for a distance of approximately 1000 yards. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the York River, near Yorktown, Virginia.

Regulatory Evaluation

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

Although this regulation will prevent traffic from transiting a portion of the York 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 the Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it is safe to do so. In many cases vessel traffic will be able to transit around the regulated using the marked navigation channel along the York River.

Small Entities

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

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

Although this regulation prevents traffic from transiting a portion of the York River during the event, this rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.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.

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 amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–031 to read as follows:

§ 100.35–T05–031 York River, Yorktown, VA.

(a) *Regulated area.* The regulated area includes the waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′30″ West, bounded on the east by a line drawn along longitude 076°30′50″ West, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions.* The following definitions apply to this section:

(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 to act on their behalf.

(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 Watermen's Heritage Festival Workboat races under the auspices of a 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 shall:

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

(ii) Proceed as directed by any Official Patrol.

(iii) 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 5:30 p.m. on July 15, 2007.

Dated: May 23, 2007.

Larry L. Hereth,

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

[FR Doc. E7–11756 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–063]

RIN 1625–AA00

Safety Zone; Lesbian and Gay Community Center Fireworks, Fire Island Pines Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Lesbian and Gay Community Center Fireworks in Fire Island Pines Harbor, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8:30 p.m. to 10:45 p.m. on June 30, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–07–063 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this event until April 20, 2007, thereby making an NPRM impracticable. A delay or cancellation of the fireworks display in order to accommodate a full notice and comment period would be contrary to the pubic interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Fire Island Pines Harbor, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it is only effective for a two hour and 15 minute period on a single day. In addition, the area closed by the safety zone is minimal, allowing vessels to transit around the zone in Fire Island Pines Harbor, NY.

Background and Purpose

The Lesbian and Gay Community Center Fireworks display will be taking place in Fire Island Pines Harbor, NY from 8:30 p.m. to 10:45 p.m. on June 30, 2007. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of the navigable waters of Fire Island Pines Harbor one hour prior to, during and one hour after the stated event.

Discussion of Rule

This regulation establishes a temporary safety zone on the navigable waters of Fire Island Pines Harbor, NY within a 600-foot radius of the fireworks barge located at approximate position 40°40′10.06″ N, 073°04′26.45″ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a portion of Fire Island Pines Harbor, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8:30 p.m. until 10:45 p.m. on June 30, 2007. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the rest of Fire Island Pines Harbor except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic because of this safety zone due to the limited area and duration covered by this regulation. Public notifications will be made prior to the effective

period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels will only be excluded from the area of the safety zone for 2 hours and fifteen (15) minutes; and vessels will be able to operate in other areas of Fire Island Pines Harbor, NY during the enforcement period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Fire Island Pines Harbor, NY covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant D. Miller, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide 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 the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because the rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–063 to read as follows:

§ 165.T01–063 Safety Zone: Lesbian and Gay Community Center Fireworks, Fire Island Pines Harbor, NY

(a) *Location.* The following area is a safety zone: All navigable waters of Fire Island Pines Harbor in a 600-foot radius of a fireworks barge site located at approximate position 40°40′10.06″ N, 073°04′26.45″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who has been authorized to act on the behalf of the Captain of the Port, Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long, Island Sound.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via telephone at (203) 468–4401.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10:45 p.m. on Saturday, June 30, 2007.

Dated: June 5, 2007.

J.J. Plunkett,

Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound, Acting.

[FR Doc. E7–11751 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–061]

RIN 1625–AA00

Safety Zone: Salute to Veterans Fireworks, West Marina/Jones Inlet, Point Lookout, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Salute to Veterans Fireworks off of West Marina/Jones Inlet, Point Lookout, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8:30 p.m. on June 30, 2007 until 10:30 p.m. on July 1, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–07–061 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this event until May 16, 2007, thereby making an NPRM impracticable. A delay or cancellation of the fireworks display in order to accommodate a full notice and comment period would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Jones Inlet, Point Lookout, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it will only be enforced for a two hour period on one of two specific days. In addition, the area closed by the safety zone is minimal, allowing vessels to transit around the zone in Jones Inlet, Point Lookout, NY.

Background and Purpose

The Salute to Veterans Fireworks display will be taking place off West Marina/Jones Inlet, Point Lookout, NY from 8:30 p.m. to 10:30 p.m. on June 30, 2007. If the fireworks display is cancelled due to inclement weather on June 30, 2007, it will take place during the same hours on July 1, 2007. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of Jones Inlet prior to, during and after the stated event so as to ensure mariners maintain a safe distance from the fireworks.

Discussion of Rule

This regulation establishes a temporary safety zone on the navigable waters of Jones Inlet, Point Lookout, NY

within a 600-foot radius of the launch site located at approximate position 40°35′36.87″ N, 073°35′20.72″ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a portion of Jones Inlet, Point Lookout, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on June 30, 2007. Marine traffic may transit outside of the safety zone during the event thereby allowing navigation of the rest of Jones Inlet except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic from this safety zone due to the limited area and short duration covered by this regulation. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels will only be excluded from the area of the safety zone for 2 hours and vessels will be able to operate in other areas of Jones Inlet, Point Lookout, NY during the enforcement period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Jones Inlet, Point Lookout, NY covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant D. Miller, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide 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 the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34), of the Instruction, from further environmental documentation. This rule falls under the provisions of paragraph (34)(g) because the rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–061 to read as follows:

§ 165.T01–061 Safety Zone: Salute to Veterans Fireworks, West Marina/Jones Inlet, Point Lookout, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Jones Inlet in a 600-foot radius of a fireworks launch site located at approximate position 40°35′36.87″ N, 073°35′20.72″ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definition applies to this section: *Designated on-scene patrol personnel,* means personnel comprise commissioned, warrant and petty officers of the U.S. Coast Guard who has been authorized to act on behalf of the Captain of the Port, Long Island Sound. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound or his designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on Saturday, June 30, 2007.

If the fireworks display is cancelled due to inclement weather on June 30, 2007, it will be enforced during the same hours on Sunday, July 1, 2007.

Dated: June 5, 2007.

J.J. Plunkett,

Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound, Acting.

[FR Doc. E7–11753 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–060]

RIN 1625–AA00

Safety Zone: Sag Harbor Fireworks, Havens Beach, Sag Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Sag Harbor Fireworks on Havens Beach, Sag Harbor, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8:30 p.m. on July 7, 2007 until 10:30 p.m. on July 8, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–07–060 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this event until April 26, 2007, thereby making an NPRM impracticable. A delay or cancellation of the fireworks display in order to accommodate a full notice and comment period would be contrary to the pubic interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is

needed to prevent traffic from transiting a portion of Sag Harbor Bay, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it will be enforced for a two hour period on only one of two specified days. In addition, the area closed by the safety zone is minimal, allowing vessels to transit around the zone in Sag Harbor Bay, NY.

Background and Purpose

The Sag Harbor Fireworks display will be taking place on Havens Beach, Sag Harbor Bay, NY from 8:30 p.m. to 10:30 p.m. on July 7, 2007. If the fireworks display is cancelled due to inclement weather on July 7, 2007, it will take place during the same hours on July 8, 2007. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of Sag Harbor Bay one hour prior to, during and one hour after the stated event.

Discussion of Rule

This regulation establishes a temporary safety zone on the navigable waters of Sag Harbor Bay, NY within a 1200-foot radius of the fireworks launch site located at approximate position 41°00.133′ N, 072°17.267′ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a portion of Sag Harbor Bay, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8:30 p.m. until 10:30 p.m. on July 7, 2007 and, if necessary due to inclement weather, will be enforced from 8:30 p.m. to 10:30 p.m. on July 8, 2007. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the rest of Sag Harbor Bay except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event due to the limited area and duration covered by this safety zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels will only be excluded from the area of the safety zone for 2 hours and vessels will be able to operate in other areas of Sag Harbor Bay, NY during the enforcement period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Sag Harbor Bay, NY covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant D. Miller, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health

Risks and Safety Risks. This rule is not an economically significant rule and will not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide 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 the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation, as it establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–060 to read as follows:

§ 165.T01–060 Safety Zone: Sag Harbor Fireworks, Havens Beach, Sag Harbor Bay, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Sag Harbor Bay in a 1200-foot radius of a fireworks launch site located at approximate position 41°00.133′ N, 072°17.26′ W. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel*, means any commissioned, warrant and petty officer of the U.S. Coast Guard who has been authorized to act on behalf of the Captain of the Port, Long Island Sound.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound or his designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on Saturday, July 7, 2007 and if the fireworks display is postponed, from 8:30 p.m. to 10:30 p.m. on Sunday, July 8, 2007.

Dated: June 5, 2007.

J.J. Plunkett,

Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound, Acting.

[FR Doc. E7–11754 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 07–018]

RIN 1625–AA00

Safety Zone; Pittsburg Chamber of Commerce Fourth of July Fireworks Display, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay for the loading, transport, and launching of fireworks used during the Pittsburg Chamber of Commerce, Fourth of July Fireworks Display to be held on July 4, 2007. This safety zone is intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

DATES: This rule is effective from 9: a.m. to 10 p.m. on July 4, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Francisco Bay 07–018 and are available for inspection or copying at Coast Guard Sector San Francisco, 1 Yerba Buena Island, San Francisco, California, 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Sheral Richardson, United States Coast Guard Sector San Francisco, at (415) 556–2950 extension 136, or the 24-hour Command Center at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, this safety zone is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. Because of these safety concerns, it is in the public interest to have these regulations in effect during the event.

For the same reasons, the Coast Guard finds that good cause exists under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in this fireworks display.

Background and Purpose

The Pittsburg Chamber of Commerce will sponsor a fireworks display on July 4, 2007 in the waters of San Francisco Bay on the New York Slough. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary regulated area in San Francisco Bay around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This restricted area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay near Pier 50 and the New York Slough. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around and under the fireworks barge within a radius of 100 feet. Fifteen minutes prior to and during the twenty minute fireworks display, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 4, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 12 p.m. and 8 p.m. on July 4, 2007. During the fireworks display, scheduled to commence at approximately 9:30 p.m., the fireworks barge will be located approximately 400 feet from Pittsburg Marina on the New York Slough approximate position 38°02.42′ N, 121°52.97′ W.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Evaluation

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

Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the event, the effect of this regulation will not be significant due to the small size and limited duration of the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of entities. This rule will affect the following entities, some of which may be small entities: Owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area; (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of San Francisco Bay to engage in these activities; (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and; (iv) the maritime public will be advised in advance of this safety zone via publicly broadcasted notice to mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide 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)(g), of the Instruction, from further environmental documentation. Paragraph (34)(g) is applicable because this rule establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–196 to read as follows:

§ 165.T11–196 Safety Zone; Pittsburg Chamber of Commerce, Fourth of July Fireworks Display, San Francisco Bay, CA.

(a) *Location.* The following area is a safety zone: The waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until fifteen minutes prior to the start of the fireworks display, the restricted area encompasses the navigable waters, from surface to bottom, around the fireworks barge within a radius of 100 feet. During the fifteen minutes preceding the fireworks display and during the twenty minute fireworks display itself, the safety zone increases in size to encompass the navigable waters, from surface to bottom, around the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 9 a.m. on July 4, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 12 p.m. and 8 p.m. on July 4, 2007. During the fireworks display, scheduled to start at approximately 9:30 p.m. on July 4, 2007, the barge will be located approximately 400 feet from Pittsburg Marina on the New York Slough in approximate position 38°02.42′ N, 121°52.97′ W.

(b) *Effective period.* This section is effective from 9 a.m. through 10 p.m. on July 4, 2007. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port San Francisco, or his designated representative.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, or the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels. Upon being hailed

by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of this safety zone by local law enforcement.

Dated: June 4, 2007.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco

[FR Doc. E7–11757 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–001]

RIN 1625–AA00

Safety Zone: Town of Marblehead Fourth of July Fireworks Display, Marblehead Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Town of Marblehead Fourth of July Fireworks on July 4, 2007 with a rain date on July 5, 2007, in Marblehead, MA temporarily closing all navigable waters of Marblehead Harbor within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°30.567′ N, 070°50.162′ W. The safety zone is necessary to protect the life and property of the maritime public from the potential hazards posed by a fireworks display. The safety zone temporarily prohibits entry into or movement within this portion of Marblehead Harbor during its closure period.

DATES: This rule is effective from 8:30 p.m. EDT on July 4, 2007 until 10 p.m. EDT on July 4, 2007. The rain date for the fireworks event is from 8:30 p.m. EDT until 10 p.m. EDT on July 5, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD01–07–001 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Joseph Yonker, Sector Boston, Waterways Management Division, at (617) 223–5007.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 16, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Town of Marblehead Fourth of July Fireworks Display, Marblehead Harbor, MA'' in the **Federal Register** (72 FR 18933). We did not receive any letters commenting on the proposed rule. No public meeting was requested, and none was held.

As the fireworks display is scheduled to occur on July 4, 2007, any delay encountered in the regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Marblehead Harbor during the fireworks display thus ensuring that the maritime public is protected from any potential harm associated with such an event. Accordingly, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This rule establishes a safety zone on the navigable waters of Marblehead Harbor within a 400 yard radius around the fireworks barge located at approximate position 42°30.567′ N, 070°50.162′ W. The safety zone is in effect from 8:30 p.m. EDT until 10 p.m. EDT on July 4, 2007. The rain date for the fireworks event is from 8:30 p.m. until 10 p.m. EDT on July 5, 2007.

The safety zone temporarily restricts movement within this portion of Marblehead Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to the event. Public notifications will be made prior to the effective period via marine information broadcasts and Local Notice to Mariners.

Discussion of Comments and Changes

The Coast Guard did not receive any comments from the public in response to the NPRM and as a result no changes have been made to this temporary final rule.

Regulatory Evaluation

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

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

Although this rule prevents vessel traffic from transiting a portion of Marblehead Harbor during the effective period, the effects of this regulation will not be significant for several reasons: vessels will be excluded from the proscribed area for only one and one half hours, vessels will be able to operate in the majority of Marblehead Harbor during the effective period, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Marblehead Harbor from 8:30 p.m. EDT until 10 p.m. EDT on July 4, 2007 or during the same hours on July 5, 2007.

This safety zone 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 one and one half hours, vessel traffic can safely pass around the zone, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide 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 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone that will be in effect for only one and one-half hours.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–001 to read as follows:

§ 165.T01–001 Safety Zone; Town of Marblehead Fourth of July Fireworks Display, Marblehead Harbor, Massachusetts.

(a) *Location.* The following area is a safety zone: All navigable waters of Marblehead Harbor within a 400 yard radius of the fireworks barge located at approximate position 42°30.567′ N, 070°50.162′ W.

(b) *Effective Date.* This section is effective from 8:30 p.m. until 10 p.m. EDT on July 4, 2007, with a rain date of 8:30 p.m. until 10 p.m. EDT on July 5, 2007.

(c) *Definitions.* As used in this section, (1) *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) *[Reserved]*

(d) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is

prohibited unless authorized by the Captain of the Port (COTP), Boston or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative on VHF Channel 16 (156.8 MHz)to seek permission to do so. If permission is granted, vessel operators must comply with all directions given to them by the COTP or the COTP's designated representative.

Dated: May 25, 2007.

James L. McDonald

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. E7–11750 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 212

[Docket No. RM 2007–6]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing a final rule establishing a lower basic registration fee of $35 for copyright claims submitted electronically. This fee applies to all registrations where the application is submitted electronically, including those registrations where the deposit materials cannot be sent electronically together with the application. At the same time, the Office is retaining its current fee of $45 for processing paper applications for basic copyright registration of a copyright claim. The dual fee structure reflects the reduced cost of processing electronic claims and serves as an incentive to the public to utilize the new online, electronic registration system. On or after July 1, 2007, the Copyright Office will begin accepting a limited number of electronic submissions of copyright claims through the Internet and the new fee will apply to these applications. The adoption of the new rule assumes that no legislative action will take place before July 1, 2007.

EFFECTIVE DATE: July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Acting General Counsel, P.O. Box 70400, Washington, D.C. 20024–0400, Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

This final rule adjusts Copyright Office fees in accordance with the applicable provisions of title 17, United States Code, and the Technical Amendments Act, Pub. L. No. 105–80, 111 Stat. 1529 (1997), codified as 17 U.S.C. 708(b).

In 1997, Congress delegated to the Register of Copyrights authority to adjust fees in accordance with a new procedure. This procedure requires the Register to conduct a study of the costs incurred for fee services, such as the registration of claims, the recordation of documents, and search services. If, after the review and application of all statutory criteria, the Register determines that fees should be adjusted, the Register prepares a proposed fee schedule and submits the schedule and the accompanying economic analysis to Congress. 17 U.S.C. 708(b)(5). The fee proposed in that schedule may be instituted in 120 days unless Congress enacts a law within that 120 day period stating that it does not approve the schedule. *Id.* Technical Amendments Act, Pub. L. No. 105–80, 111 Stat. 1529 (1997).

The Copyright Office has instituted fee adjustments under the Technical Amendments Act on three separate occasions. The first schedule was adopted in 1999. *See* 63 FR 43426 (August 13, 1998) and 64 FR 29518 (June 1, 1999). Three years later a second adjustment was made raising many copyright fees, but leaving the basic copyright registration fee at $30. 67 FR 38003 (May 31, 2002). The last fee adjustment was adopted in 2006, in which most statutory fees were again raised due to increase in costs. In this instance, the basic registration fee was increased from $30 to $45. 71 FR 15368 (March 28, 2006) and 71 FR 31089 (June 1, 2006).

Cost Study

In raising the basic registration fee last year to $45, the commentary in the **Federal Register** notice anticipated establishing a differential fee schedule with lower filing fees for online registration to reflect the efficiencies of the new reengineered processes. 71 FR at 31090. It is intended that the dual fee will not only reflect the reduced costs of processing electronic claims, but will also provide an incentive to potential electronic filers.

On February 21, 2007, a cost study was submitted to Congress proposing to reduce the basic registration fee for copyright claims submitted electronically to $35 and to institute new fees for listing titles of individual works in an application for a collection or collective work. The per title fee for an electronic submission would be $1 and the per title fee for a paper application would be $3. However, the proposed fees for listing titles of individual works in an application for a collection or collective work are not being adopted at this time.

The cost study used to determine the new fees was developed by the Copyright Office based on a model created as part of its business process reengineering initiative. The cost analysis utilized an activity–based costing methodology approved by the Office of Management and Budget in its publication, Managerial Cost Accounting Standards for the Federal Government, Statement of Federal Financial Accounting Standards, No. 4 (July 31, 1995). Cost studies of this type are retrospective, using actual data from a prior fiscal year. However, costing for the proposed fee had to be done prospectively, as an adjunct to the earlier cost study, because electronic registration has not been offered in the past. In developing the new fee, the Copyright Office utilized data from a small–scale testbed for electronic registration and data from prior cost studies relating to the costs of certain paper handling processes which will be eliminated by the new electronic processing systems. On the basis of the information available to the Copyright Office, it concluded that a fee of $35 for the electronic processing of a claim to copyright to be reasonable. The Office is likely to revisit the fee issue once the electronic system has been fully operational for a sufficient period of time so as to yield reliable information on the actual costs involved in providing the service.

The Office is also adopting technical amendments to bring all fees within the fee schedules set forth in § § 201.3 (c) and (e) of title 37 of the CFR. Specifically, the Office is amending § § 201.11(h)(3)(iv)(A), 201. 201.17(k)(3)(iv)(A), 201.27 (g)(2), 201.28(i)(3)(v)(A), 212.3(e)(1), (f)(4), and 212.5(c)(4).

Effective Date

Congress has 120 days from February 21, 2007, to review the statutory fees submitted to it, codified in § 201.3(c). If no legislation is enacted barring adoption of these fees, the $35 proposed fee for registration of copyright claims submitted electronically will be adopted, effective July 1, 2007.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 212

Design, Vessel hulls, Registration.

Final Rule

■ In consideration of the foregoing, 37 CFR parts 201 and 212 are amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Section 201.3 (c) and (e) are revised to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) *Registration, recordation and related service fees.* The Copyright Office has established the following fees for these services:

Registration, Recordation and Rated Services	Fees
(1) Registration of a basic claim in an original work of authorship: Forms TX, SE, PA, VA (including Short Forms), and Form SR	$45
(2) Electronic Registration of a basic claim in an original work of authorship: Form CO	35
(3) Registration of a claim in a group of contributions to periodicals (GR/CP)	45
(4) Registration of a renewal claim (Form RE): Claim without Addendum	75
Addendum	220
(5) Registration of a claim in a mask work (Form MW)	95
(6) Registration of a claim in a group of serials (Form SE/Group) [per issue, with minimum 2 issues]	25
(7) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/DN)	70
(8) Registration of a claim in a restored copyright (Form GATT)	45
(9) Registration of a group of published photographs	45
(10) Preregistration of certain unpublished works	100
(11) Registration of a correction or amplification to a claim (Form CA)	115
(12) Providing an additional certificate of registration	40
(13) Certification of other Copyright Office records (per hour)	150
(14) Search–report prepared from official records (per hour)	150
Estimate of search fee	100
(15) Location of Copyright Office records (per hour)	150
Location of in-process materials (per hour)	150
(16) Recordation of document, including a Notice of Intention to Enforce (NIE) (single title)	95
Additional titles (per group of 10 titles)	25
(17) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(18) Recordation of an Interim Designation of Agent to Receive Notification of Claimed Infringement under § 512(c)(2)	80
(19) Issuance of a receipt for a § 407 deposit	20
(20) Registration of a claim in a vessel hull (including 3 pages of drawing or photographs)	200
Additional pages	20
(21) Recordation of distinctive identification of vessel hull designer	80

* * * * *

(e) Licensing Division service fees. The Copyright Office has established the following fees for certain services performed by the Licensing Division:

Licensing Division Services	Fees
(1) Recordation of a Notice of Intention to Make and Distribute Phonorecords (17 U.S.C. 115)	$12
(2) Filing Fee for Recordation of License Agreements under 17 U.S.C. 118	125
(3) Recordation of Certain Contracts by Cable Television Systems Located Outside the Forty-Eight Contiguous States	50
(4) Initial Notice of Digital Transmission of Sound Recording(17 U.S.C. 114)	20
Amendment of 17 U.S.C. 114 Notice	20
(5) Statement of Account Amendment (Cable Television Systems, Satellite Carriers, and Digital Audio Recording Devices or Media, 17 U.S.C. 111, 119, and 1003)	95
(6) Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media	20
(7) Photocopy made by staff (b&w) (per page, minimum $6)	0.50
(8) Search, per hour	150
(9) Certification of Search Report	150

■ 3. Amend § 201.11 by revising the first sentence in paragraph (h)(3)(iv)(A) to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions.

* * * * *

(h) * * *

(3)* * *

(iv)(A) All requests filed under this paragraph (h) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. * * *

* * * * *

■ 4. Amend § 201.17 by revising the first sentence in paragraph (k)(3)(iv)(A) to read as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(k) * * *

(3) * * *

(iv)(A) All requests filed under this paragraph (k) (except those filed under paragraph (k)(1)(iii) of this section) must be accompanied by a filing fee in the amount prescribed in § 201.3(e) of this part for each Statement of Account involved. * * *

* * * * *

■ 5. Amend § 201.27 by revising paragraph (g)(2) to read as follows:

§ 201.27 Initial notice of distribution of digital audio recording devices or media.

* * * * *

(g) * * *

(2) No fee shall be required for the recording of Initial Notices. The fee for filing an Amendment to an Initial Notice of Distribution of Digital Audio Recording Devices or Media is prescribed in § 201.3(e).

■ 6. Amend § 201.28 by revising the first sentence in paragraph (j)(3)(v)(A) to read as follows:

§ 201.28 Statements of account for digital audio recording devices or media.

* * * * *

(j) * * *

(3) * * *

(v)(A) The request must be accompanied by a filing fee in the amount prescribed in § 201.3(e) for each Statement of Account involved. * * *

* * * * *

PART 212—PROTECTION OF VESSEL HULL DESIGNS

■ 7. The authority citation for Part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

■ 8. Amend § 212.3 by revising paragraphs (e)(1) and (f)(4) to read as follows:

§ 212.3 Registration of claims for protection of eligible designs.

(e) *Deposit material*–(1) *In General.* Identification of the design to be registered may be made in the form of drawings or photographs. No more than two drawings or photographs of the design may appear on a single sheet. Applicants may submit up to three 81/2''×11'' sheets containing drawings or photographs as part of the basic application fee. An additional fee shall be assessed for each page beyond the first three pages. No combinations of drawings and photographs may be submitted on a single sheet. The drawings or photographs that accompany the application must reveal those aspects of the design for which protection is claimed. The registration extends only to those aspects of the design which are adequately shown in the drawings or photographs.

* * * * *

(f) * * *

(4) *Fees.* The basic application fee prescribed in § 201.3(c) of this chapter applies to each design submitted, regardless of whether a single application or multiple applications are used.

■ 9. Amend § 212.5 by revising paragraph (c)(4) to read as follows:

§ 212.5 Recordation of distinctive identification of vessel hull designer.

* * * * *

(c) * * *

(4) The recordation fee in the amount prescribed in § 201.3 (c) of this chapter.

* * * * *

Dated: June 5, 2007

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. E7–11815 Filed 6–18–07; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–NC–0002–200538c; FRL–8328–6]

Approval and Promulgation of Implementation Plans; North Carolina: Charlotte, Raleigh-Durham, and Winston-Salem Areas Second 10-Year Maintenance Plan for the Carbon Monoxide National Ambient Air Quality Standard; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification.

SUMMARY: EPA is clarifying its approval of revisions to the North Carolina State Implementation Plan (SIP), published in the **Federal Register** on March 24, 2006. Specifically, EPA is clarifying that its March 24, 2006, approval of the North Carolina carbon monoxide (CO) second 10-year maintenance plan for the Charlotte, Raleigh-Durham, and Winston-Salem areas included final approval of the movement of the oxygenated fuel program from the North Carolina Raleigh-Durham CO maintenance plan to the contingency plan.

DATES: This action is effective June 19, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–NC–0002. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *Lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. EPA's Action

In September 1995, EPA redesignated Raleigh-Durham, North Carolina to attainment for the carbon monoxide National Ambient Air Quality Standard (CO NAAQS) and approved the initial 10-year maintenance plan for the area (60 FR 39258). The initial 10-year maintenance plan included the use of a 2.0% oxygenated fuel program. Subsequently, on October 19, 1995, North Carolina submitted a proposed SIP revision requesting that the oxygenated fuel program for the Raleigh-Durham CO maintenance area be moved from the maintenance plan to the contingency measures portion of the plan. The request was based on a revised vehicle miles traveled (VMT) analysis which demonstrated that the

CO NAAQS could be maintained without the continued use of the oxygenated fuel program. EPA analyzed this request and proposed to approve the revision in 1995 (60 FR 56127, November 7, 1995). EPA received no comments on its proposed action.

As required by section 175A(b) of the Clean Air Act (CAA), North Carolina submitted another SIP revision in March 2005 providing for the second 10-year maintenance plan for CO for the Raleigh-Durham area, as well as for the Charlotte and Winston-Salem CO maintenance areas. The second 10-year maintenance plan included a new carbon monoxide emission inventory for 2000 and also established new motor vehicle emission budgets (MVEBs) for CO for 2015. The plan also provided for the oxygenated fuel program for the Raleigh-Durham CO area as a contingency measure rather than as a maintenance plan component. On March 24, 2006, (71 FR 14817) EPA approved, through a direct final rulemaking, the second 10-year CO maintenance plan for the Raleigh-Durham, Charlotte, and Winston-Salem CO maintenance areas. EPA received no comments on the March 2006 direct final rulemaking and it became effective in May 2006.

The March 2006 direct final rulemaking, however, did not explicitly reference any final action by EPA on the movement of the oxygenated fuel program for the Raleigh-Durham area from the maintenance plan to the contingency measures portion of the plan. While not explicitly referenced, it was EPA's intent to take such final action in the March 2006 rulemaking. Therefore, today, EPA is clarifying that in its March 2006 approval of the second 10-year maintenance plan for the Raleigh-Durham CO maintenance area, EPA intended to finalize its 1995 proposed approval of the movement of the oxygenated fuel program for the Raleigh-Durham area from the maintenance plan to the contingency measures portion of the plan.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's clarification of EPA's March 24, 2006, rule approving the second 10-year maintenance plan for the Raleigh-Durham CO maintenance area has no substantive impact on that approval and the clarification makes no substantive difference to EPA's analysis as set out in that rule. In addition, EPA can identify no particular reason why the public would be interested in being notified of this clarification since the opportunity to comment on the action to move the oxygenated fuel program for the Raleigh-Durham area from the maintenance plan to the contingency measures portion of the plan was previously provided and no comments were received.

EPA also finds that there is good cause under APA section 553(d)(3) for this clarification to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' (5 U.S.C. 553(d)(3)). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3), is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule simply clarifies that in EPA's March 2006 approval of the second 10-year maintenance plan for the Raleigh–Durham CO maintenance area, EPA intended to finalize its 1995 proposed approval of the movement of the oxygenated fuel program for the Raleigh–Durham area from the maintenance plan to the contingency measures portion of the plan. For these reasons, EPA finds good cause under APA section 553(d)(3), for this clarification to become effective on the date of publication of this action.

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely provides clarification that in EPA's March 24, 2006, approval of the second 10-year maintenance plan for the Raleigh–Durham CO maintenance area, EPA intended to finalize its 1995 proposed approval of the movement of the oxygenated fuel program for the Raleigh–Durham area from the maintenance plan to the contingency measures portion of the plan. This clarification has no substantive impact on EPA's March 24, 2006, approval and it imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,*) Because this clarification 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 clarification 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 clarifies an approved state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action 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 action does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.,*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone.

Dated: June 7, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. In § 52.1770 (c), table 1 is amended under subchapter 2D by revising the entries for ''Sect .1301'', ''Sect .1302'' and ''Sect .1304'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Sect .1301	Purpose	09/01/96	06/19/07 [Insert first page of publication].	
Sect .1302	Applicability	09/01/96	06/19/07 [Insert first page of publication].	
*	*	*	*	*
Sect .1304	Oxygen Content Standard	09/01/96	06/19/07 [Insert first page of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E7–11776 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[EPA–HQ–OAR–2007–0120; FRL–8328–5]

RIN 2060–A026

Change in Deadline for Rulemaking To Address the Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: Because EPA received adverse comment, we are withdrawing the direct final rule for ''Change in Deadline for Rulemaking to Address the Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder'' published on April 27, 2007.

DATES: Effective June 19, 2007, EPA withdraws the direct final rule published at 72 FR 20948, on April 27, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Samulski, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; telephone number: (734) 214–4532; fax number: (734) 214–4050; e-mail address: *samulski.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Because EPA received adverse comment, we are withdrawing the direct final rule for ''Change in Deadline for Rulemaking to Address the Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder'' published on April 27, 2007 (72 FR 20948). We stated in that direct final rule that if we received adverse comment by May 29, 2007, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. Concurrent with the direct final rule, we published a separate document (72 FR 20977) that will serve as the proposed rule to consider the adoption of the provisions in the direct final rule. We will address the comments in the context of subsequent activity on the proposed rulemaking.

List of Subjects in 40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated: June 13, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–11778 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648-XA83

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Catcher Vessels in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the GOA. This action is necessary because the 2007 Pacific halibut prohibited species catch (PSC) sideboard limit specified for the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep-water species fisheries.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2007, through 1200 hrs, A.l.t., July 31, 2007.

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.

The 2007 Pacific halibut PSC sideboard limit specified for the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is 22 metric tons as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007; as corrected by 72 FR 13217, March 21, 2007), for the period 1200 hrs, A.l.t., July 1, 2007, through 1200 hrs, A.l.t., July 31, 2007.

In accordance with § 679.82(d)(9)(i)(B), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific halibut PSC sideboard limit specified for the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep-water species fisheries. Consequently, NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA. Section 679.82(d)(4)(iii) lists the species and species groups that comprise the deep-water species fishery as deep-water flatfish, rex sole, and arrowtooth flounder.

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 the deep-water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in 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 June 11, 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 § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: June 13, 2007.

James P. Burgess,

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

[FR Doc. E7–11805 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 117
Tuesday, June 19, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 436

RIN 1904–AB68

Federal Procurement of Energy Efficient Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy today publishes proposed regulations to promote Federal procurement of energy efficient products. Today's proposal would establish a requirement for Federal agencies to report implementation of amendments to the National Energy Conservation Policy Act (NECPA) that require Federal agencies to procure ENERGY STAR qualified and Federal Energy Management Program (FEMP) designated products in procurements involving energy consuming products and systems. Today's notice of proposed rulemaking also provides draft guidance for Federal agencies on implementing the procurement requirements of NECPA.

DATES: Public comment on this proposed rule must be received by August 20, 2007.

ADDRESSES: You may submit comments, identified by RIN 1904–AB68, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail to *cyrus.nasseri@ee.doe.gov.* Include RIN 1904–AB68 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.
- *Mail:* Address written comments to Mr. Cyrus Nasseri, U.S. Department of Energy, Office of Federal Energy Management Program, Mailstop EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121.
- *Hand Delivery/Courier:* Mr. Cyrus Nasseri, U.S. Department of Energy, Federal Energy Management Program, Room 1M–048, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Due to potential security-related delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.

This notice of proposed rulemaking (NOPR) and any comments that DOE receives are being made available on the FEMP Web site at: *http://www.eere.energy.gov/femp/about/legislation.html.* You also may obtain copies of comments by contacting Mr. Cyrus Nasseri.

FOR FURTHER INFORMATION CONTACT: Mr. Cyrus Nasseri, U.S. Department of Energy, Office of Federal Energy Management Program, Mailstop EE–2L, 1000 Independence Avenue, SW., Washington, DC 20585–0121; (202) 586–1573 or *cyrus.nasseri@ee.doe.gov*, or Mr. Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121; 202–586–1777 or *christopher.calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Proposed Regulations
III. Draft Guidance
IV. Public Comment Procedures
V. Regulatory Review
VI. Approval by the Office of the Secretary

I. Introduction and Background

A. The Energy Policy Act of 2005

The Energy Policy Act of 2005 (EPACT) (Pub. L. 109–58; August 8, 2005), amended Part 3 of title V of NECPA (42 U.S.C. 8251–8259) by adding section 553. Section 553 of NECPA requires each Federal agency to procure ENERGY STAR qualified or FEMP designated products, unless the head of the agency determines in writing that a statutory exception applies. (42 U.S.C. 8259b(b)(1)). Further, each agency is required to incorporate into the specifications of all procurements involving energy consuming products and systems, and into the factors for evaluation of offers received for such procurements, criteria for energy efficiency that are consistent with the criteria used for rating ENERGY STAR qualified products and for rating FEMP designated products. (42 U.S.C. 8259b(b)(3)). Section 553 also requires that all inventories or listings of products operated and maintained by the General Services Administration (GSA) and the Defense Logistics Agency (DLA) clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any listing or inventory of products, and it requires GSA and DLA to supply *only* ENERGY STAR qualified and FEMP designated products in all covered product categories, except in cases in which an exception applies. (42 U.S.C. 8259b(c)).

Section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated products, and it excludes a specific category of energy consuming products from coverage. A procurement may be excepted if the head of an agency finds in writing that either: (1) An ENERGY STAR qualified product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or (2) no ENERGY STAR qualified product or FEMP designated product is reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)). In addition, section 553 excludes from the definition of products subject to these requirements any energy consuming product or system designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5)).

In the subsection entitled ''REGULATIONS,'' section 553 of NECPA directs the Secretary of Energy to issue guidelines to carry out the statute. (42 U.S.C. 8259b(e)). The procurement requirements that NECPA section 553 imposes on agencies and the additional requirements it imposes on GSA and DLA are self-executing, and no implementing regulations are necessary to implement those requirements. However, this document proposes amendments to 10 CFR part 436, Federal Energy Management and Planning Programs, to establish a requirement for Federal agencies to report their compliance with aspects of

section 553. This document also proposes guidance for Federal agencies on the implementation of section 553.

B. ENERGY STAR Qualified and FEMP Designated Products

In 1992, the United States Environmental Protection Agency (EPA) introduced ENERGY STAR as a voluntary labeling program designed to identify and promote energy efficient products to reduce greenhouse gas emissions. The ENERGY STAR label is now on major appliances, office equipment, lighting, home electronics, and other products. Through partnerships with private and public sector organizations, the ENERGY STAR Program provides technical information and tools for organizations and consumers to choose energy efficient solutions and best management practices.

In 1996, EPA partnered with DOE's FEMP program to develop labels and Federal purchasing specifications for particular product categories. In 1999, the partnership between EPA and DOE was furthered by Executive Order 13123, ''Greening the Government Through Efficient Energy Management,'' which directed EPA and DOE to expedite the process of designating products as ENERGY STAR qualified and to merge their efficiency rating procedures (E.O. 13123, § 403(b)(1), 64 FR 30851 (June 8, 1999)). That Executive Order was recently replaced with Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' which requires among other things that in acquisitions of goods and services Federal agencies use sustainable environmental practices, including acquisition of biobased, environmentally preferable, energy-efficient, water-efficient, and recycled-content products.[1] 72 FR 3919 (January 26, 2007).

In EPACT, Congress established statutory parameters for the ENERGY STAR program. (42 U.S.C. 6294a). The statute prescribes the program duties of the Administrator of EPA and the Secretary of Energy; requires the solicitation of public comment before an ENERGY STAR product category, specification or criterion is established or revised; and establishes a lead time before a new or significant revision of a product category, specification, or criterion may become effective.

Currently, ENERGY STAR qualified and FEMP designated products cover 62 types of products in the following categories: (1) Lighting; (2) commercial and industrial equipment; (3) food service equipment; (4) office equipment; (5) home electronics; (6) appliances; (7) residential equipment; (8) plumbing; and (9) construction products. ENERGY STAR qualified and FEMP designated products have been determined to be life-cycle cost-effective in normal usage. However, purchasers are encouraged to evaluate products according to their specific applications and circumstances. Life-cycle cost calculators for many of the ENERGY STAR qualified and FEMP designated products can be accessed at: *http://www.eere.energy.gov/femp/procurement/eep_eccalculators.cfm*.

II. Proposed Regulations

As discussed above, NECPA section 553(e), entitled ''REGULATIONS,'' directs DOE to issue guidelines to carry out the section. (42 U.S.C. 8259b(e)). Today's document provides draft guidance to assist Federal agencies in complying with the procurement requirements established in section 553(e). Additionally, DOE is proposing a reporting requirement to track agency compliance with the procurement requirements.

NECPA section 553 applies to the procurement of energy consuming products. Section 553 defines ''product'' as excluding energy consuming products or systems designed or procured for combat or combat-related missions. (42 U.S.C. 8259b(a)(5)). For the purpose of the reporting requirement, today's proposal would further define ''product'' as an energy consuming product or system that is in a category covered by the ENERGY STAR or FEMP program, i.e., a ''covered product.'' Covered products are those energy consuming products that the ENERGY STAR or FEMP programs determined to hold the greatest promise for energy savings. The range of life-cycle costs associated with products in the categories covered by the ENERGY STAR and FEMP programs is usually significant. Both programs will continue to review market trends and product availability, and may determine that additional products should be added to the list of covered products.

Section 553 establishes general procurement requirements for all Federal agencies and for Federal catalog and ordering systems. For the purpose of the proposed reporting requirement, DOE defines ''agency'' consistent with the definition contained in Title 5 of the United States Code. 5 U.S.C. 551(1) The 5 U.S.C. 551(1) definition and the proposed definition essentially limit the term ''agency'' to mean any Executive Branch agency. Section 553(a)(1) specifies a definition of agency that includes an agency under any branch of the Government (including a congressional agency), and is inappropriate for the proposed regulation given the authority of DOE. (42 U.S.C. 8259b(a)(1)) Moreover, the definition of ''agency'' in 5 U.S.C. 551(1) is incorporated by reference into subchapter III, Federal Energy Initiative, of Chapter 91 of Title 42 of the United States Code, which includes section 553. The other branches of the Government may, in their discretion, use DOE's proposed regulation and draft guidance in implementing section 553.

As stated above, section 553 of NECPA contains two exceptions to the requirement to procure only ENERGY STAR qualified and FEMP designated products. In order to track exceptions, DOE is proposing reporting requirements to track the exception findings made by agency heads. Under the proposed section 436.42, ''Reporting Requirement,'' agency officials would be required to document the number, monetary value, and the product description of excepted procurements, as well as the reasons the exceptions were granted. This information would be required to be included in an agency's annual report to the DOE under the applicable Executive Order. This information would help DOE and EPA determine if there is a need for revisions to ENERGY STAR qualified or FEMP designated products. It would also help determine the level of compliance with section 553.

III. Draft Guidance

Section 553(b) requires that when agencies procure energy consuming products, either directly or through part of a larger contract (e.g., construction, renovation, and service or maintenance contracts) that they procure either an ENERGY STAR qualified product or a FEMP designated product. (42 U.S.C. 8259b(b)(1)). Section 553(c) requires GSA and DLA to clearly identify and prominently display ENERGY STAR qualified and FEMP designated products in any inventory or listing of products by these agencies and that they supply only ENERGY STAR qualified and FEMP designated products when appropriate. (42 U.S.C. 8259b(c)). DOE encourages agencies other than GSA and DLA that operate procurement ordering systems to achieve the goals of section 553. The discussion below provides draft guidance for Federal agencies in complying with section 553.

Paragraph (d) in section 553 also establishes requirements for the procurement of specific products. (42 U.S.C. 8259b(d)). DOE has addressed

[1] Eexecutive Order 13423 revoked Executive Order 13123.

that paragraph in a previous rulemaking published in the **Federal Register** on August 18, 2006. 71 FR 47791.

A. Procurements

Requirements for Federal procurement are governed, in part, by the Federal Acquisition Regulations (FAR). 48 CFR part 1 *et seq.* Currently, FAR includes energy efficient procurement requirements at FAR § 23.203, which were based on the provisions of Executive Order 13123 and Executive Order 13221, ''Energy Efficient Standby Power Devices,'' 66 FR 40571 (August 2, 2001). DOE anticipates that the FAR Council will update the FAR to reflect the requirements in section 553. To date, DOE has worked closely with members of the FAR Council to ensure a consistent interpretation of the legislative language. If the FAR revisions are finalized prior to issuance of a final rule for 10 CFR part 436, DOE will ensure that this guidance is consistent with the FAR.

Federal agencies are generally required to procure an ENERGY STAR qualified or FEMP designated product whenever procuring a covered product. Additionally, products furnished by contractors while performing at a federally controlled facility should be qualified products regardless of whether the government receives title at the end of contract performance. A list of product categories, which contain ENERGY STAR qualified and FEMP designed products, is located at *http://www1.eere.energy.gov/femp/pdfs/eep_productfactsheet.pdf*.

To identify actual products that are ENERGY STAR rated, potential purchasers can go to *http://www.energystar.gov/products.*

Currently, there is no companion list of FEMP designated products, but the FEMP specifications for energy efficiency products are located at *http://www.eere.energy.gov/femp/procurement/eep_requirements.cfm*.

B. Procurement Planning

In addition to establishing requirements for the actual procurement of certain products, section 553(b)(3) directs heads of agencies to incorporate into the specifications for all procurements involving covered products criteria for energy efficiency that are consistent with the criteria used to rate ENERGY STAR products and FEMP designated products. (42 U.S.C. 8259b(b)(3)). This requirement applies to general specifications, project specifications, and construction, renovation and service contracts that involve the procurement of covered products. Agencies should consider this requirement to apply to:

- Design, design/build, renovation, retrofit and services contracts; facility maintenance and operations contracts; as well as energy savings performance contracts and utility energy service contracts.
- If applicable, lease agreements for buildings or equipment, including build-to-lease contracts, such as those used to implement the Military Housing Privatization Initiative.

Further, agencies should modify existing multi-year contracts and contracts with multiple option years, if possible, to require the procurement of ENERGY STAR and FEMP designated products when an option year is awarded, and at other times if the agency determines it is appropriate.

As directed by section 553(b)(3), Federal agencies should include criteria for energy efficiency that are consistent with the criteria used for rating qualified products in the factors for the evaluation of:

- Offers received for procurements involving covered products, and
- Offers received for construction, renovation, and services contracts that include provisions for covered products.

Agencies should notify their vendors of the Federal requirements for energy efficient purchasing.

Guidance is available for developing model contract language for contracts which involve covered products. Model contract language for all ENERGY STAR qualified and FEMP designated products can be found at *http://www.eere.energy.gov/femp/procurement/eep_modellang.cfm*. Moreover, there are guide specification requirements which have already been incorporated in existing specifications such as the Unified Facilities Guide Specifications, which are available at *http://www.wbdg.org/ccb/browse_org.php?o=70*, and EPA's Federal Guide for Green Construction Specifications, which is available at *http://www.wbdg.org/design/greenspec.php*.

Further, FEMP offers a series of training opportunities for procurement staff that are listed at *http://www.eere.energy.gov/femp/services/training_catalog.html*. New classes are periodically added to the Web site. Procurement officials are encouraged to take advantage of these training opportunities, which can provide a useful context to understand the benefits of energy efficient technologies and the innovative financing strategies available to fund them.

Although energy consuming products or systems that are designed or procured for combat or combat-related missions are not subject to the requirements of this subpart (see § 436.40 of this subpart), DOE encourages the Department of Defense to incorporate energy efficiency criteria into procurements of combat-related equipment, to the extent practicable.

C. Exceptions

As stated above, section 553 provides for exceptions to the procurement requirements. Under the statute, an agency may only procure an energy consuming product that is not an ENERGY STAR qualified or FEMP designated product if the head of the agency finds in writing that an exception applies. (42 U.S.C. 8259b(b)(2)). Under section 553(b)(2) a written exception can only be made if one of two criteria are met. (42 U.S.C. 8259b(b)(2)). The first criterion requires an agency head to find that a product is not life-cycle cost-effective in the application for which it will be used. (42 U.S.C. 8259b(b)(2)(A)). Although ENERGY STAR qualified and FEMP designated products are life-cycle cost-effective under normal use conditions, they may not be if used in a specialized way or for very limited hours. When making a determination that a product is not life-cycle cost-effective, an agency should rely on the life-cycle cost analysis method in part 436, subpart A, or another method determined by the agency to be equivalent. The second criterion requires an agency head to find that there is no ENERGY STAR qualified or FEMP designated product reasonably available that meets the functional requirements of the agency. (42 U.S.C. 8259b(b)(2)(B))

IV. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate in this proceeding by submitting data, views, or arguments. Written comments should be submitted to the address and in the form indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of

Information regulations at 10 CFR 1004.11.

V. Regulatory Review

A. Executive Order 12866

This proposed regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. National Environmental Policy Act

DOE has initially determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to rulemakings that are strictly procedural, such as rulemaking establishing a reporting requirement applicable to contracting practices for the purchase of goods and services. The proposed rule would establish a reporting requirement for Federal agencies that would assist DOE in tracking compliance with the requirements of section 553, to procure energy efficient products and develop procurement practices which facilitate the purchase of energy efficient products. The proposed rule would not establish any procurement requirements. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's proposed regulations for reporting of agency procurement of energy efficient products would apply only to Federal agencies. Today's proposal would not impact small entities. In addition, the proposal only facilitates Federal agency compliance with a statutory mandate to procure ENERGY STAR qualified and FEMP designated products. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Paperwork Reduction Act

Proposed 10 CFR 436.42 would require Federal agencies to annually report on the progress of their efforts to implement the procurement requirements of NECPA section 553, including specific information about any exceptions that were determined during the reporting year. The proposed rule requires agencies to report on the status of their efforts to meet the requirements of section 553. This status is added to an existing report. However, because this information is to be collected from Federal agencies as part of the annual energy report to the President pursuant to the applicable Executive Order and is to be collected only to improve the internal management of the executive branch and is not used for general statistical purposes, the Paperwork Reduction Act requirements would not apply. Accordingly, OMB clearance is not required.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments, or the private sector. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This proposed rule would not impose a Federal mandate on State, local, or tribal governments or the private sector. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

F. Treasury and General Government Appropriations Act, 1999

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

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of

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

I. Treasury and General Government Appropriations Act, 2001

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

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

VI. Approval by the Office of the Secretary

The issuance of this proposed rule has been approved by the Office of the Secretary.

Issued in Washington, DC, on May 11, 2007.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

List of Subjects in 10 CFR Part 436

Energy conservation, Federal buildings and facilities, Reporting and recordkeeping requirements, Solar energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

1. The authority citation for part 436 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8258; 42 U.S.C. 8259b.

2. Subpart C is added to part 436 to read as follows:

Subpart C—Agency Procurement of Energy Efficient Products

Sec.
436.40 Purpose and scope.
436.41 Definitions.
436.42 Reporting requirement.

§ 436.40 Purpose and scope.

This subpart promotes the procurement of energy efficient products by Federal agencies and promotes procurement practices which facilitate the procurement of energy efficient products, consistent with the requirements in section 553 of the National Energy Conservation Policy Act. (42 U.S.C. 8259b.)

§ 436.41 Definitions.

Agency means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(1) The Congress;

(2) The courts of the United States;

(3) The governments of the territories or possessions of the United States;

(4) The government of the District of Columbia.

Covered product means a product that is of a category for which an ENERGY STAR qualification or FEMP designation is established.

ENERGY STAR qualified product means a product that is rated for energy efficiency under an ENERGY STAR program established by section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a).

FEMP designated product means a product that is designated under the Federal Energy Management Program as being among the highest 25 percent of equivalent products for energy efficiency.

§ 436.42 Reporting requirement.

(a) Each agency must report on its progress toward implementing the procurement requirements of section 553 of the National Energy Conservation Policy Act (42 U.S.C. 8259b) in its annual report on energy management to the President under the appropriate Executive Order. The report must include:

(1) The number of covered product for which exceptions were found by the head of the agency under section 42 U.S.C. 8259b(b)(2);

(2) The monetary value of the excepted procurements;

(3) A description of the products for which exceptions were granted; and

(4) The reasons the exceptions were granted.

(b) Each agency must also report compliance with this section as may be required by the Office of Management and Budget, including as part of the Environmental Stewardship Score Card.

[FR Doc. E7–11772 Filed 6–18–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28375; Directorate Identifier 2007–NM–015–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200 and 767–300 series airplanes. This proposed AD would require reworking certain duct assemblies in the environmental control system (ECS). This proposed AD results from reports of duct assemblies in the ECS with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This proposed AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, which is a material for which the fire retardant properties deteriorate with age. We are proposing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

DATES: We must receive comments on this proposed AD by August 3, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

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

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

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28375; Directorate Identifier 2007–NM–015–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation on two Boeing Model 767–200 series airplanes. The airplane manufacturer has also notified us that certain Boeing Model 767–200 and 767–300 series airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation. The fire-retardant properties of the BMS 8–39 polyurethane foam insulation deteriorate with age. This, along with dust, dirt, and other carbon particulate contamination of the insulation on the ducts, adds an available fuel source for a potential fire. Once ignited, the foam insulation emits noxious smoke, does not self-extinguish, and drips droplets of liquefied polyurethane, which can further propagate a fire. Because the insulation is wrapped around the duct assemblies, which are located throughout the airplane, if the insulation is ignited a fire could potentially travel along the ducts and spread throughout the airplane. This condition, if not corrected, could result in a potential electrical arc igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies of the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

Other Relevant Rulemaking

We are considering additional rulemaking for Boeing Model 737–100, –200, –200C, and –300 series airplanes that have been determined to be subject to the same unsafe condition.

Additionally, on December 14, 2001, we issued AD 2001–26–09, amendment 39–12573 (66 FR 66734, December 27, 2001), applicable to certain Boeing Model 767–200 series airplanes. That AD requires a one-time inspection for damage of the water line heater tape where it passes close to the duct assemblies of the air distribution system for the flight compartment. That AD also requires eventual replacement of certain duct assemblies or foam insulation on those duct assemblies with new assemblies or improved foam insulation. That AD was prompted by a report of burned BMS 8–39 polyurethane foam insulation on an air distribution system duct located in the electronics and electrical (E/E) compartment. The actions required by that AD are intended to prevent ignition of foam insulation on the air distribution ducts, which could result in a fire in the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006. The service

bulletin describes procedures for reworking the affected duct assemblies in the air distribution system (sections 41, 45, and 46), the Gasper air system (sections 41, 43, 45, and 46), the forward E/E compartment air supply, and the instrument panel cooling supply. The rework includes removing the BMS 8–39 polyurethane foam insulation and replacing it with BMS 8–300 polyimide foam insulation that meets flammability criteria of Section 25.856 (''Fire Protection: Thermal/Acoustic Insulation Materials'') of the Federal Aviation Regulations (14 CFR 25.856(a)). The service bulletin also describes procedures for part-marking the duct assemblies with new part numbers once the rework has been accomplished. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and the Service Bulletin

Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006, recommends accomplishing the duct assembly rework ''during the next heavy maintenance visit, not to exceed 24,000 flight-hours from the date on this service bulletin.'' This proposed AD would require operators to accomplish the rework within 72 months after the effective date of this AD. In developing the compliance time for this action, we considered the degree of urgency associated with addressing the subject unsafe condition, the availability of required parts and the practical aspect of reworking the duct assemblies within an interval of time that parallels normal scheduled maintenance for most affected operators, and the manufacturer's recommendations. We have determined that 72 months represents an appropriate interval of time in which to modify the affected fleet without adversely affecting the safety of these airplanes. Based on the average Model 767 fleet utilization rate of approximately 4,000 flight hours per year, we have determined that the proposed compliance time of 72 months is equivalent to the manufacturer's recommended compliance time of 24,000 flight hours. We have coordinated this difference with Boeing.

Costs of Compliance

There are about 130 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost per airplane	Average cost per airplane	Number of U.S.-registered airplanes	Average fleet cost
Duct assembly rework	7, per duct (average 50 ducts per airplane).	$80	$4,955	$32,955	96	$3,163,680

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28375; Directorate Identifier 2007–NM–015–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 767–200 and 767–300 series airplanes, certificated in any category; as identified in Boeing Service

Bulletin 767–21A0167, Revision 1, dated December 19, 2006.

Unsafe Condition

(d) This AD results from reports of duct assemblies in the environmental control system (ECS) with burned Boeing Material Specification (BMS) 8–39 polyurethane foam insulation. This AD also results from a report from the airplane manufacturer that airplanes were assembled with duct assemblies in the ECS wrapped with BMS 8–39 polyurethane foam insulation, a material of which the fire retardant properties deteriorate with age. We are issuing this AD to prevent a potential electrical arc from igniting the BMS 8–39 polyurethane foam insulation on the duct assemblies or the ECS, which could propagate a small fire and lead to a larger fire that might spread throughout the airplane through the ECS.

Compliance

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

ECS Duct Assembly Rework

(f) Except as provided by paragraph (g) of this AD, within 72 months after the effective date of this AD, rework the duct assemblies in the ECS for the air distribution system at sections 41, 45, and 46; the Gasper air system at sections 41, 43, 45, and 46; the forward electronic and electrical (E/E) compartment air supply; and the instrument panel cooling supply; in accordance with the Accomplishment Instructions and Appendices A and B of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006.

Optional Part Installed

(g) If an affected duct assembly having a part number other than part number 217T2109–12, or a part number other than any part number specified in the applicable figure of Boeing Service Bulletin 767–21A0167, Revision 1, dated December 19, 2006, is found installed, and that part number is listed as an optional part number in the table in paragraph B.2., ''Optional Part Table,'' of the Accomplishment Instructions of the service bulletin: No rework is required for that duct assembly only.

Parts Installation

(h) As of the effective date of this AD, no person may install an air distribution system, Gasper air system, forward E/E compartment air supply, or instrument panel cooling supply duct assembly with BMS 8–39 polyurethane foam insulation on any airplane.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on June 8, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–11781 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128274–03]

RIN 1545–BC22

Section 42 Utility Allowance Regulations Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The proposed regulations update the utility allowances regulations to provide new options for estimating tenant utility costs. The proposed regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the state and local housing credit agencies who administer the credit. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by **September 17, 2007.** Outlines of topics to be discussed at the public hearing scheduled for October 9, 2007, must be received by September 18, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–128274–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–128274–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–128274–03). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking in § 1.42–10(b)(4)(ii) have previously been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1102.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code. Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental housing if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

In order to qualify as a rent-restricted unit within the meaning of section 42(g), the gross rent for the unit must not exceed 30 percent of the applicable income limitation. If any utilities are paid directly by the tenant, section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary, after taking into account the procedures under section 8 of the United States Housing Act of 1937.

Section 1.42–10(b) provides rules for calculating the appropriate utility allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building's rents and utility allowances are reviewed by the Department of Housing and Urban Renewal (HUD) on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings).

Under § 1.42–10(b)(4), other buildings generally use the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program or use a local utility company estimate. The local utility company estimate may be obtained by any interested party (including a low-income tenant, a building owner, or a State or local housing credit agency (Agency)).

Explanation of Provisions

The IRS and Treasury Department have received comments from organizations representing tenants, non-profit housing organizations, housing credit agencies, building owners, building management companies, developers, and others noting that the existing methods in § 1.42–10 that provide rules for calculating utility expenses often result in flawed information being used for calculating rent adjustments and need updating. These organizations assert that PHA utility schedules referenced by the existing regulations do not represent the proper usage of utilities for low-income housing tax credit units. This is primarily because PHA utility schedules are designed for Section 8 properties, which generally are older buildings with higher utility costs, whereas low-income housing projects require measurements that are appropriate for new construction. Further, a number of project developers, owners, and building managers have indicated that they are unable to obtain local utility estimates due to a lack of data or an unwillingness on the part of utility companies to provide the information. Even if a utility company is willing to provide an initial estimate, annual updates are often difficult to obtain. Therefore, these commentators have recommended that § 1.42–10 be amended to provide more viable and accurate options for estimating tenant utility costs.

In response to these concerns, § 1.42–10(b)(4)(ii) is amended by these proposed regulations to provide additional options for accurately calculating utility allowances. Section 1.42–10(b)(4)(ii)(B), which permits any interested party to obtain a local utility company estimate for a unit, is revised to accommodate multiple utility services to a property. When charges for electricity transmission and distribution are paid to more than one company, cost estimates must be obtained from each of the utilities when computing the utility allowance.

Section 1.42–10(b)(4)(ii) is amended to permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building. The Agency's estimate must take into account the local utility rate data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

Further, the regulations are proposed to be amended to permit a building owner to calculate utility allowances using the ''HUD Utility Schedule Model'' that can be found on the Low-Income Housing Tax Credits page at *http://www.huduser.org/datasets/lihtc.html.* The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate. A building owner who chooses to use the HUD Utility Schedule Model must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

Section 1.42–10(c) provides that if the applicable utility allowance for a unit in a building changes, the new utility allowance must be used to compute gross rent of rent-restricted units due 90 days after the change. Commentators requested that this rule be modified to restrict changes to the building's utility allowance until after the building has achieved 90 percent occupancy for a period of 90 consecutive days, or by the end of the first year of the credit period, whichever is earlier. The proposed regulations adopt this comment. Section 1.42–10(c) also is modified to require that a building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

The IRS and Treasury Department request comments on whether other methods should be used for calculating utility allowances such as energy or water and sewer services using a software model run by a State-certified engineer who is approved by the Agency that has jurisdiction over the building.

Proposed Effective Date

The regulations are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 9, 2007, at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. Due to

building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by September 17, 2007 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.42–10 is amended by:

1. Revising the first sentence of paragraph (a).
2. Revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4) introductory text and (c).
3. Removing the language ''HUD rental assistance'' from the first place that it appears in paragraph (b)(4)(i) and adding the language ''rental assistance from the Department of Housing and Urban Development'' in its place.
4. Adding two sentences at the end of paragraph (b)(4)(ii)(A).
5. Revising the second sentence in paragraph (b)(4)(ii)(B).
6. Adding new paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).

The additions and revisions read as follows:

§ 1.42–10 Utility allowances.

(a) * * * If the cost of any utility (other than telephone or cable television) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. * * *

(b) *Applicable utility allowances*—(1) *Buildings assisted by the Rural Housing Service.* If a building receives assistance from the Rural Housing Service (RHS-assisted building) the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building.

(2) *Buildings with Rural Housing Service assisted tenants.* If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

(3) *Buildings regulated by the Department of Housing and Urban Development.* If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

(i) * * *

(ii) * * * (A) * * * However, if a local utility company estimate is obtained for any unit in the building under paragraph (b)(4)(ii)(B) of this section, a State or local housing credit agency (Agency) provides a building owner with an estimate for any unit in a building under paragraph (b)(4)(ii)(C) of this section, or a cost estimate is calculated using the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, then the estimate under paragraph (b)(4)(ii)(B), (C), or (D) of this section becomes the applicable utility allowance for all rent-restricted units of similar size and construction in the building. Paragraphs (b)(4)(ii)(B), (C), and (D) of this section do not apply to units to which the rules of paragraphs (b)(1), (2), (3), or (4)(i) of this section apply.

(B) * * * The estimate is obtained when the interested party receives, in writing, information from a local utility company (including combined rate charges from multiple utility companies) providing the estimated cost of the utilities provided by that company for a unit of similar size and construction for the geographic area in which the building containing the unit is located.

(C) *Agency estimate.* A building owner may obtain a utility estimate for each unit in the building from the Agency that has jurisdiction over the building provided the Agency agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the Agency providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency estimate may be obtained by a building owner at any time during the building's extended use period (see section 42(h)(6)(D)). Costs incurred in obtaining the estimate are borne by the building owner. In establishing an accurate utility allowance estimate for a particular building, an Agency (or an agent or other private contractor of the Agency) must take into account, among other things, local utility rate data, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the ''HUD Utility Schedule Model'' that can found on the Low-Income Housing Tax Credits page at *http://www.huduser.org/datasets/lihtc.html.* A building owner who chooses this method must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

(c) *Changes in applicable utility allowance*—(1) *In general.* If at any time during the building's extended use period, the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the

otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate. This paragraph (c)(1) does not apply until the building has achieved 90 percent occupancy for a period of 90 consecutive days or by the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

Par. 3. Section 1.42–12 is amended by adding paragraph (a)(4) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) * * *

(4) *Utility allowances.* Section 1.42–10 is applicable to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–11731 Filed 6–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114084–04]

RIN 1545–BD20

Section 42 Qualified Contract Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: Section 42(h)(6)(F) requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 42(h)(6)(F), including regulations to prevent the manipulation of the qualified contract amount. This document contains proposed regulations that provide guidance concerning taxpayers' requests to housing credit agencies to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The regulations will affect taxpayers requesting a qualified contract, potential buyers, and low-income housing credit agencies responsible for the administration of the low-income housing credit program. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 17, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2007, must be received by September 13, 2007.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG–114084–04), room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–114084–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or may be sent electronically via the Federal eRulemaking Portal at: *http://www.regulations.gov* (IRS REG–114084–04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jack Malgeri (202) 622–3040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 20, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.42–18(a)(1)(ii)(B). This information is required in order for a taxpayer to provide a written request to a housing credit agency to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 20,000 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 20,000.

Estimated annual frequency of responses: One time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 42 of the Internal Revenue Code (Code). Section 42 was amended by section 7108(c)(1) of the Omnibus Budget Reconciliation Act

of 1989 (Pub. L. 101–239, 103 Stat. 2106) to add paragraph (h)(6). In general, section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B) provides in part that the term commitment means any agreement between the taxpayer and the low-income housing credit agency (Agency) that requires that the applicable fraction (as defined in section 42(c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in the commitment, and that prohibits the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit and any increase in the gross rent with respect to the unit not otherwise permitted under section 42.

Section 42(h)(6)(D) defines the term extended use period as the period beginning on the first day in the compliance period under section 42(i)(1) on which the building is part of a qualified low-income housing project and ending on the later of: (1) The date specified by the Agency in the commitment, or (2) the date which is 15 years after the close of the compliance period.

Section 42(h)(6)(E)(i)(II) provides for the termination of the extended use period if the Agency is unable to present within a specified period of time a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a low-income building.

Section 42(h)(6)(F) defines the term qualified contract as a bona fide contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the commitment) of the sum of: (I) The outstanding indebtedness secured by, or with respect to the building, (II) the adjusted investor equity in the building, plus (III) other capital contributions not reflected in these amounts, reduced by cash distributions from (or available for distribution from) the project.

Section 42(h)(6)(F) also provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out that paragraph, including regulations to prevent the manipulation of the amount determined under section 42(h)(6)(F).

Section 42(h)(6)(I) provides that the Agency must present the qualified contract within the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the Agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

These proposed regulations provide guidance with respect to the application of the qualified contract provisions of section 42.

Explanation of Provisions

Qualified Contract Formula

Section 1.42–18(c)(1) of the proposed regulations defines the qualified contract formula used to compute the purchase price amount of the low-income housing building as: (1) The fair market value of the non low-income portion of the building, plus (2) the low-income portion of the building. Section 1.42–18(c)(2) of the proposed regulations defines the low-income portion of the building as an amount not less than the applicable fraction (as specified in the commitment) of the total of: (a) Outstanding indebtedness on the building, plus (b) the adjusted investor equity in the building, plus (c) other capital contributions not reflected in the amounts in described in (a) and (b), minus (d) cash distributions from (or available for distribution from) the project.

Under § 1.42–18(b)(3) of the proposed regulations, the fair market value of the non low-income portion of the building is its fair market value at the time of the Agency's offer of sale. Because the intent of the extended-long term commitment is the continued use of the low-income portion of the building as low-income housing, the Treasury Department and IRS believe that fair market value must reflect the restrictions on the use of the low-income portion of the building. Therefore, the proposed regulations provide that the valuation must take into account the existing and continuing requirements under the commitment for the building.

Section 42(h)(6) does not discuss the appropriate treatment of land in the calculation of qualified contracts. Qualified contracts are defined by reference to the building, which for other purposes of section 42 generally does not include the underlying land. However, because the Treasury Department and the IRS anticipate that the sales of the building without the underlying land would be infrequent, the Treasury Department and the IRS believe that it is necessary to include the underlying land in the computation of the qualified contract formula. Therefore, the proposed regulations provide that the non low-income portion also includes the fair market value of the land underlying the entire building, both the non low-income portion and the low-income portion, regardless of whether the building is entirely low-income. Comments are requested on whether low-income buildings are ever sold without the underlying land, and if so, the appropriate treatment in those cases. In addition, comments are requested on the appropriate treatment of leased land and the prevalence of leased land in low-income housing credit transactions.

For purposes of determining the low-income portion of the building, § 1.42–18(c)(3) defines the term outstanding indebtedness as the outstanding principal balance, at the time of the sale, of any indebtedness or loan that is secured by, or with respect to, the building, and that does not exceed the amount of qualifying building costs. Qualifying building costs are generally defined in § 1.42–18(b)(4) of the proposed regulations as those costs that would have been includible in eligible basis of a low-income housing building under section 42(d)(1), provided the amounts were expended for depreciable property that conveys under the contract with the building. Thus, for example, the outstanding mortgage on the building will generally be outstanding indebtedness for purposes of section 42(h)(6)(F), even if the indebtedness is incurred after the first year of the credit period, but only up to the amount of costs included in original eligible basis established at the end of the first year of the credit period under section 42(f)(1), plus indebtedness for qualifying building costs incurred after the first year of the credit period of a type that could be includible in eligible basis under section 42(d)(1). Thus, any proceeds from refinancing indebtedness or additional mortgages in excess of such qualifying building costs are not outstanding indebtedness for purposes of section 42(h)(6)(F).

Outstanding indebtedness with an interest rate below the applicable Federal rate (as determined under section 1274(d)) at the time of issuance must be discounted using a present-value calculation to obtain an imputed principal amount. This imputed principal amount constitutes the amount of indebtedness that must be utilized in calculating the amount of outstanding indebtedness under the qualified contract formula.

Section 1.42–18(c)(4) of the proposed regulations provides that adjusted investor equity includes only those cash investments by owners of the low-income building used for qualifying building costs. Investor equity is adjusted by a cost of living adjustment not to exceed five percent. The cost-of-living adjustment is determined under section 1(f)(3), substituting the language in section 1(f)(3)(B) with ''the CPI for the base calendar year.'' The base calendar year is the calendar year with or within which the first taxable year of the credit period ends. Thus, the cost-of-living adjustment is the percent by which the Consumer Price Index (CPI) for the year preceding the written request to find a person to acquire the project exceeds the CPI for the base calendar year.

Under § 1.42–18(c)(5) of the proposed regulations, other capital contributions are defined as contributions for qualifying building costs other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. An example of other capital contributions includes an amount expended to replace a furnace after the first year of the credit period, provided any loan taken to finance the furnace was not secured by the furnace or the building. In this example, the loan would be outstanding indebtedness on the building.

Qualifying building costs are defined under § 1.42–18(b)(4)(i) and (ii) of the proposed regulations. Under § 1.42–18(b)(4)(i) of the proposed regulations, a qualifying building is a cost included in eligible basis under section 42(d)(1). A cost is included in eligible basis under section 42(d)(1) only if the cost is (1) included in the adjusted basis of depreciable property subject to section 168 and the property qualifies as residential rental property under section 142(d) and § 1.103–8(b)(4)(iii), or (2) included in the adjusted basis of depreciable property subject to section 168 that is used in a common area or provided as a comparable amenity to all residential rental units in the building, but only if the property conveys under the contract with the building. A qualifying building cost also includes costs incurred after the first year of the credit period (as defined in section 42(f)) of the type included in eligible basis under section 42(d)(1). See § 1.42–18(b)(4)(ii) of the proposed regulations.

Under the qualified contract formula, the sum of the outstanding indebtedness, adjusted investor equity, and other capital contributions is reduced by cash distributions from or available for distribution from the project. Section 1.42–18(c)(6) of the proposed regulations defines cash distributions as including all distributions to owners or related parties within the meaning of section 267(b) or 707(b) (for example, cash distributions to owners from the proceeds of refinancings and second mortgages in excess of existing mortgages), and all cash and cash equivalents including reserve funds (for example, replacement and operating reserves) generated by cash flow from the project. To the extent an owner contributed his or her own funds to a reserve fund for replacement and improvements, such amounts are evaluated as either adjusted investor equity or other capital contributions. The Treasury Department and the IRS request comments and examples of forms of cash distributions from or available for distribution from the project that should or should not be included in the regulatory definition. Additionally, comments are requested whether low-income housing is owned by other than a corporation or partnership, for example, a sole proprietor, estate, or trust, and if so, what rules should apply for determining the amount of cash distributions from the project.

Administrative Discretion and Responsibilities of Agency

Under § 1.42–18(d)(1) of the proposed regulations, the Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. For example, the Agency may determine that an owner's request to find a buyer for the project lacks essential information and it may suspend the one-year period for finding a buyer until essential information is submitted.

Actual Offer of Sale

Section 1.42–18(d)(2) of the proposed regulations provides that in order to satisfy the qualified contract requirements under section 42(h)(6), the Agency must offer the building for sale to the general public at the determined qualified contract price upon receipt of a written request by the owner to find a buyer to acquire the building.

Fair Market Value Cap

Commentators suggested the inclusion of a fair market value cap on the low-income portion of the qualified contract amount as defined in section 42(h)(6)(F) noting that the qualified contract price may exceed the fair market value of a project. Commentators noted one reason for the qualified contract price exceeding fair market value is the formula for adjusted investor equity, which includes the CPI-based cost of living adjustments. The statute defines a qualified contract, in part, as a contract to acquire the low-income portion of the building for an amount ''not less than'' the applicable fraction of the statutorily provided formula. Therefore, the proposed regulations do not adopt this comment. However, the flush language of section 42(h)(6)(E) provides that the qualified contract exception to the termination of the extended use period of a commitment shall not apply to the extent more stringent requirements are provided in the commitment or in state law. The Treasury Department and the IRS request comments on the extent of Agency and state authority in providing more stringent requirements than the provisions contained in section 42(h)(6)(F), and specifically, the authority of Agency or state regulators to require in agreements a fair market value cap that would restrict any qualified contract price to fair market value.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described under the heading ''Paperwork Reduction Act'' imposes virtually no incremental burden in time or expense and is voluntary for the taxpayer to obtain a benefit. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed

rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 15, 2007, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments on September 17, 2007 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 13, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Jack Malgeri, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–18 also issued under 26 U.S.C. 42(h)(6)(F) and 42(h)(6)(K); * * *

Par. 2. Section 1.42–18 is added to read as follows:

§ 1.42–18 Qualified contracts.

(a) *Extended low-income housing commitment*—(1) *In general.* No credit under section 42(a) is allowed by reason of section 42 and this section with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of such taxable year. A commitment must be in effect for the extended use period (as defined in paragraph (a)(1)(i) of this section).

(i) *Extended use period.* The term *extended use period* means the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project (as defined in section 42(g)(1)) and ending on the later of—

(A) The date specified by the low-income housing credit agency (Agency) in the commitment; or

(B) The date that is 15 years after the close of the compliance period.

(ii) *Termination of extended use period.* The extended use period under paragraph (a)(1)(i) of this section for any building will terminate—

(A) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period; or

(B) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) the owner submits a written request to the Agency to find a person to acquire the owner's interest in the low-income portion of the building and the Agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (as defined in section 42(c)(2)). This paragraph (a)(1)(ii)(B) shall not apply to the extent more stringent requirements are provided in the commitment or under state law. If the Agency provides a qualified contract within the one-year period and the owner rejects or fails to act upon the contract, the building remains subject to the existing commitment.

(iii) *Eviction, gross-rent increase concerning existing low-income tenants not permitted.* During the three-year period following the termination of a commitment, no owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent for such unit in a manner or amount not otherwise permitted by section 42.

(2) [Reserved]

(b) *Special rules.* For purposes of this section, the following terms are defined:

(1) *Base calendar year* means the calendar year with or within which the first taxable year of the credit period ends.

(2) *The low-income portion* of a building is the portion of the building equal to the applicable fraction (as defined in section 42(c)(1)) specified in the commitment for the building.

(3) *The fair market value* of the non low-income portion of the building is determined at the time of the Agency's offer of sale of the project to the general public. This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The non low-income portion also includes the fair market value of the land underlying the entire building, both the non low-income portion and the low-income portion regardless of whether the project is entirely low-income. The non low-income portion also includes the fair market value of items of personal property not included in eligible basis under section 42(d)(1) that convey under the contract with the building.

(4) *A qualifying building cost* is—

(i) A cost that is included in eligible basis of a low-income housing building under section 42(d)(1) which is—

(A) Included in the adjusted basis of depreciable property subject to section 168 and the property qualifies as residential rental property under section 142(d) and § 1.103–8(b)(4)(iii); or

(B) Included in the adjusted basis of depreciable property subject to section 168 that is used in a common area or provided as a comparable amenity to all residential rental units in the building; and

(ii) Of the type described in paragraph (b)(4)(i) of this section incurred after the first year of the low-income building's credit period under section 42(f).

(c) *Qualified contract purchase price formula*—(1) *In general.* For purposes of this section, the term *qualified contract* means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value (as defined in paragraph (b)(3) of this section) and the low-income portion of the building (as defined in paragraph (b)(2) of this section) for the low-income portion amount as calculated in paragraph (c)(2) of this section. The qualified contract amount is determined at the time of the Agency's offer of sale of the project to the general public. An Agency must,

however, adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments which reduce outstanding indebtedness between the time of the seller's request to the Agency to obtain a buyer and the project's actual sale closing date. In addition, the Agency may adjust the fair market value of the building if, after a reasonable period of time within the one-year offer of sale period, no buyer has made an offer or market values have adjusted downward.

(2) *Low-income portion amount.* The low-income portion amount is an amount not less than the applicable fraction specified in the commitment, as defined in section 42(h)(6)(B)(i), multiplied by the total of—

(i) The outstanding indebtedness for the building (as defined in paragraph (c)(3) of this section); plus

(ii) The adjusted investor equity in the building (as defined in paragraph (c)(4) of this section); plus

(iii) Other capital contributions (as defined in paragraph (c)(5) of this section), not including any amounts described in paragraphs (c)(2)(i) and (ii) of this section; minus

(iv) Cash distributions from (or available for distribution from) the building (as defined in paragraph (c)(6) of this section).

(3) *Outstanding indebtedness.* (i) For purposes of paragraph (c)(2)(i) of this section, except as provided in paragraph (c)(3)(ii) of this section, the term *outstanding indebtedness* for the building means the remaining stated principal balance, at the time of the Agency's offer of sale of the project to the general public, of any indebtedness secured by, or with respect to, the building that does not exceed the amount of qualifying building costs described in paragraph (b)(4) of this section. Examples of such indebtedness include certain mortgages and developer fee notes (excluding developer service costs not included in eligible basis). Outstanding indebtedness does not include debt used to finance nondepreciable land costs, syndication costs, legal and accounting costs, and operating deficit payments. The term outstanding indebtedness for the building only includes obligations that are indebtedness under general principles of Federal income tax law.

(ii) For purposes of paragraph (c)(2)(i) of this section, if the indebtedness had a yield to maturity below the applicable Federal rate (as determined under section 1274(d)) at the time of issuance, the term outstanding indebtedness for the building is the imputed principal amount of the indebtedness, secured by, or with respect to, the building, at the time of the Agency's offer of sale of the project to the general public, that does not exceed the amount of qualifying building costs described in paragraph (b)(4) of this section. The imputed principal amount of the indebtedness is the sum of the present values, as of the Agency's offer of sale of the project to the general public, of all the remaining payments of principal and interest payable on the indebtedness after the Agency's offer of sale of the project to the general public. The present value of each payment is determined by using a discount rate equal to the applicable Federal rate (as determined under section 1274(d)) at the time of issuance of the indebtedness. In the case of a variable rate debt instrument, rules similar to those in § 1.1274–2(f) are used to determine the instrument's imputed principal amount.

(4) *Adjusted investor equity.* (i) For purposes of paragraph (c)(2)(ii) of this section, the term *adjusted investor equity* for any calendar year means the aggregate amount of cash invested by owners for qualifying building costs described in paragraph (b)(4)(i) of this section. Thus, equity paid for land, credit adjuster payments, Agency low-income housing credit application and allocation fees, operating deficit contributions, and legal, syndication, and accounting costs all are examples of cost payments that do not qualify as adjusted investor equity under this section.

(ii) The adjusted investor equity as determined under paragraph (c)(4)(i) of this section is increased by an amount equal to the adjusted investor equity multiplied by the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting for the language in section 1(f)(3)(B), the Consumer Price Index for all urban consumers (CPI) (not seasonally adjusted, U.S. City Average) as specified in paragraph (c)(4)(v) of this section for the base calendar year (as defined in paragraph (b)(1) of this section).

(iii) Adjusted investor equity is taken into account under this section only to the extent there existed an obligation to invest the amount as of the beginning of the low-income building's credit period (as defined in section 42(f)(1)).

(iv) Adjusted investor equity does not include amounts included in the calculation of outstanding indebtedness as defined in paragraph (c)(3) of this section.

(v) *The cost-of-living adjustment* is based on the CPI as of the close of the 12-month period ending on August 31 of the calendar year. The *cost-of-living adjustment* is the percent by which the CPI for the year preceding the written request to find a person to acquire the taxpayer's project (CPI_p) exceeds the CPI for the base calendar year (CPI_b). If the CPI for any calendar year during this period (after the base calendar year) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under paragraph (c)(4) of this section. The adjusted investor equity equals the aggregate amount of cash invested by the taxpayer in the building multiplied by the ratio of CPI_p to CPI_b.

(vi) *Example.* The following example illustrates the CPI calculation:

Example. Owner contributed $600,000 in equity to a building in 1991, which was the first year of the credit period for the project. In year 2005, owner requests Agency to find a buyer to purchase the building. The CPI_b (at the close of the 12-month period ending on August 31, 1991) is 136.6. The CPI_p for the close of the 12-month period ending August 31, 2004, is 189.5. At no time during this period (after the base calendar year) did the CPI for any calendar year exceed the CPI for the preceding calendar year by more than 5 percent. The owner's adjusted investor equity is $600,000 multiplied by 189.5/136.6, or $832,357.

(5) *Other capital contributions.* For purposes of paragraph (c)(2)(iii) of this section, other capital contributions to a low-income building are qualifying building costs described in paragraph (b)(4)(ii) of this section paid or incurred by the owner of the low-income building other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. For example, other capital contributions may include amounts incurred to replace a furnace after the first year of a low-income housing credit building's credit period under section 42(f), provided any loan used to finance the replacement of the furnace is not secured by the furnace or the building. Other capital contributions do not include expenditures for land costs, operating deficit payments, credit adjuster payments, and payments for legal, syndication, and accounting costs.

(6) *Cash distribution*—(i) *In general.* For purposes of paragraph (c)(2)(iv) of this section, the term *cash distributions* from (or available for distribution from) the project include—

(A) All distributions from the project to the owners or to related parties within the meaning of section 267(b) or section 707(b)), including distributions under section 301 (relating to distributions by a corporation), section

731 (relating to distributions by a partnership), or section 1368 (relating to distributions by a S corporation); and

(B) All cash and cash equivalents available for distribution at the time of sale, including for example, reserve funds whether operating or replacement reserves.

(ii) *Anti-abuse rule.* The Commissioner will interpret and apply the rules in this paragraph (c)(6) as necessary and appropriate to prevent manipulation of the qualified contract amount. For example, cash distributions include payments to owners or related parties within the meaning of section 267(b) or section 707(b) for any operating expenses in excess of amounts reasonable under the circumstances.

(d) *Administrative responsibilities of the Agency*—(1) *In general.* An Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. Examples of administrative discretion may include but are not limited to the following:

(i) Concluding that the owner's request lacks essential information and denying the request until such information is provided.

(ii) Refusing to consider an owner's representations without substantiating documentation verified with the Agency's records.

(iii) Suspending the one-year period for finding a buyer until the owner provides requested information.

(iv) Determining how many subsequent requests to find a buyer, if any, may be submitted if the owner has previously submitted a request for a qualified contract and then rejects or fails to act upon the qualified contract furnished by the Agency.

(v) Assessing and charging the seller certain administrative fees for the performance of services in obtaining a qualified contract (for example, real estate appraiser costs).

(vi) Requiring other conditions applicable to the qualified contract consistent with this section.

(2) *Actual offer.* Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale at the determined qualified contract amount to the general public in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a contract to purchase the building.

(e) *Effective/applicability date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–11725 Filed 6–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD14–07–001]

RIN 1625–AA87

Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the permanent security zones in waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. Review of the established zones indicates the need for some adjustment to better suit vessel and facility security in and around Hawaiian ports. The proposed changes are intended to enhance the protection of personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature.

DATES: Comments and related material must reach the Coast Guard on or before July 19, 2007.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Sector Honolulu, Sand Island Parkway, Honolulu, Hawaii 96819–4398. Sector Honolulu 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, are available for inspection and copying at Coast Guard Sector Honolulu between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Jasmin Parker, U. S. Coast Guard Sector Honolulu at (808) 842–2600.

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 (CGD14–07–001), 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 81/2 by 11 inches, suitable for copying. If you would like to know that your submission 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 Sector Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by separate notice in the **Federal Register**.

Background and Purpose

The terrorist attacks against the United States that occurred on September 11, 2001, have emphasized the need for the United States to establish heightened security measures in order to protect the public, ports and waterways, and the maritime transportation system from future acts of terrorism or other subversive acts. The terrorist organization al-Qaeda and other similar groups remain committed to conducting armed attacks against U.S. interests, including civilian targets within the United States. National security and intelligence officials warn that future terrorist attacks are likely.

In response to this threat, on December 19, 2005, the Coast Guard published a final rule establishing permanent security zones in designated waters surrounding the Hawaiian Islands (70 FR 75036, December 19, 2005). These zones replaced the temporary zones that had been established, and then extended, in the waters surrounding the Hawaiian Islands soon after the attacks (66 FR 52693, October 17, 2001). The existing permanent security zones have been in operation for over a year.

We have recently completed a periodic review of port and harbor security procedures and considered the oral feedback that local vessel operators gave to Coast Guard units enforcing the zones. In response, the Coast Guard is proposing to reduce the scope of the *Honolulu International Airport, North Section* security zone. The Coast Guard is also proposing new zones at

Kawaihae Harbor, Hawaii and Kahe Point, Oahu to address a new vessel operation and recent identification of a critical facility. Additionally, we are proposing changes that would clarify the application of large cruise ship (LCS) security zones to the new Hawaii SuperFerry.

Our proposal with respect to the *Honolulu International Airport, North Section* zone (33 CFR 165.1407(a)(4)(i)) is to change it from one that is perpetually activated and enforced to one that is used only in response to a threat. This proposed change, permitting a reduced security posture in the waters adjacent to Honolulu International Airport, is based on a 2006 reevaluation of airport protection requirements. The new arrangement offers us an opportunity to decrease disruption to maritime commerce and inconvenience to small entities by making the zone subject to activation and enforcement only under certain conditions rather than all the time.

As are the security zones currently in place, this and the revised security zones described below would be permanently established. We use the word ''activated'' to describe when these permanently established zones would be subject to enforcement.

Our proposal to add a Kawaihae Harbor security zone is due to the arrival of the Hawaii SuperFerry. In June 2004, Hornblower Marine Services, Inc. signed a Marine Management Operating Agreement and Construction Oversight contract for the new Hawaii SuperFerry operation, an inter-island ferry service. The service will transport passengers and vehicles to Hawaiian island ports, including Kawaihae Harbor on the island of Hawaii. Each day, these ferries will carry many passengers as well as cargo and vehicles, presenting the same security vulnerabilities as the large cruise ships that operate in those areas. Kawaihae Harbor, however, lacks a security zone to protect such vessels, so our proposal is to create one there.

Additionally, the definition of *large cruise ship* (LCS) in 33 CFR 165.1408(b), 165.1409(b), and 165.1410(b) does not adequately describe the Hawaii SuperFerry or any other vessel of similar size and carriage capacity. Therefore, the Coast Guard proposes to revise the term *large cruise ship* to clarify that the presence of SuperFerry-type vessels triggers the activation and enforcement of the Maui, Hawaii, and Kauai security zones described in those three sections.

Our proposed creation of a Kahe Point security zone is meant to protect the Hawaiian Electric Company power plant at Kahe Point, which produces a significant portion of the electricity for the island of Oahu. This beach-front power plant uses sea water piped in directly from the ocean to cool its turbines. Loss or damage to this cooling water system due to sabotage would reduce the power-generating capacity of the plant and overburden the other island facilities. Our proposed zone would enhance its security.

Discussion of Proposed Rule

The existing security zones in the Honolulu Captain of the Port Zone (see 33 CFR 3.70–10) consist of two categories: (1) Those activated and enforced at all times; and (2) those activated and enforced only upon the occurrence of an event specified in the rule. Whenever a security zone is activated and enforced, persons and vessels are prohibited from entering the zone without the express permission of the Captain of the Port.

The security zone located at Honolulu International Airport, North Section (33 CFR 165.1407(a)(4)(i)) is currently activated and enforced at all times. Our proposal is to decrease disruption to maritime commerce and reduce the inconvenience to small entities by re-designating this zone as one that is activated and enforced only upon the occurrence of one of the following events:

1. Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or,

2. Whenever the Captain of the Port is made aware of any threat that may cause a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The Captain of the Port would cause notice of either of these two enforcement-triggering events to be published in the **Federal Register**. The Captain of the Port would use actual notice, local notice to mariners, and broadcast notice to mariners to advise the public when these security zones are activated and enforced. By the same means, the Captain of the Port would also announce suspension of enforcement.

In order to clarify that SuperFerry-type vessels would receive the same protection as *large cruse ships* in Maui (under 33 CFR 165.1408), Hawaii (under 33 CFR 165.1409), and Kauai (under 33 CFR 165.1410), the Coast Guard proposes to change the term *large cruise ship* in those sections to *large passenger vessel* (LPV).

To protect SuperFerry-type vessels during their use of Kawaihae Harbor, the Coast Guard is proposing to create an *LPV* security zone there. This security zone would be activated and enforced upon the presence of an LPV. A large passenger vessel would be either a cruise ship or ferry that is more than 300 feet in length.

The zone would encompass the waters extending 100 yards in all directions from an LPV. When an LPV is anchored, position-keeping, or moored, the security zone would remain fixed, extending 100 yards in all directions from the vessel.

Additionally, the Coast Guard is proposing to create a security zone at Kahe Point, Oahu. It would be in the waters adjacent to the Hawaiian Electric Company power plant at Kahe Point within 500 yards of the lighted tower at specified coordinates. This zone would be activated and enforced only upon the occurrence of one of the following events:

1. Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or,

2. Whenever the Captain of the Port is made aware of any threat that may cause a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The Captain of the Port would cause notice of either of these two enforcement-triggering events to be published in the **Federal Register**. The Captain of the Port would use actual notice, local notice to mariners, and broadcast notice to mariners to advise the public when the security zone is activated and enforced. By the same means, the Captain of the Port would also announce suspension of enforcement.

Entry into this proposed security zone while it is activated and enforced would be prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, Hawaii. The Captain of the Port or his or her representatives would enforce this security zone. The Captain of the Port may be assisted by other federal or state agencies to the extent permitted by law.

For all seaplane traffic entering or transiting the proposed security zone, a seaplane's compliance with all Federal Aviation Administration (FAA) regulations regarding flight-plan approval would be deemed adequate permission to transit this waterway security zone. No communication between the aircraft and the Coast

Guard would be necessary upon compliance with FAA regulations regarding the flight plan.

The proposed Kahe Point security zone would be established pursuant to the authority of the Magnuson Act, 50 U.S.C. 191, *et seq.*, and regulations promulgated by the President under Title 33, Part 6 of the Code of Federal Regulations. Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

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.

The Coast Guard expects 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. This expectation is based on the short activation and enforcement duration of the zones created or impacted by this proposal, as well as the limited geographic area affected by them.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule will 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 will not have a significant economic impact on a substantial number of small entities. While we are aware that affected areas have small commercial entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of these proposed changes.

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 (Public Law 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu, (808) 842–2600. 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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This 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 proposed 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, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.1407 to add paragraph (a)(7) and to revise the paragraph (d) heading and paragraph (d)(1) introductory text to read as follows:

§ 165.1407 Security Zones; Oahu, HI.

(a) * * *

(7) *Kahe Point, Oahu.* All waters adjacent to the Hawaiian Electric Company power plant at Kahe Point within 500 yards of 21°21.30′ N/158°07.7′ W (lighted tower).

* * * * *

(d) *Notice of enforcement or suspension of enforcement of security zones.* (1) The security zones described in paragraphs (a)(3) (Kalihi Channel and Keehi Lagoon, Oahu), (a)(4)(i) (Honolulu International Airport, North Section), (a)(4)(ii) (Honolulu International Airport, South Section), and (a)(6) (Barbers Point Harbor, Oahu) of this section, will be enforced only upon the occurrence of one of the following events—

* * * * *

3. Amend § 165.1408 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) to read as follows:

§ 165.1408 Security Zones; Maui, HI.

(a) * * *

(1) *Kahului Harbor, Maui.* All waters extending 100 yards in all directions from each large passenger vessel in Kahului Harbor, Maui, HI or within 3 nautical miles seaward of the Kahului Harbor COLREGS DEMARCATION (See 33 CFR 80.1460). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Lahaina, Maui.* All waters extending 100 yards in all directions from each large passenger vessel in Lahaina, Maui, whenever the LPV is within 3 nautical miles of Lahaina Light (LLNR 28460). The security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored, and will continue in effect until such time as the LPV departs Lahaina and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferry more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through a large passenger vessel security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of an LPV that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representative.

(2) When conditions permit, the Captain of the Port, or his or her designated representative, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV security zone in order to ensure navigational safety.

* * * * *

4. Amend § 165.1409 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) and to add paragraph (a)(3) to read as follows:

§ 165.1409 Security Zones; Hawaii, HI.

(a) * * *

(1) *Hilo Harbor, Hawaii.* All waters extending 100 yards in all directions from each large passenger vessel in Hilo Harbor, Hawaii, HI or within 3 nautical miles seaward of the Hilo Harbor COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Kailua-Kona, Hawaii.* All waters extending 100 yards in all directions from each large passenger vessel in Kailua-Kona, Hawaii, whenever the LPV is within 3 nautical miles of Kukailimoku Point. The 100-yard security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored and will continue in effect until such time as the LPV departs Kailua-Kona and the 3-mile enforcement area.

(3) *Kawaihae Harbor, Hawaii.* All waters extending 100 yards in all directions from each large passenger vessel in Kawaihae Harbor, Hawaii, or within 3 nautical miles seaward of the Kawaihae Harbor COLREGS DEMARCATION (See 33 CFR 80.1470). The 100-yard security zone around each LPV is activated and enforced whether the LPV is underway, moored, position-keeping, or anchored.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferry more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representative. When authorized passage through a large passenger vessel security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large passenger vessel that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV

security zone in order to ensure navigational safety.

* * * * *

5. Amend § 165.1410 to revise paragraphs (a)(1), (a)(2), (b), (c)(1), and (c)(2) to read as follows:

§ 165.1410 Security Zones; Kauai, HI.

(a) * * *

(1) *Nawiliwili Harbor, Lihue, Kauai.* All waters extending 100 yards in all directions from each large passenger vessel in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor COLREGS DEMARCATION (See 33 CFR 80.1450). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(2) *Port Allen, Kauai.* All waters extending 100 yards in all directions from each large passenger vessel in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LPV is in transit and becomes a fixed zone when the LPV is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *large passenger vessel* or *LPV* means a cruise ship more than 300 feet in length that carries passengers for hire, and any passenger ferries more than 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representative. When authorized passage through an LPV security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representative. No person is allowed within 100 yards of a large passenger vessel that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representative.

(2) When conditions permit, the Captain of the Port, or his or her designated representative, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LPV security zone in order to ensure navigational safety.

* * * * *

Dated: June 6, 2007.

Sally Brice-O'Hara,

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

[FR Doc. E7–11748 Filed 6–18–07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU78

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Guajón (Eleutherodactylus cooki)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period, availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a revised proposed critical habitat designation for the guajón (*Eleutherodactylus cooki*). We are reopening the public comment period to accept comments on proposed additional critical habitat units and revised required determinations, and also to announce the availability of and accept comments on our draft economic analysis of the proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (Act). We are allowing all interested parties an opportunity to comment simultaneously on the original proposed rule, the proposed additional critical habitat units, the revised required determinations, and the associated draft economic analysis. If you submitted comments previously on the original proposed rule, you need not resubmit them, as we will incorporate them into the public record and fully consider them as we prepare the final rule. We are proposing five additional critical habitat units totaling 43.4 acres (ac) (17.5 hectares (ha)). With their inclusion, we are proposing 17 critical habitat units for the species, for a total of 260.6 ac (105.6 ha). The amendments we propose in this document are in addition to, and not in lieu of, the proposed designation we published in our original proposed rule of October 5, 2006. The draft economic analysis, that includes the additional units, finds that potential future costs associated with conservation activities for the guajón are estimated at $4.34 million in undiscounted dollars, $4.28 million when discounted at 3 percent, and $4.23 million when discounted at 7 percent over the 20 year period 2007–2026. Annualized future costs are $288,000 and $399,000 using a 3 percent and 7 percent discount rate, respectively.

DATES: We will accept public comments until July 19, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and information concerning this proposal, identified by ''Attn: Guajón Proposed Rule,'' by any one of the following methods:

1. *Mail:* You may submit written comments and information to Edwin E. Muñiz, Field Supervisor, U.S. Fish and Wildlife Service, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622.

2. *Hand delivery:* You may hand-deliver written comments to us at the following address: Cabo Rojo National Wildlife Refuge Visitor Center, Boquerón Field Office, PR–301, km. 5.1, Boquerón, PR.

3. *E–mail:* You may send comments by electronic mail (e–mail) to *jorge_saliva@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

1. *Facsimile:* You may fax your comments to 787–851–7440.

5. *Federal Rulemaking Portal:* Submit comments via the Federal Rulemaking portal at *http://www.regulations.gov.* Follow the instructions on the site for submitting comments.

Please see the Public Comments Solicited section below for more information about submitting comments or viewing our received materials.

FOR FURTHER INFORMATION CONTACT: Jorge E. Saliva, Ph.D., Boquerón Field Office, P.O. Box 491, Boquerón, PR 00622 (telephone 787–851–7297 x 224; facsimile (787–851–7440)). Persons who use the telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We are accepting written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation for the guajón published in the **Federal Register** on October 5, 2006 (71 FR 58954), the inclusion of the additional units proposed in this document, and our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested

parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat for the guajón under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of guajón habitat, particularly what areas should be included in the designation that were occupied at the time of listing and that contain the features that are essential for the conservation of the species and why; and what areas that were not occupied at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities.

(5) Information on whether the draft economic analysis identifies all local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(8) Whether the draft economic analysis appropriately identifies all costs and benefits that could result from the designation;

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(10) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

Pursuant to section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

If you submitted previous comments and information during the initial comment period on the October 5, 2006, proposed rule (71 FR 58954) you need not resubmit them because they are currently part of our record and will be considered in the development of the final rule. If you wish to comment, you may submit your comments and materials concerning the proposed rule, proposed additional units, draft economic analysis, and amended Required Determinations by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. On the basis of information received during the public comment period, in the critical habitat proposal, and in the final economic analysis, we may during the development of our final critical habitat determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If submitting comments electronically, please also include ''Attn: Guajón Proposed Rule'' in your e–mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your electronic message, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Availability of Comments

Before including your address, phone number, e–mail address, or other personal identifying information in your comment, 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. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection by appointment during normal business hours at the Boquerón Field Office located at the Cabo Rojo National Wildlife Refuge (see **ADDRESSES**).

You may obtain copies of the original proposed rule and the draft economic analysis by visiting our Web site at *http://www.fws.gov/southeast* or by contacting the Boquerón Field Office at the address or contact numbers under **ADDRESSES.**

Background

The guajón is a petricolous (i.e., inhabiting rocky areas) frog species endemic to the southeastern part of Puerto Rico. The guajón was listed as threatened under the Act on June 11, 1997 (62 FR 31757), due to its restricted distribution, specialized habitat utilization, and threats to its habitat; this listing was effective on July 11, 1997. On October 5, 2006, we published a proposed rule (71 FR 58954) to designate critical habitat for the guajón. We proposed 12 units that contain one or more of the primary constituent elements (PCEs) (i.e., biological or physical features essential to the conservation of the species). Such features include subtropical forest at elevations from 118 to 1183 feet (ft) (36 to 361 meters (m)) above sea level; plutonic, granitic, or sedimentary rocks or boulders that form caves, crevices, and grottoes (interstitial spaces) in a streambed in proximity, or connected to, a permanent, ephemeral, or subterranean clear-water stream or water source; and vegetation over rocks along drainages and vegetated streambed that extend laterally up to 99 ft (30 m) from the banks of a stream or drainage. Areas that do not contain at least one of the PCEs and are not currently occupied by the species were not included in the proposal. Boundaries for each proposed critical habitat unit were determined based on known guajón sightings, topographical features known to be needed by the species, the range of elevations used by the species, and visual inspection of the units. In the proposed rule (71 FR 58954), we proposed to designate 9 units on lands determined to be occupied at the time of listing and containing sufficient PCEs to support life history functions essential for the conservation of the species, and 3 units on lands not known to be occupied at the time of listing, but that provide habitat essential to the conservation of the species. The 12 units that we proposed as critical habitat in 71 FR 58954 encompass approximately 217.2 ac (88 ha) within the municipalities of

Humacao, Las Piedras, Maunabo, Patillas, and Yabucoa in Puerto Rico and are: Mariana, Montones, Tejas, Emajagua, Jacaboa, Calabazas, Guayanés, Panduras, Talante, Guayabota, Guayabito, and Guayabo.

We now revise our original proposed rule (71 FR 58954) to add five additional units, as described in the next section. As a result of these additions, and revisions to the original proposed rule's acreage figures presented in Table 1 below, the proposed critical habitat now encompasses 260.6 ac (105.6 ha).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Additional Proposed Critical Habitat Units

By this publication in the **Federal Register**, we advise the public of our proposed inclusion of five additional critical habitat units over what we proposed in our October 5, 2006, proposed rule (71 FR 58954). During the comment period for the original proposed rule, we received letters from the Puerto Rico Department of Natural and Environmental Resources (PRDNER) and the Center for Biological Diversity (CBD) which included information on additional sites within the historical range of the guajón that were occupied at the time of listing and support suitable habitat for the species. In total, nine sites were recommended. These organizations recommended that the Service include these nine sites in the critical habitat designation.

Each of these nine sites was visited by the Service to confirm the presence or absence of guajón and the PCEs. As a result of these site visits, we now propose five of the nine recommended units (which we call Units 13–17) as additional critical habitat. A site was considered for designation if: (1) It was occupied by the guajón at the time of listing and possessed at least one or more of the PCEs, or (2) was not occupied at the time of listing but is currently occupied by the guajón, and has been determined to be essential to the conservation of the species. All five of the units described above are in close proximity with or connected to one or more of the units described in the original proposed rule. Unit 13 is in the immediate vicinity of Units 8 and 9 within the Panduras and Talante Wards; Units 14 and 15 are in the immediate vicinity of Unit 10 and only separated from it by Río Grande de Loíza; Unit 16 is connected to Unit 2 through Río Valenciano; and Unit 17 is connected to Unit 11 and Unit 12 through Quebrada Guayabo.

Six of the recommended sites have been part of the guajón study areas of Dr. Rafael Joglar and Dr. Patricia Burrowes since the early 1990s (Joglar 1992; Burrowes 1997). Of the 6 sites recommended by CBD, 4 sites have at least one PCE and guajón present (Unit 13, Unit 14, Unit 15, and Unit 17). These sites were occupied at the time of listing (i.e., prior to June 1997) (Drewry 1986; Moreno 1991; Joglar 1992; Joglar *et al.* 1996). One site was not included because it did not contain at least one PCE and the species was not present, and one site was determined to be the same as the Emajagua Unit described in the October 5, 2006, proposed rule. Only one other site was located and verified (Unit 16), and was not occupied at the time of listing. Two sites could not be found following the directions provided in the comment.

These five units (Units 13–17) share the following characteristics: (1) They are within the historical range of the species and, with the exception of Unit 16, were occupied at the time of listing; (2) they provide PCEs necessary for the long-term persistence of guajón populations (e.g., caves or large plutonic, granitic, or sedimentary boulders that form crevices and grottoes, forested streambeds where guajón may forage, and high humidity); and (3) they are currently occupied. Unit 16 is essential to the conservation of the species because of the representation, redundancy, and resiliency it adds to the critical habitat designation. Below, we present brief descriptions of the five units, the PCEs they contain, and reasons why they meet the definition of critical habitat for the guajó.

Unit 13: El Cielito Unit

Unit 13 consists of approximately 7.84 ac (3.17 ha), between the municipal boundary of Yabucoa to the north, PR–759 to the south and west, and PR–3 to the east, within Talante Ward, Maunabo. It includes 1,778.15 ft (541.98 m) of a drainage that connects with Quebrada Tumbada, and a guajón foraging area extending laterally 99 ft (30 m) from each side of the drainage. This unit was occupied at the time of listing (Joglar, pers. comm., 2007). It consists of a steep, forested drainage with large granite boulders forming large caves, vegetation-covered rocks, and with high humidity. No surface running water is present, but humidity is maintained through percolation from underground water. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 13 being located on a private farm about 1.2 miles (mi) (2 kilometers (km)) to the west of PR–3, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams or underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 14: Verraco Unit

Unit 14 consists of approximately 8.9 ac (3.6 ha), between PR–181 to the north and west, Río Grande de Loíza to the east and south, and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo. It includes three drainages that connect with Quebrada Verraco, and a guajón foraging area extending laterally 99 ft (30 m) from each side of each drainage. This unit was occupied at the time of listing (Burrowes 1997). It is heavily forested and humid, and contains very large granite boulder formations covered with vegetation. No surface running water is present, but humidity is maintained through percolation from underground water. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 14 being located in a private farm about 0.9 mi (1.5 km) from Rd 181, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams/underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 15: Cueva Marcela Unit

Unit 15 is referred to as Cuevas Doña Marcela by Burrowes (1997, 2000) and Burrowes and Joglar (1999), and consists of approximately 7.4 ac (3.02 ha) between PR–181 and Quebrada Verraco to the north, PR–181 to the west, and Río Grande de Loíza and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo. It includes two drainages that are not connected and a guajón foraging area extending laterally 99 ft (30 m) from each side of each drainage. The north drainage is approximately 4.28 ac (1.73 ha), and the south drainage is approximately 3.2 ac (1.3 ha). This unit was occupied at the time of listing (Joglar 1996). Both drainages have large, vegetation-covered granite boulders that create caves within patchy secondary forest. There is no surface running water, but humidity is maintained through puddles and intermittent streams formed during rainy events. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 15 being located on a private farm about 1.2 mi (2 km) from Road 181, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams or underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 16: Ceiba Sur Unit

Unit 16 consists of approximately 13.92 ac (5.63 ha) between Road PR–9934 to the east, and Road PR–919 to the west within Ceiba Sur Ward, Juncos. It includes 3,123 ft (951.91 m) of an intermittent stream that connects with the Río Valenciano, and a guajón foraging area extending laterally 99 ft (30 m) on each side of the drainage. This unit was not known to be occupied at the time of listing. All PCEs are found within this unit. Presence of the species and PCEs at this site was confirmed by the Service in January 2007. The area has high humidity and contains densely forested stream banks, large sedimentary rocks, and vegetation-covered rocks. Unit 16 is essential to the conservation of the guajón for several reasons. The intermittent stream, large rocks, and closed canopy of Unit 16 provide habitat essential to the guajón for food, shelter, breeding, foraging, and population expansion. The guajón was listed primarily due to its highly restricted geographical distribution and habitat requirements (Joglar 1998, p. 73). The habitat of this species is naturally fragmented and the majority of the known populations are on private land where the increased levels of land development currently occurring in southeastern Puerto Rico where the species occurs, threatens to further reduce and fragment the species habitat, distribution, and survival (Joglar 1998, p. 73).

Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions such as roads makes populations less resilient to natural population declines (Pechman et al. 1991, p. 895). Protection of existing populations of the guajón is extremely important due to its limited distribution and the specialized habitat it occupies.

Unit 17: Playita Unit

Unit 17 consists of approximately 5.27 ac (2.13 ha), between PR–900 to the north and east and the municipal boundary of Maunabo to the south, within Calabazas Ward, Yabucoa. It includes 1,208.9 ft (368.47 m) of a forested stream that connect with Río Guayabo, and a guajón foraging area extending laterally 99 ft (30 m) on each side of the drainage. This unit was occupied at the time of listing (Joglar, pers. comm., 2007). It is sparsely forested and humid, and it contains very large, vegetation-covered granite boulder formations. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 17 being located adjacent to private homes and close to an ancillary road to PR–900, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to use of herbicides, fertilizers, or insecticides, and pollution of the stream caused by human and domestic animal refuse (PCE 2).

The majority of the known populations of this species are on private land where increased levels of land development threaten to further reduce and fragment the species habitat, distribution, and survival (Joglar 1998, p. 73). Additionally, fragmentation of the habitat through human intrusions, such as roads, makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895).

The five additional proposed units total 43.4 ac (17.5 ha). As a result of these additions, and revisions to acreage figures from the original proposed rule presented in Table 1 below, the proposed critical habitat now encompasses 260.6 ac (105.6 ha) in 17 units. Table 1 contains the corrected acreage (and hectare) values, including the 43.4 additional ac (17.5 ha), we now propose for inclusion. Other than the changes described in this document, the proposed rule of October 5, 2006 (71 FR 58954), remains intact. We will submit for publication in the **Federal Register** a final critical habitat designation guajón on or before October 1, 2007.

TABLE 1. AREAS PROPOSED AS CRITICAL HABITAT FOR THE GUAJÓN

[Area estimates reflect all land within critical habitat unit boundaries.]

Proposed critical habitat unit	Land ownership	Area (ac(ha))
1. Mariana, Humacao, PR	Private	23.6 (9.6)
2. Montones, Las Piedras, PR	Private	31.1 (12.6)
3. Tejas, Las Piedras, PR	Private	5.2 (2.1)
4. Emajagua, Maunabo, PR	Private	33.0 (13.4)
5. Jacaboa, Patillas, PR	Private	10.3 (4.2)
6. Calabazas, Yabucoa, PR	Private	13.8 (5.6)
7. Guayanés, Yabucoa, PR	Private	7.9 (3.2)
8. Panduras, Yabucoa, PR	Private	28.6 (11.6)
9. Talante, Yabucoa, PR	Private	23.5 (9.5)
10. Guayabota, Yabucoa, PR	Private	13.1 (5.3)
11. Guayabito, Yabucoa, PR	Private	17.3 (7.0)
12. Guayabo, Yabucoa, PR	Private	9.8 (3.9)

TABLE 1. AREAS PROPOSED AS CRITICAL HABITAT FOR THE GUAJÓN—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Proposed critical habitat unit	Land ownership	Area (ac(ha))
13. El Cielito, Maunabo, PR	Private	7.84 (3.17)
14. Verraco, San Lorenzo, PR	Private	8.9 (3.6)
15. Cueva Marcela, San Lorenzo, PR	Private	7.47 (3.02)
16. Ceiba Sur, Juncos, PR	Private	13.92 (5.63)
17. Playita, Yabucoa, PR	Private	5.27 (2.13)
Total		260.6 ac (105.6 ha)

Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis based on the October 5, 2006, proposed rule (71 FR 58954) plus the five additional units described in this document.

The draft economic analysis considers the potential economic effects of all actions related to the conservation of the guajón, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the guajón in proposed critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date this species was listed as threatened (June 11, 1997; 62 FR 31757), and considers those costs that may occur in the 20 years following designation of critical habitat (i.e., 20007–2026).

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the guajón; some of these costs will likely be incurred regardless of whether critical habitat is designated. Over the 20 year period 2007–2026, the draft economic analysis finds that costs associated with conservation activities for the guajón are estimated at $4.34 million in undiscounted dollars, $4.28 million when discounted at 3 percent, and $4.23 when discounted at 7 percent. Annualized future costs are $288,000 using a 3 percent discount rate and $399,000 using a 7 percent discount rate.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for the guajón, costs related to conservation activities for the guajón pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $4.34 million in undiscounted dollars. Discounted future costs are estimated to be $4.28 million ($288,000 annually) at a 3 percent discount rate, or $4.23 million ($399,000 annually) at a 7 percent discount rate. Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for the guajón would not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility

analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed guajón critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the guajón and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of guajón conservation efforts in four categories: (a) Deforestation and earth movement near streams for road construction; (b) agricultural practices (e.g., use of herbicides, fertilizers, or insecticides); (c) urban and rural development; and (d) degradation of water quality from illegal garbage dumping, untreated sewage, and fishing with chemicals. We determined from our analysis that in the economic impacts of the designation are expected to be borne primarily by the Puerto Rico Highway and Transportation Authority, an agency of the Commonwealth of Puerto Rico, during construction of PR Highway 53. However, the government of the Commonwealth does not fit the SBA criteria for a small entity. Consequently, we certify that the designation of critical habitat for the guajón will not result in a significant economic impact on a substantial number of small business entities. Please see the ''Economic Analysis'' section above and the draft economic analysis itself for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, or Use

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for guajón is considered a significant regulatory action under Executive Order 12866 because it raises novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the draft economic analysis, energy-related impacts associated with guajón conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse

modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the guajón, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the guajón within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for this species will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630–Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the guajón. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for this species does not pose significant takings implications.

Author

The primary author of this notice is Dr. Jorge E. Saliva, Boquerón Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 71 FR 58954, October 5, 2006, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Guajón (*Eleutherodactylus cooki*) in § 17.95(d), which was proposed to be added on October 5, 2006, at 71 FR 58954, is proposed to be amended by revising paragraphs 1 and 5 and by adding new paragraphs 18 through 22 in the entry for ''Guajón'' to read as follows:

§ 17.95 *Critical habitat—fish and wildlife.*

* * * * *

(d) Amphibians

* * * * *

Guajón (Eleutherodactylus cooki)

* * * * *

(1) Critical habitat units are depicted for Humacao, Las Piedras, Juncos, Maunabo, Patillas, San Lorenzo, and Yabucoa, Puerto Rico, on the maps below.

* * * * *

(5) *Note:* Index map (Map 1) follows:

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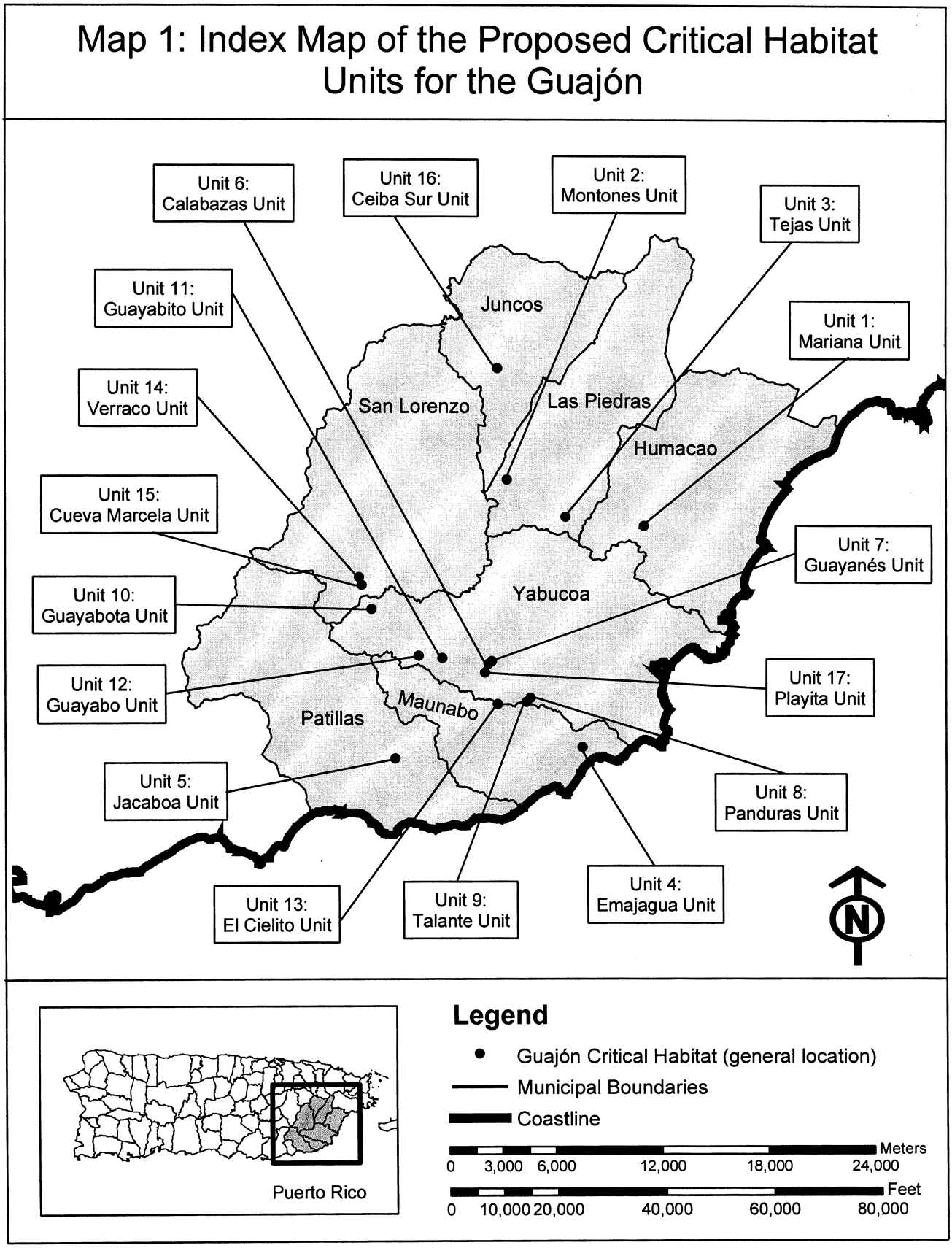


* * * * *

(18) Unit 13: El Cielito, Maunabo, Puerto Rico.

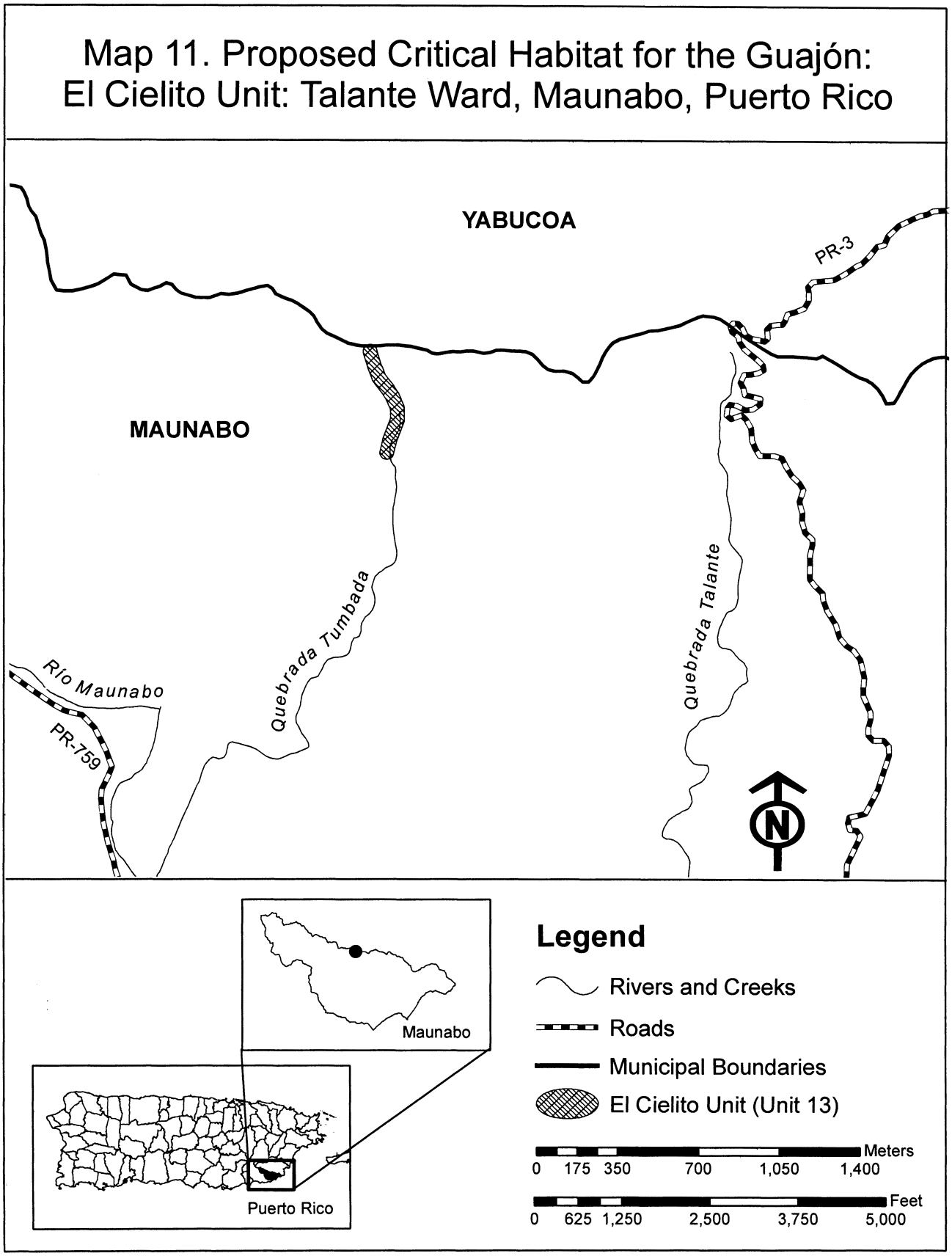
(i) *General Description:* Unit 13 consists of approximately 7.84 ac (3.17

ha), between the municipal boundary of Yabucoa to the north, PR–759 to the south and west, and PR–3 to the east, within Talante Ward, Maunabo.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 13 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825982.02, 1996690.65; 825982.05, 1996692.62; 825982.22, 1996694.58; 825982.51, 1996696.52; 825982.93, 1996698.44; 825983.48, 1996700.33; 825984.14, 1996702.18; 825984.93, 1996703.98; 825985.83, 1996705.72; 825986.85, 1996707.40; 825987.97, 1996709.02; 825989.19, 1996710.55; 825990.52, 1996712.01; 825991.93, 1996713.37; 825993.43, 1996714.64; 825995.01, 1996715.80; 825996.67, 1996716.86; 825998.39, 1996717.81; 826000.17, 1996718.65; 826002.00, 1996719.37; 826003.87, 1996719.96; 826005.78, 1996720.44; 826007.71, 1996720.78; 826009.66, 1996721.00; 826011.63, 1996721.09; 826013.59, 1996721.06; 826015.55, 1996720.89; 826017.49, 1996720.60; 826019.41, 1996720.18; 826021.30, 1996719.63; 826023.15, 1996718.97; 826024.95, 1996718.18; 826026.69, 1996717.28; 826028.38, 1996716.27; 826029.99, 1996715.14; 826031.53, 1996713.92; 826032.98, 1996712.59; 826034.34, 1996711.18; 826035.61, 1996709.68; 826036.77, 1996708.10; 826037.84, 1996706.44; 826038.79, 1996704.72; 826039.62, 1996702.94; 826040.34, 1996701.11; 826040.80, 1996699.72; 826058.80, 1996639.86; 826064.87, 1996626.21; 826065.02, 1996625.87; 826065.62, 1996624.39; 826077.68, 1996591.67; 826117.27, 1996543.05; 826117.56, 1996542.70; 826118.72, 1996541.12; 826119.34, 1996540.18; 826137.43, 1996511.67; 826137.87, 1996510.96; 826138.82, 1996509.24; 826139.63, 1996507.52; 826162.49, 1996454.74; 826162.51, 1996454.69; 826163.23, 1996452.86; 826163.82, 1996450.98; 826164.30, 1996449.08; 826164.64, 1996447.14; 826164.86, 1996445.19; 826164.96, 1996443.23; 826165.66, 1996392.36; 826165.62, 1996390.40; 826165.46, 1996388.44; 826165.16, 1996386.49; 826164.74, 1996384.58; 826164.20, 1996382.69; 826163.81, 1996381.55; 826132.56, 1996296.82; 826120.53, 1996241.20; 826120.29, 1996240.18; 826119.75, 1996238.29; 826119.08, 1996236.44; 826118.30, 1996234.64; 826117.39, 1996232.89; 826116.38, 1996231.21; 826115.26, 1996229.60; 826114.03, 1996228.06; 826112.71, 1996226.61; 826111.29, 1996225.25; 826109.79, 1996223.98; 826108.21, 1996222.81; 826106.56, 1996221.75; 826104.84, 1996220.80; 826103.06, 1996219.97; 826101.23, 1996219.25; 826099.36, 1996218.65; 826097.45, 1996218.18; 826095.51, 1996217.83; 826093.56, 1996217.61; 826091.60, 1996217.52; 826089.63, 1996217.56; 826087.68, 1996217.72; 826085.73, 1996218.02; 826083.81, 1996218.44; 826081.93, 1996218.98; 826080.08, 1996219.65; 826078.28, 1996220.43; 826076.53, 1996221.34; 826074.85, 1996222.35; 826073.24, 1996223.47; 826071.70, 1996224.70; 826070.25, 1996226.02; 826068.88, 1996227.44; 826067.62, 1996228.94; 826066.45, 1996230.52; 826065.39, 1996232.17; 826064.44, 1996233.89; 826063.60, 1996235.67; 826062.89, 1996237.50; 826062.29, 1996239.37; 826061.82, 1996241.28; 826061.47, 1996243.21; 826061.25, 1996245.17; 826061.16, 1996247.13; 826061.20, 1996249.09; 826061.36, 1996251.05; 826061.65, 1996253.00; 826061.83, 1996253.89; 826074.31, 1996311.58; 826074.55, 1996312.60; 826075.09, 1996314.49; 826075.48, 1996315.62; 826105.53, 1996397.10; 826104.99, 1996436.39; 826085.46, 1996481.49; 826069.59, 1996506.50; 826027.95, 1996557.62; 826027.67, 1996557.98; 826026.50, 1996559.56; 826025.44, 1996561.21; 826024.49, 1996562.93; 826023.65, 1996564.71; 826023.06, 1996566.20; 826009.61, 1996602.69; 826003.16, 1996617.18; 826003.01, 1996617.52; 826002.29, 1996619.34; 826001.84, 1996620.74; 825983.29, 1996682.42; 825983.15, 1996682.90; 825982.68, 1996684.80; 825982.33, 1996686.74; 825982.11, 1996688.69; 825982.02, 1996690.65.

(iii) *Note:* Map of Unit 13 (Map 11) follows:



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(19) Unit 14: Verraco, San Lorenzo, Puerto Rico.

(i) *General Description:* Unit 14 consists of approximately 8.9 ac (3.6 ha), between PR–181 to the north and west, Río Grande de Loíza to the east and south, and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo.

(ii) *Coordinates:* From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 14 bounded by the following UTM 19 NAD 83 coordinates (E, N):

818021.78, 2003743.38; 818021.82, 2003745.35; 818021.98, 2003747.31; 818022.27, 2003749.25; 818022.69, 2003751.17; 818023.24, 2003753.06; 818023.90, 2003754.90; 818024.69, 2003756.71; 818025.59, 2003758.45; 818026.61, 2003760.13; 818027.41, 2003761.31; 818041.40, 2003780.81; 818041.72, 2003781.25; 818042.95, 2003782.78; 818044.27, 2003784.24; 818045.68, 2003785.60; 818047.19, 2003786.87; 818048.77, 2003788.03; 818050.42, 2003789.09; 818051.64, 2003789.78; 818072.66, 2003801.02; 818073.16, 2003801.29; 818074.94, 2003802.12; 818076.77, 2003802.84; 818078.64, 2003803.44; 818080.55, 2003803.91; 818082.48, 2003804.26; 818084.44, 2003804.48; 818086.40, 2003804.57; 818088.36, 2003804.53; 818089.35, 2003804.46; 818118.63, 2003801.99; 818119.61, 2003801.89; 818121.55, 2003801.60; 818123.47, 2003801.18; 818125.20, 2003800.69; 818179.90, 2003783.29; 818180.06, 2003783.24; 818181.91, 2003782.58; 818183.71, 2003781.79; 818183.86, 2003781.72; 818240.72, 2003754.27; 818242.32, 2003753.44; 818244.00, 2003752.42; 818245.61, 2003751.30; 818247.15, 2003750.08; 818248.60, 2003748.75; 818249.96, 2003747.34; 818251.23, 2003745.84; 818252.40, 2003744.26; 818253.46, 2003742.60; 818254.41, 2003740.88; 818255.24, 2003739.10; 818255.96, 2003737.28; 818256.56, 2003735.40; 818257.03, 2003733.50; 818257.38, 2003731.56; 818257.60, 2003729.61; 818257.69, 2003727.65; 818257.65, 2003725.68; 818257.49, 2003723.73; 818257.19, 2003721.78; 818256.77, 2003719.86; 818256.23, 2003717.97; 818255.56, 2003716.13; 818254.78, 2003714.33; 818253.88, 2003712.58; 818252.86, 2003710.90; 818251.74, 2003709.28; 818250.51, 2003707.75; 818249.19, 2003706.30; 818247.78, 2003704.93; 818246.27, 2003703.67; 818244.69, 2003702.50; 818243.04, 2003701.44; 818241.32, 2003700.49; 818239.54, 2003699.65; 818237.71, 2003698.93; 818235.84, 2003698.34; 818233.93, 2003697.87; 818232.00, 2003697.52; 818230.05, 2003697.30; 818228.08, 2003697.21; 818226.12, 2003697.24; 818224.16, 2003697.41; 818222.22, 2003697.70; 818220.30, 2003698.12; 818218.41, 2003698.67; 818216.56, 2003699.33; 818214.76, 2003700.12; 818214.61, 2003700.19; 818187.94, 2003713.06; 818216.83, 2003685.69; 818233.41, 2003672.94; 818247.97, 2003666.94; 818249.43, 2003666.29; 818251.18, 2003665.38; 818252.86, 2003664.37; 818254.47, 2003663.25; 818256.01, 2003662.02; 818257.46, 2003660.70; 818258.83, 2003659.29; 818260.09, 2003657.78; 818261.26, 2003656.20; 818262.32, 2003654.55; 818263.27, 2003652.83; 818264.11, 2003651.05; 818264.82, 2003649.22; 818265.42, 2003647.35; 818265.89, 2003645.44; 818266.24, 2003643.51; 818266.46, 2003641.56; 818266.55, 2003639.59; 818266.51, 2003637.63; 818266.35, 2003635.67; 818266.06, 2003633.73; 818265.64, 2003631.81; 818265.09, 2003629.92; 818264.43, 2003628.07; 818263.64, 2003626.27; 818262.74, 2003624.53; 818261.72, 2003622.84; 818260.60, 2003621.23; 818259.38, 2003619.69; 818258.05, 2003618.24; 818256.64, 2003616.88; 818255.14, 2003615.61; 818253.56, 2003614.44; 818251.90, 2003613.38; 818250.18, 2003612.43; 818248.40, 2003611.60; 818246.57, 2003610.88; 818244.70, 2003610.28; 818242.80, 2003609.81; 818240.86, 2003609.46; 818238.91, 2003609.24; 818236.95, 2003609.15; 818236.49, 2003609.16; 818236.87, 2003608.20; 818237.46, 2003606.33; 818237.94, 2003604.42; 818238.28, 2003602.49; 818238.50, 2003600.54; 818238.59, 2003598.57; 818238.56, 2003596.61; 818238.39, 2003594.65; 818238.10, 2003592.71; 818237.68, 2003590.79; 818237.13, 2003588.90; 818236.47, 2003587.05; 818235.68, 2003585.25; 818234.78, 2003583.51; 818233.77, 2003581.82; 818232.64, 2003580.21; 818231.42, 2003578.67; 818230.10, 2003577.22; 818229.24, 2003576.35; 818227.83, 2003574.98; 818226.33, 2003573.72; 818224.75, 2003572.55; 818223.09, 2003571.49; 818221.37, 2003570.54; 818219.59, 2003569.70; 818217.76, 2003568.98; 818215.89, 2003568.39; 818213.99, 2003567.92; 818212.05, 2003567.57; 818210.10, 2003567.35; 818208.14, 2003567.26; 818206.17, 2003567.29; 818204.21, 2003567.46; 818202.27, 2003567.75; 818200.35, 2003568.17; 818198.46, 2003568.72; 818196.62, 2003569.38; 818194.81, 2003570.17; 818193.07, 2003571.07; 818191.39, 2003572.08; 818189.77, 2003573.21; 818188.24, 2003574.43; 818186.87, 2003575.67; 818119.61, 2003627.58; 818118.47, 2003628.50; 818117.02, 2003629.82; 818116.33, 2003630.51; 818088.04, 2003659.86; 818054.31, 2003681.68; 818054.28, 2003681.70; 818052.67, 2003682.82; 818051.13, 2003684.04; 818049.68, 2003685.37; 818048.32, 2003686.78; 818047.05, 2003688.28; 818046.58, 2003688.89; 818030.14, 2003710.85; 818029.44, 2003711.82; 818028.38, 2003713.48; 818027.43, 2003715.20; 818026.59, 2003716.97; 818025.88, 2003718.80; 818025.28, 2003720.68; 818024.81, 2003722.58; 818024.52, 2003724.15; 818022.15, 2003739.10; 818022.09, 2003739.47; 818021.87, 2003741.42; 818021.78, 2003743.38;

(iii) *Note:* The map depicting Unit 14 is provided at paragraph (20) (iii) of this entry.

(20) Unit 15: Cueva Marcela Unit, San Lorenzo, Puerto Rico.

(i) *General Description:* Unit 15 consists of approximately 7.47 ac (3.02 ha), between PR–181 and Quebrada Verraco to the north, PR–181 to the west, and Río Grande de Loíza and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo.

(ii) *Coordinates:* From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 15 bounded by the following UTM 19 NAD 83 coordinates (E, N):

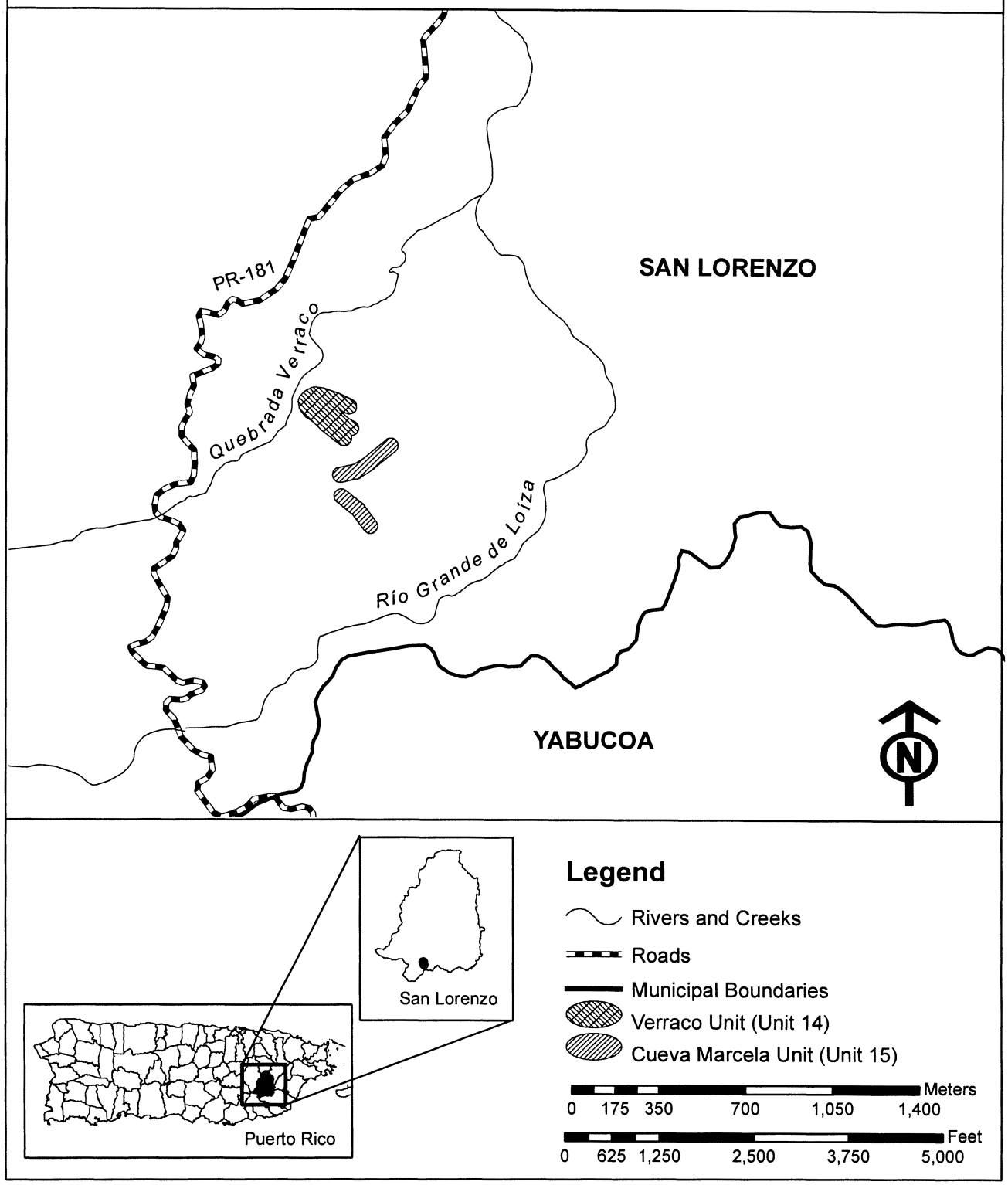
818171.51, 2003361.29; 818171.55, 2003363.25; 818171.72, 2003365.21; 818172.01, 2003367.15; 818172.43, 2003369.07; 818172.97, 2003370.96; 818173.64, 2003372.81; 818174.42, 2003374.61; 818175.33, 2003376.36; 818176.34, 2003378.04; 818177.46, 2003379.65; 818178.69, 2003381.19; 818180.01, 2003382.64; 818181.43, 2003384.00; 818182.93, 2003385.27; 818184.51, 2003386.44; 818186.16, 2003387.50; 818187.88, 2003388.45; 818189.66, 2003389.28; 818191.49, 2003390.00; 818193.36, 2003390.60; 818195.27, 2003391.07; 818197.20, 2003391.42; 818199.16, 2003391.64; 818201.12, 2003391.73; 818203.08, 2003391.69; 818205.04, 2003391.53; 818206.98, 2003391.23; 818208.90, 2003390.81; 818210.79, 2003390.27; 818212.64, 2003389.60; 818214.44, 2003388.82; 818216.19, 2003387.92; 818217.87, 2003386.90; 818219.48, 2003385.78; 818219.89, 2003385.47; 818287.51, 2003333.26; 818288.65, 2003332.34; 818290.10, 2003331.02; 818291.46, 2003329.60; 818292.73, 2003328.10; 818293.05, 2003327.68; 818343.46, 2003261.48; 818344.31, 2003260.32; 818345.37, 2003258.66; 818346.32, 2003256.94; 818347.15, 2003255.17; 818347.87, 2003253.34; 818348.47, 2003251.46; 818348.94, 2003249.56; 818349.29, 2003247.62; 818349.51, 2003245.67; 818349.60, 2003243.71; 818349.56, 2003241.74;

818349.40, 2003239.79; 818349.10, 2003237.84; 818348.68, 2003235.92; 818348.14, 2003234.03; 818347.47, 2003232.19; 818346.69, 2003230.39; 818345.79, 2003228.64; 818344.77, 2003226.96; 818343.65, 2003225.34; 818342.42, 2003223.81; 818341.10, 2003222.36; 818339.69, 2003220.99; 818338.18, 2003219.73; 818336.60, 2003218.56; 818334.95, 2003217.50; 818333.23, 2003216.55; 818331.45, 2003215.71; 818329.62, 2003214.99; 818327.75, 2003214.40; 818325.84, 2003213.93; 818323.91, 2003213.58; 818321.96, 2003213.36; 818319.99, 2003213.27; 818318.03, 2003213.30; 818316.07, 2003213.47; 818314.13, 2003213.76; 818312.21, 2003214.18; 818310.32, 2003214.73; 818308.47, 2003215.39; 818306.67, 2003216.18; 818304.93, 2003217.08; 818303.24, 2003218.09; 818301.63, 2003219.22; 818300.09, 2003220.44; 818298.64, 2003221.77; 818297.28, 2003223.18; 818296.01, 2003224.68; 818295.69, 2003225.10; 818247.68, 2003288.15; 818183.19, 2003337.94; 818182.05, 2003338.86; 818180.60, 2003340.18; 818179.24, 2003341.60; 818177.97, 2003343.10; 818176.81, 2003344.68; 818175.74, 2003346.33; 818174.79, 2003348.05; 818173.96, 2003349.83; 818173.24, 2003351.66; 818172.64, 2003353.53; 818172.17, 2003355.44; 818171.82, 2003357.37; 818171.60, 2003359.33; 818171.51, 2003361.29; 818164.80, 2003448.26; 818164.84, 2003450.23; 818165.01, 2003452.18; 818165.30, 2003454.13; 818165.72, 2003456.05; 818166.26, 2003457.93; 818166.93, 2003459.78; 818167.72, 2003461.58; 818168.62, 2003463.33; 818169.63, 2003465.01; 818170.75, 2003466.62; 818171.98, 2003468.16; 818173.30, 2003469.61; 818174.72, 2003470.98; 818176.22, 2003472.24; 818177.80, 2003473.41; 818179.45, 2003474.47; 818181.17, 2003475.42; 818182.95, 2003476.26; 818184.78, 2003476.97; 818186.65, 2003477.57; 818188.15, 2003477.95; 818251.08, 2003492.29; 818296.61, 2003523.57; 818376.74, 2003594.09; 818377.97, 2003595.11; 818379.55, 2003596.27; 818381.20, 2003597.34; 818382.92, 2003598.29; 818384.70, 2003599.12; 818386.53, 2003599.84; 818388.40, 2003600.44; 818390.31, 2003600.91; 818392.24, 2003601.26; 818394.20, 2003601.48; 818396.16, 2003601.57; 818398.12, 2003601.53; 818400.08, 2003601.36; 818402.02, 2003601.07; 818403.94, 2003600.65; 818405.83, 2003600.11; 818407.68, 2003599.44; 818409.48, 2003598.66; 818411.23, 2003597.75; 818412.91, 2003596.74; 818414.52, 2003595.62; 818416.06, 2003594.39; 818417.51, 2003593.07; 818418.87, 2003591.65; 818420.14, 2003590.15; 818421.31, 2003588.57; 818422.37, 2003586.92; 818423.32, 2003585.20; 818424.15, 2003583.42; 818424.87, 2003581.59; 818425.47, 2003579.72; 818425.94, 2003577.81; 818426.29, 2003575.88; 818426.51, 2003573.92; 818426.60, 2003571.96; 818426.56, 2003570.00; 818426.40, 2003568.04; 818426.10, 2003566.10; 818425.68, 2003564.18; 818425.14, 2003562.29; 818424.47, 2003560.44; 818423.69, 2003558.64; 818422.79, 2003556.89; 818421.77, 2003555.21; 818420.65, 2003553.60; 818419.42, 2003552.06; 818418.10, 2003550.61; 818416.69, 2003549.25; 818416.41, 2003549.00; 818334.93, 2003477.30; 818333.70, 2003476.28; 818332.12, 2003475.11; 818332.09, 2003475.09; 818280.35, 2003439.55; 818278.72, 2003438.50; 818277.00, 2003437.55; 818275.22, 2003436.72; 818273.39, 2003436.00; 818271.52, 2003435.40; 818270.02, 2003435.02; 818201.50, 2003419.40; 818201.09, 2003419.31; 818199.16, 2003418.97; 818197.21, 2003418.75; 818195.25, 2003418.66; 818193.28, 2003418.69; 818191.32, 2003418.86; 818189.38, 2003419.15; 818187.46, 2003419.57; 818185.57, 2003420.11; 818183.72, 2003420.78; 818181.92, 2003421.57; 818180.18, 2003422.47; 818178.49, 2003423.48; 818176.88, 2003424.61; 818175.35, 2003425.83; 818173.89, 2003427.15; 818172.53, 2003428.57; 818171.26, 2003430.07; 818170.10, 2003431.65; 818169.04, 2003433.31; 818168.09, 2003435.03; 818167.25, 2003436.80; 818166.53, 2003438.63; 818165.94, 2003440.50; 818165.46, 2003442.41; 818165.12, 2003444.35; 818164.90, 2003446.30; 818164.80, 2003448.26;

(iii) *Note:* Map of Units 14 and 15 (Map 12) follows:

BILLING CODE 4310–55–P

Map 12. Proposed Critical Habitat for the Guajón: Cueva Marcela and Verraco Units: Espino Ward, San Lorenzo, Puerto Rico



(21) Unit 16: Ceiba Sur Unit, Juncos, Puerto Rico.

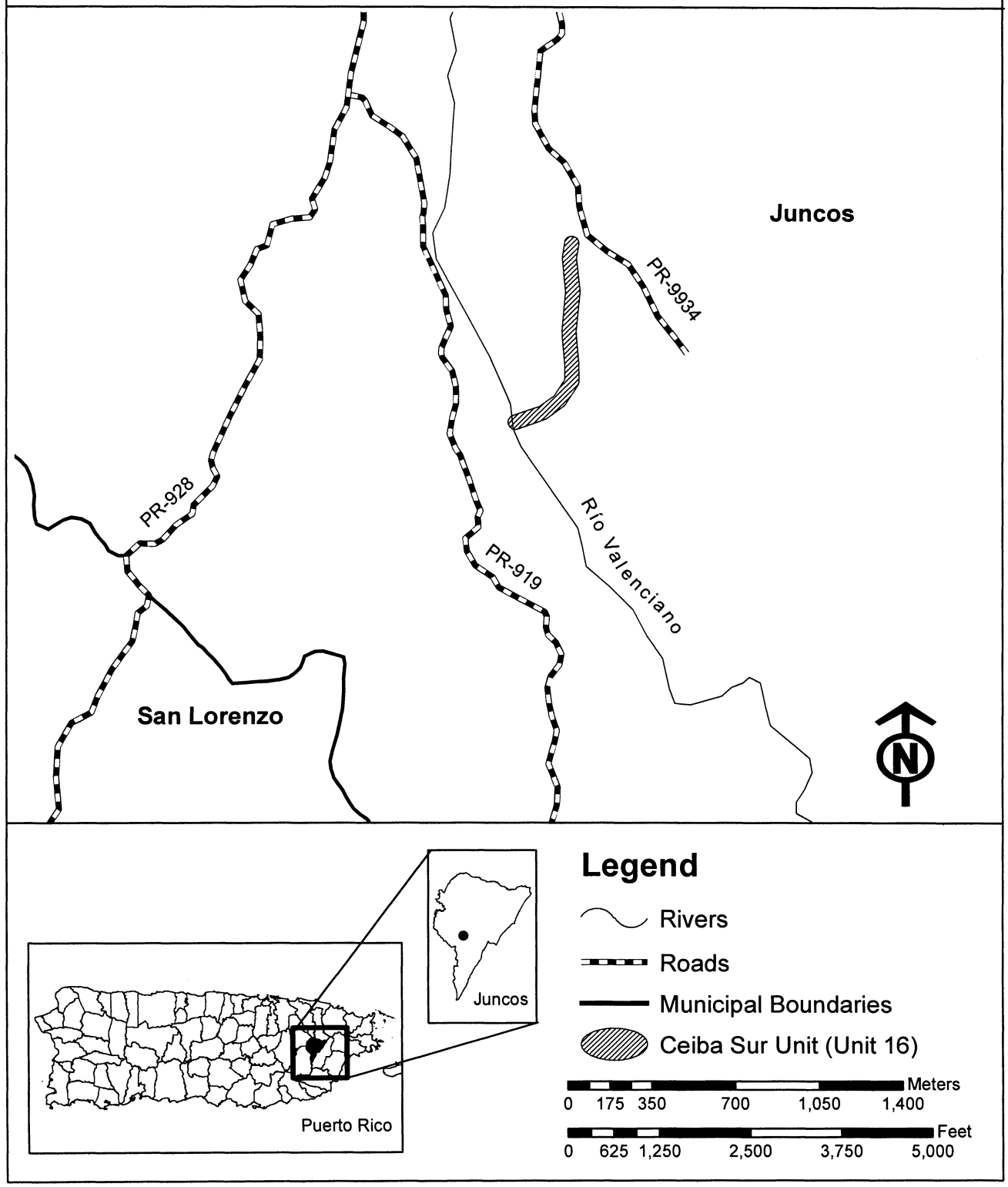
(i) *General Description:* Unit 16 consists of approximately 13.92 ac (5.63 ha) between Road PR–9934 to the east, and Road PR–919 to the west within Ceiba Sur Ward, Juncos.

(ii) *Coordinates:* From Juncos USGS 1:20,000 quadrangle map. Unit 16 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825495.74, 2015729.02; 825495.78, 2015730.98; 825495.94, 2015732.94; 825496.23, 2015734.88; 825496.65, 2015736.80; 825497.20, 2015738.69; 825497.86, 2015740.54; 825498.65, 2015742.34; 825499.55, 2015744.08; 825500.57, 2015745.77; 825501.69, 2015747.38; 825502.91, 2015748.92; 825504.24, 2015750.37; 825505.65, 2015751.73; 825507.15, 2015753.00; 825508.73, 2015754.17; 825510.39, 2015755.23; 825512.11, 2015756.18; 825513.89, 2015757.01; 825515.50, 2015757.66; 825623.97, 2015797.10; 825686.46, 2015843.70; 825729.39, 2015913.29; 825728.50, 2015977.04; 825714.36, 2016115.79; 825714.30, 2016116.45; 825714.21, 2016118.41; 825714.25, 2016120.38; 825714.32, 2016121.45; 825728.89, 2016288.33; 825712.58, 2016422.79; 825712.46, 2016424.02; 825712.36, 2016425.98; 825712.40, 2016427.95; 825712.57, 2016429.90; 825712.65, 2016430.55; 825721.59, 2016494.66; 825721.80, 2016495.95; 825722.22, 2016497.87; 825722.77, 2016499.76; 825723.43, 2016501.61; 825724.22, 2016503.41; 825725.12, 2016505.16; 825726.13, 2016506.84; 825727.26, 2016508.45; 825728.48, 2016509.99; 825729.80, 2016511.44; 825731.22, 2016512.80; 825732.72, 2016514.07; 825734.30, 2016515.24; 825735.96, 2016516.30; 825737.68, 2016517.25; 825739.45, 2016518.09; 825741.28, 2016518.80; 825743.16, 2016519.40; 825745.06, 2016519.87; 825747.00, 2016520.22; 825748.95, 2016520.44; 825750.91, 2016520.53; 825752.88, 2016520.50; 825754.83, 2016520.33; 825756.78, 2016520.04; 825758.70, 2016519.62; 825760.59, 2016519.07; 825762.43, 2016518.41; 825764.24, 2016517.62; 825765.98, 2016516.72; 825767.66, 2016515.71; 825769.28, 2016514.58; 825770.81, 2016513.36; 825772.27, 2016512.04; 825773.63, 2016510.62; 825774.90, 2016509.12; 825776.06, 2016507.54; 825777.12, 2016505.88; 825778.08, 2016504.16; 825778.91, 2016502.39; 825779.63, 2016500.56; 825780.23, 2016498.69; 825780.70, 2016496.78; 825781.05, 2016494.84; 825781.27, 2016492.89; 825781.36, 2016490.93; 825781.32, 2016488.96; 825781.16, 2016487.01; 825781.07, 2016486.36; 825772.67, 2016426.13; 825788.89, 2016292.45; 825789.01, 2016291.22; 825789.11, 2016289.26; 825789.07, 2016287.29; 825788.99, 2016286.22; 825774.40, 2016119.05; 825788.38, 2015981.81; 825788.44, 2015981.16; 825788.53, 2015979.19; 825789.56, 2015905.38; 825789.53, 2015903.42; 825789.36, 2015901.46; 825789.07, 2015899.52; 825788.65, 2015897.60; 825788.10, 2015895.71; 825787.44, 2015893.86; 825786.65, 2015892.06; 825785.75, 2015890.32; 825785.09, 2015889.20; 825734.57, 2015807.29; 825734.21, 2015806.72; 825733.09, 2015805.11; 825731.86, 2015803.57; 825730.54, 2015802.12; 825729.12, 2015800.76; 825727.62, 2015799.49; 825726.96, 2015798.98; 825656.34, 2015746.31; 825655.42, 2015745.66; 825653.76, 2015744.59; 825652.04, 2015743.64; 825650.26, 2015742.81; 825648.65, 2015742.17; 825536.03, 2015701.22; 825535.81, 2015701.14; 825533.94, 2015700.54; 825532.03, 2015700.07; 825530.10, 2015699.72; 825528.15, 2015699.50; 825526.19, 2015699.41; 825524.22, 2015699.45; 825522.26, 2015699.61; 825520.32, 2015699.91; 825518.40, 2015700.33; 825516.51, 2015700.87; 825514.66, 2015701.54; 825512.86, 2015702.32; 825511.12, 2015703.22; 825509.43, 2015704.24; 825507.82, 2015705.36; 825506.28, 2015706.59; 825504.83, 2015707.91; 825503.47, 2015709.32; 825502.20, 2015710.83; 825501.03, 2015712.41; 825499.97, 2015714.06; 825499.02, 2015715.78; 825498.19, 2015717.56; 825497.47, 2015719.39; 825496.87, 2015721.26; 825496.40, 2015723.17; 825496.05, 2015725.10; 825495.83, 2015727.05; 825495.74, 2015729.02

(iii) *Note:* Map of Unit 16 (Map 13) follows:

Map 13. Proposed Critical Habitat for the Guajón: Ceiba Sur Unit: Ceiba Sur Ward, Juncos, Puerto Rico



(22) Unit 17: Playita Unit, Yabucoa, Puerto Rico.

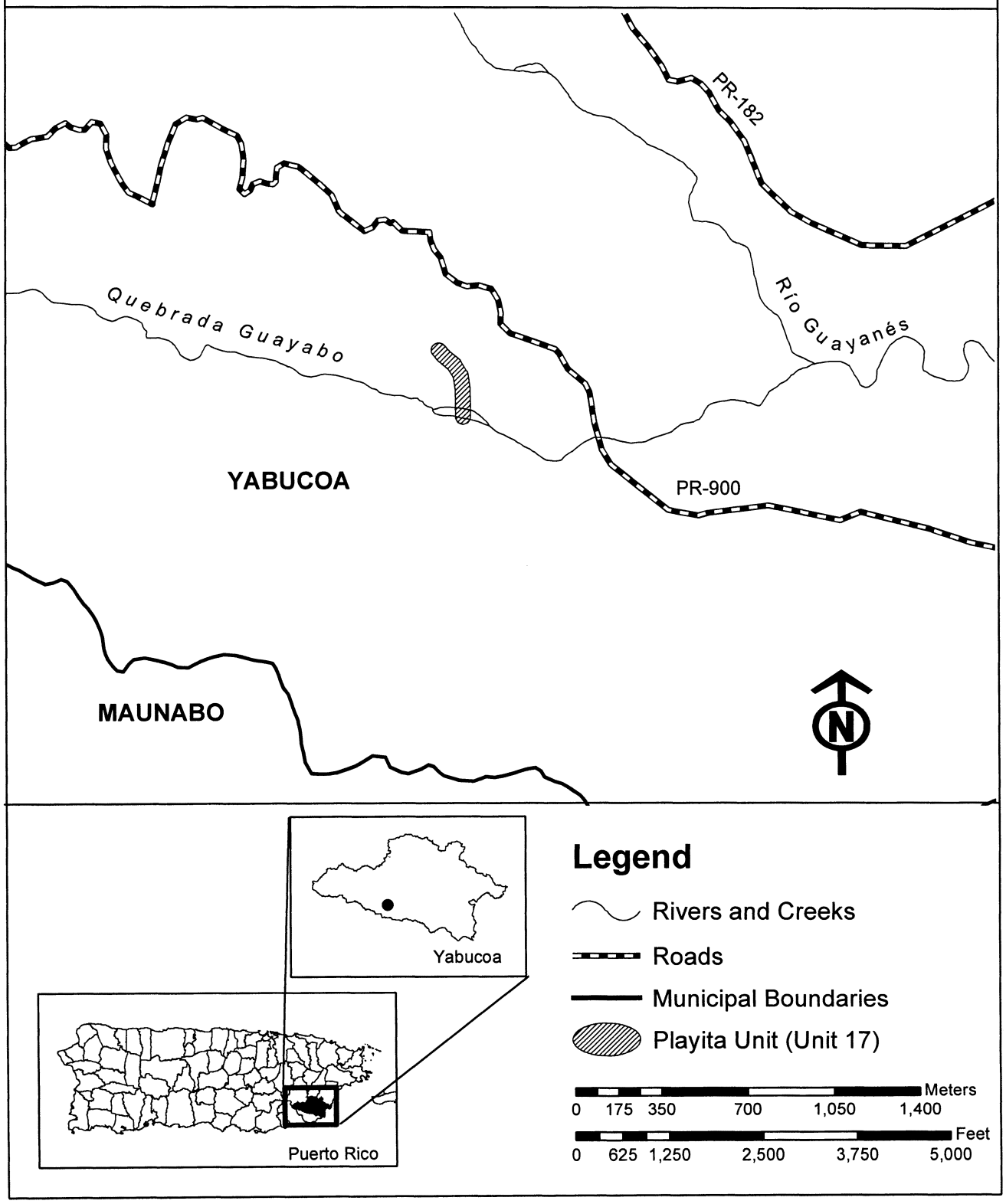
(i) *General Description:* Unit 17 consists of approximately 5.27 ac (2.13 ha), between PR–900 to the north and east and the municipal boundary of *Maunabo* to the south, within Calabazas Ward, Yabucoa.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 17 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825120.79, 1998673.78; 825120.83, 1998675.74; 825121.00, 1998677.70; 825121.29, 1998679.64; 825121.71, 1998681.56; 825122.25, 1998683.45; 825122.92, 1998685.30; 825123.71, 1998687.10; 825124.61, 1998688.85; 825125.62, 1998690.53; 825126.74, 1998692.14; 825127.97, 1998693.68; 825129.29, 1998695.13; 825130.71, 1998696.49; 825132.21, 1998697.76; 825133.79, 1998698.93; 825135.44, 1998699.99; 825137.16, 1998700.94; 825138.94, 1998701.77; 825140.77, 1998702.49; 825142.64, 1998703.09; 825144.55, 1998703.56; 825146.49, 1998703.91; 825148.44, 1998704.13; 825150.40, 1998704.22; 825152.37, 1998704.18; 825154.32, 1998704.02; 825156.27, 1998703.72; 825158.19, 1998703.30; 825160.07, 1998702.76; 825161.92, 1998702.09; 825163.72, 1998701.31; 825165.47, 1998700.40; 825167.15, 1998699.39; 825168.76, 1998698.27; 825170.30, 1998697.04; 825171.75, 1998695.72; 825172.48, 1998694.98; 825196.33, 1998670.14; 825233.38, 1998640.82; 825234.24, 1998640.12; 825235.69, 1998638.80; 825237.05, 1998637.38; 825238.32, 1998635.88; 825239.49, 1998634.30; 825240.24, 1998633.15; 825266.62, 1998590.83; 825266.93, 1998590.32; 825267.88, 1998588.60; 825268.71, 1998586.82; 825269.43, 1998584.99; 825270.03, 1998583.12; 825270.50, 1998581.21; 825270.83, 1998579.42; 825279.64, 1998520.84; 825279.66, 1998520.70; 825279.88, 1998518.75; 825279.96, 1998517.25; 825283.32, 1998403.46; 825283.33, 1998402.99; 825283.29, 1998401.03; 825283.13, 1998399.07; 825282.84, 1998397.12; 825282.42, 1998395.21; 825281.87, 1998393.32; 825281.20, 1998391.47; 825280.42, 1998389.67; 825279.52, 1998387.92; 825278.50, 1998386.24; 825277.38, 1998384.63; 825276.15, 1998383.09; 825274.83, 1998381.64; 825273.42, 1998380.27; 825271.91, 1998379.01; 825270.33, 1998377.84; 825268.68, 1998376.78; 825266.96, 1998375.83; 825265.18, 1998374.99; 825263.35, 1998374.28; 825261.48, 1998373.68; 825259.57, 1998373.21; 825257.64, 1998372.86; 825255.69, 1998372.64; 825253.72, 1998372.55; 825251.76, 1998372.59; 825249.80, 1998372.75; 825247.86, 1998373.05; 825245.94, 1998373.46; 825244.05, 1998374.01; 825242.20, 1998374.68; 825240.40, 1998375.46; 825238.65, 1998376.36; 825236.97, 1998377.38; 825235.36, 1998378.50; 825233.82, 1998379.73; 825232.37, 1998381.05; 825231.01, 1998382.46; 825229.74, 1998383.97; 825228.57, 1998385.55; 825227.51, 1998387.20; 825226.56, 1998388.92; 825225.73, 1998390.70; 825225.01, 1998392.53; 825224.41, 1998394.40; 825223.94, 1998396.31; 825223.59, 1998398.24; 825223.37, 1998400.19; 825223.29, 1998401.69; 825219.99, 1998513.68; 825212.36, 1998564.33; 825192.03, 1998596.96; 825157.45, 1998624.31; 825156.60, 1998625.01; 825155.15, 1998626.34; 825154.42, 1998627.07; 825129.15, 1998653.40; 825128.52, 1998654.08; 825127.25, 1998655.59; 825126.08, 1998657.17; 825125.02, 1998658.82; 825124.07, 1998660.54; 825123.24, 1998662.32; 825122.52, 1998664.15; 825121.92, 1998666.02; 825121.45, 1998667.93; 825121.10, 1998669.86; 825120.88, 1998671.81; 825120.79, 1998673.78;

(iii) *Note:* Map of Unit 17 (Map 14) follows:

MAP 14. Proposed Critical Habitat for the Guajón: Playita Unit: Calabazas Ward, Yabucoa, Puerto Rico



* * * * *

Dated: June 12, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–3031 Filed 6–15–07; 11:13 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070601115–7115–01]

RIN 0648–AU93

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish, Crab, Salmon, and Scallop Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska, Essential Fish Habitat Rule Correction

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to correct certain provisions of a June 28, 2006, essential fish habitat (EFH) rule for Alaska fisheries. This proposed rule would clarify that portions of EFH management areas in the vicinity of the Aleutian Islands are located in State of Alaska waters. This proposed action also would apply EFH vessel monitoring system (VMS) and closure requirements to federally permitted vessels operating in State of Alaska waters adjacent to the Gulf of Alaska (GOA) and Aleutian Islands subarea. This action is necessary to ensure federally permitted vessels operating in State of Alaska waters comply with EFH protection measures.

DATES: Written comments must be received by July 19, 2007.

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

- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;
- Fax: 907–586–7557;
- E-mail: VMS-PR–0648–AU93@noaa.gov. Include in the subject line the following document identifier: ''VMS PR.'' 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.

Copies of the maps of EFH and habitat areas of particular concern (HAPC) management areas, the Environmental Impact Statement (EIS) for EFH Identification and Conservation, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for HAPCs and the RIR/IRFA for this action may be obtained from the mailing or street address stated above or from the Alaska Region NMFS website at *http://www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NMFS Alaska Region and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7228 or e-mail at *melanie.brown@noaa.gov.*

SUPPLEMENTARY INFORMATION: The groundfish, crab, scallop, and salmon fisheries in the exclusive economic zone (EEZ) off Alaska are managed under their respective fishery management plans (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq*. Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify other measures to promote the conservation and enhancement of EFH. The Secretary of Commerce, acting through NMFS, approved the most recent EFH amendments to the FMPs on May 3, 2006. These were Amendments 78 and 65 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendments 73 and 65 to the FMP for Groundfish of the Gulf of Alaska (GOA), Amendments 16 and 12 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs, Amendments 7 and 9 to the FMP for the Scallop Fishery off Alaska, and Amendments 7 and 8 to the FMP for Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska. These amendments revised the FMPs by identifying and describing EFH and designating HAPC, and included measures to minimize to the extent practicable potential adverse effects of fishing on EFH.

On June 28, 2006, NMFS issued a final rule implementing the EFH amendments (71 FR 36694). Additional background information regarding the EFH FMP and regulatory amendments is in the March 22, 2006, proposed rule (71 FR 14470) and in the EIS and EA/RIR/IRFA for HAPCs (see **ADDRESSES**).

Protection Area Definitions

The June 28, 2006, EFH rule contains definitions for the Aleutian Islands Habitat Conservation Area (AIHCA) and the Aleutian Islands Coral Habitat Protection Areas (AICHPA) and are described by coordinates listed in Tables 23 and 24 to 50 CFR part 679. Each table includes coordinates for locations within State of Alaska (State) waters, as intended by the Council and described in the EFH FMP amendments. The current regulatory definitions for these protection areas conflict with the FMP amendments and Tables 23 and 24 by describing the protection areas as part of the Aleutian Islands subarea. The Aleutian Islands subarea is limited to waters of the EEZ, which does not include State waters (§ 679.2).

To ensure that the definitions are consistent with the Council's intent, the FMP amendments, and Tables 23 and 24, § 679.2 would be revised to define the protection areas as located in reporting areas of the Aleutian Islands, including adjacent State of Alaska waters. This revision would ensure that the AIHCA and AICHPA apply to federally permitted vessels operating in the EEZ and in State waters.

VMS Requirements

The June 28, 2006, EFH rule requires all federally permitted fishing vessels to operate a VMS when operating in the Aleutian Islands subarea or when operating in the GOA with mobile bottom contact gear onboard (§ 679.28(f)(6)). For the EFH rule, the Council intended that the VMS requirements apply to all federally permitted vessels operating in State or Federal waters. Specifically, the EFH rule should have required VMS operation for all federally permitted vessels operating in Federal waters of the Aleutian Islands subarea or adjacent State waters and operating with mobile bottom contact gear onboard in the GOA

or adjacent State waters. This would ensure activities in or near the EFH protection areas could be easily monitored. As described above, the AIHCA and AICHPA include areas in State waters. The EFH protection areas in the GOA are not located in State waters but some are near State waters. Because preexisting VMS requirements implemented to monitor Steller sea lion protection areas apply to federally permitted vessels in State waters and the Council's intent was to build on existing VMS requirements, the EFH protection measures' VMS requirements also should apply in State waters.

Section 679.28(f)(6)(ii) and (iii) identify the applicable areas for VMS as the Aleutian Islands subarea and the GOA. Under § 679.2, this description does not include State waters. This proposed rule would revise these paragraphs by requiring VMS operation in reporting areas of the Aleutian Islands subarea and the GOA, including adjacent State waters. This correction would ensure VMS operation for federally permitted vessels operating in State or Federal waters of the Aleutian Islands subarea for all gear types and in the GOA or adjacent State waters when mobile bottom contact gear is onboard. This correction would facilitate monitoring of vessel activities near EFH protection areas.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E. O.)12866.

This proposed rule contains no federalism implications under E. O. 13132. Even though the requirements of this rule apply to federally permitted vessels in State waters, this rule does not supplant any State regulatory requirements.

NMFS prepared an IRFA for this action, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The vessels that are directly regulated by the proposed action are those that are federally permitted and operate in State waters adjacent to the Aleutian Islands subarea or operate with mobile bottom contact fishing gear onboard in State waters adjacent to the GOA. Vessels were considered small, according to the Small Business Administration criteria, if they had estimated 2004 gross revenues less than or equal to $4 million, and were not known to be affiliated with other firms whose combined receipts exceeded $4 million.

In the Aleutian Islands reporting areas, an estimated 88 federally permitted vessels are believed to have been operated by small entities during 2004. Forty-three of these appear to have fished within State waters of the Aleutian Islands during at least one month of the year. Thus, an estimated 43 vessels would be directly regulated by this action in the State waters adjacent to the Aleutian Islands subarea. These 43 vessels grossed, on average, about $964,000 from all fisheries, and an average of about $114,000 from their fishing within State waters, within the Aleutian Islands reporting areas.

In the GOA, an estimated 60 federally permitted vessels using mobile bottom contact gear appear to have been operated by small entities during 2004. Twenty-seven of these appear to have fished with mobile bottom contact gear within State waters adjacent to the GOA during at least one month of the year. Thus, an estimated 27 mobile bottom contact vessels would be directly regulated by this action. These 27 vessels grossed, on average, about $660,000 from all fisheries, and an average of about $36,000 from their fishing with mobile bottom contact gear within State waters adjacent to the GOA.

Based on these cost estimates, the calculated upper bounds for annual transmission and maintenance costs are $10,617 per year, or $247 per small entity. Thus, average annual costs would be 0.03 percent of total annual revenues from all sources, and 0.2 percent of revenues from fishing within State waters adjacent to the Aleutian Islands subarea. In addition, an entity may need to acquire a VMS unit to comply with this regulation. The cost of this is estimated to be $2,174, although a portion of this cost is reimbursable by the Pacific States Marine Fisheries Commission (PSMFC). The analysis estimated that about $1,600 of the initial purchase price would be reimbursable.

These cost estimates may be upper bounds for several reasons. For example, some of these vessels may already be subject to VMS regulations because of crab requirements imposed since 2004. Moreover, as noted above, vessels buying VMS to comply with this regulation are eligible for a reimbursement of a portion of the initial purchase price from the PSMFC. Some vessels may choose to avoid the VMS requirement by surrendering their federal permit during periods when they expect to operate only in State waters.

Based on these statistics, estimates of the upper bound annual transmission and maintenance costs are $3,952 per year, or $146 per small entity. Thus, average annual costs would be 0.02 percent of total annual gross revenues from all sources, and 0.4 percent of gross revenues from fishing within State waters adjacent to the GOA. In addition, two small entities may be required to acquire VMS units to comply with this regulation. The total cost of this is estimated to be $4,348, or $2,174 per vessel, although the current reimbursement program would offset some of this cost. As discussed in the RIR, there are several reasons for believing that these costs are upper bound estimates.

For purposes of the VMS requirement, a federally permitted vessel is one required to carry either a Federal fisheries permit or a Federal crab vessel permit. This action would add new reporting requirements for federally permitted vessels fishing in State waters adjacent to the Aleutian Islands subarea, or for federally permitted vessels with mobile bottom contact gear onboard while operating in State waters adjacent to the GOA. These fishing operations would be required to carry VMS units, and to report their locations every half hour while they were in fisheries subject to the requirement. Moreover, they would be required to notify NOAA Office of Law Enforcement (OLE) that their VMS unit was active before it was used for fishing activity. They would be required to notify NOAA OLE in the event of a breakdown of the unit. Estimated costs are described above.

There are no Federal rules that duplicate, overlap, or conflict with the proposed action.

An IRFA must describe any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. This action has only the status quo and the preferred alternative. The status quo does not meet the objectives of the action because the current regulations do not apply

EFH closures and VMS requirements to certain federally permitted vessels operating in state waters. As noted in Section 2.6 of the IRFA for this action, the objectives of this action are to (1) correct erroneous language contained in current regulations to better reflect the original intent of the Council and to ensure consistency with the FMP amendments and Tables 23 and 24 to 50 CFR part 679, and (2) facilitate enforcement of EFH closure areas within State waters through the use of VMS equipment by federally permitted vessels operating in State waters adjacent to the Aleutian Islands subarea, and by federally permitted vessels operating with mobile bottom contact gear onboard in State waters adjacent to the GOA. In this way, the action provides for the protection of EFH areas in State waters adjacent to the Aleutian Islands subarea and GOA, as was the Council's purpose in the original action.

The purpose of this action is to correct or clarify regulations to make them reflect the original ''preferred alternative'' chosen by the Council and the Secretary of Commerce under the previous EFH action. There are no other identifiable alternatives that would accomplish this objective; and no other alternatives were identified, considered, and rejected.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0445. Public reporting burden per response are estimated to average: 6 seconds for each VMS transmission, 12 minutes for VMS check-in form, 6 hours for VMS installation, and 4 hours for VMSannual maintenance. The response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 11, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator For RegulatoryPrograms, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

2. In § 679.2, revise the definitions for ''Aleutian Islands Coral Habitat Protection Areas'' and ''Aleutian Islands Habitat Conservation Area,'' to read as follows:

§ 679.2 Definitions.

* * * * *

Aleutian Islands Coral Habitat Protection Areas means management areas established for the protection of certain coral garden areas in reporting areas of the Aleutian Islands subarea and adjacent State waters. See Table 23 to this part.

Aleutian Islands Habitat Conservation Area means a management area established for the protection of fish habitat in reporting areas of the Aleutian Islands subarea and adjacent State waters. See Table 24 to this part.

* * * * *

3. In § 679.28, paragraphs (f)(6)(ii) and (iii) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(ii) You operate a vessel required to be federally permitted in reporting areas located in the Aleutian Islands subarea or operate a federally permitted vessel in adjacent State waters;

(iii) You operate a vessel required to be federally permitted with mobile bottom contact gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with mobile bottom contact gear onboard in adjacent State waters; or

* * * * *

[FR Doc. E7–11633 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 117
Tuesday, June 19, 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

Agricultural Marketing Service

[Docket No. AMS–FV–07–0078; FV–07–377]

Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Notice of reestablishment of the U.S. Department of Agriculture (USDA) Fruit and Vegetable Industry Advisory Committee and a request for nominations.

SUMMARY: The USDA reestablished the Fruit and Vegetable Industry Advisory Committee (Committee). The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary of Agriculture on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs. USDA also seeks nominations of individuals to be considered for selection as Committee members.

DATES: Written nominations must be received on or before July 19, 2007.

ADDRESSES: Nominations should be sent to Robert C. Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2077–S, Stop 0235, Washington, DC 20250–0235; Facsimile: (202) 720–0016. E-mail: *robert.keeney@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Hatch, Designated Federal Official; phone: (202) 690–0182; e-mail: *andrew.hatch@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture reestablished the Fruit and Vegetable Industry Advisory Committee for two years. The purpose of the Committee is to examine the full spectrum of issues faced by the fruit and vegetable industry and provide suggestions and ideas to the Secretary on how USDA can tailor its programs to better meet the fruit and vegetable industry's needs. The Deputy Administrator of the Agricultural Marketing Service's Fruit and Vegetable Programs will serve as the Committee's Executive Secretary. Representatives from USDA mission areas and agencies affecting the fruit and vegetable industry will be called upon to participate in the Committee's meetings as determined by the Committee Chairperson.

Industry members will be appointed by the Secretary of Agriculture and serve 2-year terms. Membership will consist of up to twenty-five (25) members who represent the fruit and vegetable industry and will include individuals representing fruit and vegetable growers/shippers, wholesalers, brokers, retailers, processors, fresh cut processors, foodservice suppliers, state departments of agriculture, and trade associations. The members of the reestablished Committee will elect the Chairperson and Vice Chairperson of the Committee. In absence of the Chairperson, the Vice-Chairperson will act in the Chairperson's stead.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the reestablished Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee, and list their name, title, address, telephone, and fax number. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in providing suggestions and ideas on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

Individuals who are nominated will receive necessary forms from USDA for membership. The biographical information and clearance forms must be completed and returned to USDA within 10 working days of notification, to expedite the clearance process that is required before selection of Committee members by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Dated: June 8, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–11724 Filed 6–18–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0021]

Availability of an Environmental Assessment for a Field Test of Two Non-pathogenic, Genetically Engineered Strains of Burkholderia glumae

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposed field trial involving two genetically engineered strains of the bacterium *Burkholderia glumae. Burkholderia glumae* is a plant pathogen that causes panicle blight in rice. The purpose of this field test is to conduct experiments that will provide information on the pathogenicity of *Burkholderia glumae* and will assist in the development of control methods to reduce yield loss caused by panicle blight. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 19, 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–2007–0021 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instruction 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–2007–0021, 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–2007–0021.

Reading Room: You may read the environmental assessment (EA) and any comments we receive on the EA 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. The EA is available on the Internet at *http://aphis.usda.gov/brs/aphisdocs/06_11101r_ea.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Huberty, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0659. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On April 21, 2006, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 06–111–01r) from Louisiana State University, in Baton Rouge, LA, for a field trial using strains of the bacterium *Burkholderia glumae.* Permit application 06–111–01r describes four *Burkholderia glumae* strains: Two wild-type strains, one of which is disease-causing and the other naturally non-pathogenic, endemic to the United States, and two genetically engineered, non-pathogenic strains that share the same avirulent phenotype. The transgenic strains were created by placing base pairs of a methyltransferase gene into the cloning vector. The introduced vector, along with the methyltransferase gene, will integrate into the bacterial chromosome by homologous recombination.

The subject *Burkholderia glumae* is considered a regulated article under the regulations in 7 CFR part 340 because it is the causal pathological agent of panicle blight in rice, a plant disease occurring in the United States.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release of these bacterial strains, we have prepared an environmental assessment (EA). The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–11813 Filed 6–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0190]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Proposed Field Release of Genetically Engineered Safflower

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment has been prepared for a proposed field release involving a transgenic safflower line that has been genetically engineered to express, within the seeds, a carp growth hormone fused to an *Arabidopsis* oleosin. The purpose of this field release is to obtain a seed increase for future use as a supplement in aquaculture meal. After assessment of the application, review of pertinent scientific information, and consideration of comments provided by the public, we have concluded that these field releases will not present a risk of introducing or disseminating a plant pest. We have completed the environmental assessment and have concluded that this field release will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field releases.

DATES: *Effective Date:* June 7, 2007.

ADDRESSES: You may read the environmental assessment (EA), the finding of no significant impact (FONSI), and any comments we received 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. The EA, FONSI and decision notice, and responses to comments are available on the Internet

at: *http://www.aphis.usda.gov/brs/aphisdocs/06_25002r_ea.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Beetham, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0664. To obtain copies of the EA, FONSI, and response to comments, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On September 5, 2006, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 06–250–02r) from SemBioSys Genetics, Inc. of West Sacramento, CA, for a field trial using a line of transgenic safflower. Permit application 06–250–02r describes a transgenic safflower (*Carthamus tinctorius*) cultivar that has been genetically engineered to express a fusion protein consisting of oleosin from *Arabidopsis thaliana* and carp growth hormone (somatotropin) from *Cyprinus carpio* exclusively within its seeds. Expression of this fusion protein is controlled by the phaseolin promoter and terminator sequences from *Phaseolus vulgaris* L. (common bean). Constructs were inserted into the recipient organisms via a disarmed *Agrobacterium tumefaciens* vector system. The seed from these safflower plants will be ground and incorporated into aquaculture feed to be used in experimental fish feeding studies by SemBioSys and is not for commercial production.

The subject safflower is considered a regulated article under the regulations in 7 CFR part 340 because it has been genetically engineered using the recombinant DNA technique using a vector derived from *Agrobacterium tumefaciens.*

On February 5, 2007, APHIS published a notice in the **Federal Register** (72 FR 5263–5264, Docket No. APHIS–2006–0190) announcing the availability of an environmental assessment (EA) for the proposed field release. During the 30-day comment period, APHIS received 33 comments. Two comments were from individuals who supported the planting of genetically engineered crops in general, but did not raise any specific points regarding the EA. Conversely, 23 comments were from individuals who were opposed to the use of biotechnology in food crops in general, but did not cite specific plant pest risk issues associated with this particular EA. One public interest group submitted 20,360 nearly identical letters from individuals opposing pharmacological proteins produced in food crops in general without addressing specific issues within the EA. Another public interest group submitted a letter bearing 25 signatures of representatives of various organizations that oppose pharmacological proteins in food crops and addressed specific issues within the EA. In total, eight public interest groups wrote letters in opposition to allowing the planting of the transgenic safflower. APHIS' responses to these comments are provided as an attachment to the finding of no significant impact (FONSI) and decision notice.

Pursuant to the regulations in 7 CFR part 340 promulgated under the Plant Protection Act, APHIS has determined that this field release will not pose a risk of the introduction or dissemination of a plant pest. Additionally, based upon analysis described in the EA, APHIS has determined that the action proposed in Alternative B of the EA, issue the permit with supplemental permit conditions, will not have a significant impact on the quality of the human environment. You may read the FONSI and decision notice on the Internet or in the APHIS reading room (see **ADDRESSES** above). Copies may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with proposed release of the transgenic safflower, an EA and FONSI have been prepared. The EA and FONSI were prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of June 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–11798 Filed 6–18–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6310–PN–LITU; HAG 07–0097]

Notice of Availability of the Final Supplement to the 2004 Final Supplemental Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines.

AGENCIES: U.S. Forest Service (FS), Agriculture; Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), and the National Forest Management Act of 1976 (NFMA, 16 U.S.C. 1600–1614 *et seq.*), the FS and BLM (collectively the Agencies) have prepared a *Final Supplement* to the 2004 Final Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines (2004 FSEIS). The Agencies are supplementing the analyses contained in the 2004 FSEIS, which proposes to amend Land and Resource Management Plans on National Forests and BLM Districts within the range of the northern spotted owl in western Oregon, western Washington and northwestern California.

The Final Supplement is now available. Requests to receive copies of the Final Supplement should be sent to

the addresses listed below. Alternately, the Final Supplement is available on the Internet at *http://www.reo.gov/s-m2006.* Copies are also available for inspection at FS and BLM offices in western Washington, western Oregon and northwestern California.

DATES: Readers should note that the Secretary of Agriculture and the Secretary of the Interior are the responsible officials for this proposed action. Therefore, no administrative review (''appeal'') through the FS will be available on the Record of Decision (ROD) under 36 CFR part 217. Also no administrative review (''protest'') through the BLM will be available on the Final Supplement under 43 CFR 1610.5–2. Because there is no administrative review of the decision and because of the review period described above, the ROD(s) will not be signed until at least 30 days after the Environmental Protection Agency Notice of Availability for the Final Supplement appears in the **Federal Register** (see 40 CFR 1506.10(b)).

ADDRESSES: You may request copies of the Final Supplement, add your name to the mailing list, or submit written comments by either of the following methods. Submit mail to the agencies Survey and Manage Team, PO Box 2965, Portland, OR 97208, or submit e-mail to *ORSMSEIS@blm.gov.*

Comments may be submitted for 30 days.

Before including your address, phone numbers, e-mail address, or other personal identifying information in your comment, 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. No public meetings have been scheduled. All comments received within 30 days will be considered by the decisionmakers.

FOR FURTHER INFORMATION CONTACT: Michael Haske, Chief, Branch of Forest Resources and Special Status Species, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, telephone (503) 808–6066 or Alan Christensen, Group Leader, Wildlife, Fisheries, Watershed, Soils and Range, Forest Service, P.O. Box 3623, Portland, Oregon 97208, telephone (503) 808–2922.

SUPPLEMENTARY INFORMATION: In January 2004 the Agencies released a Final Supplemental Environmental Impact Statement (2004 FSEIS) analyzing a proposal to remove the Survey and Manage Mitigation Measure from the Northwest Forest Plan. The Agencies subsequently released a ROD adopting that proposal. In August 2005 the U.S. District Court of the Western District of Washington found the 2004 FSEIS failed to: (1) ''* * * analyze potential impacts to Survey and Manage species if they are not added to or are removed from the FS's and BLM's respective programs for special status species;'' (2) ''* * * provide a thorough analysis of their assumption that the late-successional reserves would adequately protect species that the Survey and Manage standard was introduced to protect, particularly in light of their previous positions in earlier environmental impact statements;'' and (3) ''* * * disclose and analyze flaws in their methodology for calculating the acreage in need of hazardous fuel treatments. Part of the cost analysis was similarly flawed because it relied on the acreage in need of hazardous fuel treatments in calculating the cost of the Survey and Manage standard.'' The Final Supplement provides the additional information and analysis to address the deficiencies noted by the court, and it provides and analyzes new information available since publication of the 2004 FSEIS. In November 2006, in a different court case, the U.S. Court of Appeals for the Ninth Circuit found the Agencies' 2001 decision to change the category of the red tree vole and the subsequent 2003 removal of red tree vole from Survey and Manage following processes described in the Survey and Manage Standards and Guidelines constituted a BLM plan amendment that should have followed NEPA and applicable planning processes. To address this decision and its potential implications on other 2001 to 2003 species removals and category changes, the Final Supplement includes another no-action alternative that considers all species on Survey and Manage, and their assigned categories, when the previous Survey and Manage Record of Decision was signed in January 2001.

No sooner than 30 days following release of the Final Supplement, the Agencies will prepare a new ROD. A decision to select one of the action alternatives would amend the management direction in all 28 FS and BLM land and resource management plans in the Northwest Forest Plan area.

Lisa Freedman,

Director of Resource Planning & Monitoring, Region 6, USDA Forest Service.

James G. Kenna,

Associate State Director, Oregon/Washington, Bureau of Land Management.

[FR Doc. 07–3041 Filed 6–18–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Fishlake National Forest, USDA Forest Service.

ACTION: Notice of new fee site.

SUMMARY: The Fremont River Ranger District of the Fishlake National Forest will begin charging a $20 fee for double family overnight camping at the Rosebud ATV Campground. There will also be a $5 fee for an extra vehicle. This campground is located on the Dixie National Forest, but is administered by the Fishlake National Forest. Overnight camping at other campgrounds on the Dixie National Forest have shown that publics appreciate and enjoy the availability of developed recreation facilities. Funds from the fee charges will be used for the continued operation and maintenance of the Rosebud ATV Campground.

DATES: Rosebud ATV Campground will become available for overnight camping on May 25, 2008 (weather permitting).

ADDRESSES: Forest Supervisor, Fishlake National Forest, 115 East, 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: David C. Bell, Forester, 435–836–2811.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Fremont River Ranger District of the Fishlake National Forest currently has several fee campgrounds. These facilities are located on Boulder Mountain in south central Utah. They are in close proximity to Scenic Byway 12, an all American highway. This area offers significant recreational camping, fishing, boating, ATV riding, hiking, horseback riding, hunting and wildlife viewing opportunities and is rich in historical and cultural importance. A

market analysis indicates that the $20/per night double family camping fee is both reasonable and acceptable for this sort of unique recreation experience.

Dated: June 6, 2007.

Mary C. Erickson,

Fishlake National Forest Supervisor.

[FR Doc. E7–11800 Filed 6–18–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of new fee site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Fishlake National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Fremont River Ranger District of the Fishlake National Forest will begin charging a $10 fee for single family overnight camping and a $25 fee for group family overnight camping at the Tasha Equestrian Campground. There will also be a $5 fee for an extra vehicle. Overnight camping at other campgrounds on the Fishlake National Forest have shown that publics appreciate and enjoy the availability of developed recreation facilities. Funds from the fee charges will be used for the continued operation and maintenance of the Tasha Equestrian Campground.

DATES: Tasha Equestrian Campground will become available for overnight camping on May 25, 2008 (weather permitting).

ADDRESSES: Forest Supervisor, Fishlake National Forest, 115 East, 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION CONTACT: David C. Bell, Forester, 435–836–2811.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Fremont River Ranger District of the Fishlake National Forest currently has several other fee campgrounds. These facilities are within the Fish Lake Basin Recreation Area in close proximity to Fish Lake, the largest natural mountain lake in the state. It is the only equestrian campground in the area. This area offers significant recreational opportunities such as camping, boating, fishing, hiking, horseback riding, and wildlife viewing. A market analysis indicates that the $10/per night single family camping fee and $25/per night group family camping fee is both reasonable and acceptable for this sort of unique recreation experience.

Dated: June 6, 2007.

Mary C. Erickson,

Fishlake National Forest Supervisor.

[FR Doc. E7–11802 Filed 6–18–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: One-Time Report for Foreign Software of Technology Eligible for De Minimis Exclusion.

Agency Form Number: None.

OMB Approval Number: 0694–0101.

Type of Request: Extension of a currently approved collection of information.

Burden Hours: 5,925.

Average Time per Response: 25 hours.

Number of Respondents: 237.

Needs and Uses: Any company that is seeking exemption from export controls on foreign software and technology commingled with U.S. software or technology must file a one-time report for the foreign software or technology. The report must include the percentage of relevant values in determining U.S. content, assumptions, and the basis or methodologies for making the percentage calculation. The methodologies must be based upon accounting standards used in the operation of the relevant business, which must be specified in the report.

Affected Public: Business or other for-profit organizations.

Respondent's Obligation: Required to obtain benefits.

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.

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, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: June 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 07–3003 Filed 06–18–07; 8:45 am]

BILLING CODE 3510–DT–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: Applications and Reporting Requirements for Small Takes of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0151.

Type of Request: Regular submission.

Burden Hours: 20,456.

Number of Respondents: 72.

Average Hours Per Response: Petition for Regulations, 483 hours; simple LOA application, 3 hours; simple LOA report, 20 hours; complex LOA application, 120 hours; complex LOA report, 285 hours; simple IHA application, 160 hours; simple IHA report, 120 hours; complex IHA application, 285 hours; complex IHA report, 325 hours.

Needs and Uses: The ''taking'' by harassment, injury, or mortality of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA) unless exempted or authorized by a permit. The small-take program authorized the taking of marine mammals incidental to maritime activities (oil industry, shipping). It is the responsibility of the activity to determine if it might have a ''taking'' and, if it does, to apply for an authorization. Applications are necessary for NMFS to know that an authorization is needed and to determine whether authorization can be made under the MMPA. The reporting requirements are mandated by the MMPA and are necessary to ensure that determinations made in regard to the impact on marine mammals are valid.

Affected Public: Business or other for-profit organizations; not-for-profit

institutions; Federal Government; State, Local or Tribal Government.

Frequency: Annually, quarterly, and on occasion.

Respondent's Obligation: Mandatory.

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: June 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11765 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Delivery Verification Certificate.

Agency Form Number: BIS–647P.

OMB Approval Number: 0694–0016.

Type of Request: Extension of a currently approved collection of information.

Burden Hours: 56.

Average Hours Per Response: 34 minutes.

Number of Respondents: 100.

Needs and Uses: The Delivery Verification Certificate is the result of an agreement between the United States and a number of other countries to increase the effectiveness of their respective controls over international trade in strategic commodities. The form is issued and certified by the government of the country of ultimate destination, at the request of the U.S. government (BIS). It is a service performed to honor an agreement between the U.S. Government and the other countries participating in this Delivery Verification procedure.

Affected Public: Business or other for-profit organizations.

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 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.

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, e-mail address, *David_Rostker@omb.eop.gov*, or fax number, (202) 395–7285.

Dated: June 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11766 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE.

International Trade Administration

[A–357–812]

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2005, to November 30, 2006, with respect to four companies. This rescission, in part, is based on the timely withdrawal of the request for review by the interested parties that requested the review. A complete list of the companies for which the administrative review is being rescinded is provided in the background section below.

EFFECTIVE DATE: June 19, 2007.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone: (202) 482–0408 and (202) 482–0649, respectively.

BACKGROUND:

On December 1, 2006, the Department published in the **Federal Register** its notice of an opportunity to request a review of the antidumping duty order on honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). In response, on December 29, 2006, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2005, through November 30, 2006. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by nine Argentine producers/exporters[1]. In addition, the Department received requests for review from six Argentine exporters included in the petitioners' request. Furthermore, the Department received one request from a producer/exporter that was not included in petitioners' requests for review.

On February 2, 2007, the Department initiated a review on the ten companies[2] for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007).

On March 9, 2007, petitioners timely withdrew their requests for review of the following companies: Agroin Las Piedras Ltda., Seabird Argentina S.A. and Ultramar Argentina S.A.. *See* Letter from petitioners to the Department, Honey From Argentina, (March 9, 2007), on file in the Central Records Unit (CRU), room B–099 of the main Department building. On April 23, 2007, Nexco S.A. (Nexco) withdrew its request for a review. On April 24, 2007, petitioners withdrew their request for a review of Nexco.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of

[1] Petitioners requested Mielar S.A. (Mielar) and Compania Apicola Argentina (CAA) as separate entities. However, in a previous segment of this proceeding, the Department treated these two companies as a single entity.

[2] The Federal Register notice lists 11 companies but as explained above Mielar and CAA are currently being treated as a single entity based on decisions made in a previous segment of this proceeding.

natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under the scope of the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under this order is dispositive.

Rescission in Part, of Administrative Review:

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review in whole or in part. The petitioners made a timely withdrawal of their requests for an administrative review within the 90-day deadline, for the following companies: Agroin Las Piedras Ltda., Seabird Argentina S.A. and Ultramar Argentina S.A. Because the petitioners were the only party to request administrative review of these companies, we are rescinding the review with regard to Agroin Las Piedras Ltda., Seabird Argentina S.A. and Ultramar Argentina S.A. Furthermore, as both petitioners and respondent Nexco timely withdrew their requests for review of this company, we are rescinding this review with respect to Nexco.

The Department will issue appropriate assessment instructions directly to the CBP 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties for these companies at the cash deposit rate in effect on the date of entry for entries during the period December 1, 2005, to November 30, 2006.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: June 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration

[FR Doc. E7–11787 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Office of Education Educational Partnership Program (EPP) and Ernest F. Hollings Undergraduate Scholarship Program

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 August 20, 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 Meka Laster, 301–713–9437 or *meka.laster@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) Educational Partnership Program (EPP) collects, evaluates and assesses student data and information for the purpose of selecting successful candidates, generating internal NOAA reports and articles to demonstrate the success of its program. EPP requires applicants to its student scholarship programs to complete an application for NOAA undergraduate and graduate scholarship programs. Part of the application package requires references (*e.g.*, academic professors and advisors) to complete a NOAA student scholar reference form in support of the scholarship application. NOAA EPP student scholar alumni are also requested to provide information for NOAA internal tracking purposes. In addition, the collected student data supports NOAA EPP's program performance measures.

II. Method of Collection

Electronic applications and electronic forms are required from participants, and the primary methods of submittal are email and Internet transmission of electronic forms. Approximately 1% of the application and reference forms may be mailed.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 2,935.

Estimated Number of Annual Responses: 2,935.

Estimated Time per Response: Student tracker database form, 16 hours; graduate application form, 10 hours; undergraduate application form, 8 hours; reference forms, 1 hour.

Estimated Total Annual Burden Hours: 10,020.

Estimated Total Annual Cost to Public: $300.

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: June 14, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–11764 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coral Reef Conservation Program External Review

AGENCY: Coral Reef Conservation Program, NOAA, Department of Commerce.

ACTION: Request for public comment.

SUMMARY: The Coral Reef Conservation Act of 2000 supports effective management and sound science to preserve, sustain, and restore valuable coral reef ecosystems. The NOAA Coral Reef Conservation Program (CRCP or Program) is a partnership among four NOAA Line Offices (i.e., the National Ocean Service, the National Marine Fisheries Service, the National Environmental Satellite, Data, and Information Service, and the Office of Oceanic and Atmospheric Research) working on coral reef issues. The program carries out, directly and in partnership with scientific, private, government and nongovernmental groups, a wide range of coral reef-related activities, including mapping and monitoring, management and capacity building, strategic research, and education and outreach.

In order to evaluate and improve the success of its efforts to understand and conserve coral reefs, the CRCP is undertaking a comprehensive external review of the program. To this end, the CRCP is seeking external feedback, including public comment, on the program's approach to balancing competing priorities.

An independent contractor will summarize all comments received in response to this request and will provide them to an expert review panel scheduled to convene in late September 2007.

DATES: Your comments must be submitted no later than July 19, 2007.

ADDRESSES: This announcement contains guidance on how to provide feedback, including some of the questions for which the CRCP is seeking comment. The questions are also available for download via the Internet on the CRCP Web site at *http://www.coralreef.noaa.gov/review.html.* You may submit comments electronically via e-mail to *crcp.comments@noaa.gov.* You may also submit comments in writing to: CRCP, c/o Roger Griffis, 1305 East-West Highway, Sta. 10122, (N/ORM), Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Roger Griffis by mail at CRCP, NOAA, 1305 East-West Highway, Sta. 10122, (N/ORM), Silver Spring, Maryland 20910 or phone: (301) 713–3155 ext. 152 or e-mail: *roger.b.griffis@noaa.gov* or visit the CRCP Web site at *http://www.coralreef.noaa.gov/review.html.*

SUPPLEMENTARY INFORMATION: The CRCP's external review will encompass program activities between 2002 and 2006. An independent, external panel of seven experts in coral reef and natural resource science and management will convene for a three day meeting in late September 2007 to review materials and information about the CRCP, develop findings, and make recommendations.

The program is seeking input on the questions listed below. Please note that you do not need to address all questions, and the CRCP welcomes additional input on topics not covered in the questions listed.

Although the CRCP is the most interested in obtaining feedback based on the public's interaction and experience with the Program, background information concerning the CRCP and its activities is available from the CRCP Web site at *http://www.coralreef.noaa.gov/review.html.* The CRCP is seeking input on the following questions:

- Is the Program focusing efforts on the right suite of activities to advance coral reef conservation?
- Are the Program's efforts in various geographic areas appropriate to address the issues in each region?
- Are the Program's science and observation efforts (e.g., research, mapping, and monitoring) adequately addressing management needs, and informing and resulting in management actions?
- Have the Program's education and outreach efforts been effective in reaching the proper audiences?
- Is the Program providing effective leadership and building useful partnerships to advance coral reef conservation?
- How can the CRCP improve its impact and performance in the future?

An electronic version of these questions is available on the CRCP Web site at *http://www.coralreef.noaa.gov/review.html.*

(Optional) When you submit your comments, you are welcome to provide background information about yourself, such as your organization(s), area(s) of expertise, and experience with the CRCP. This information will be used by the independent consultant who will compile and summarizes the comments.

Public comments may be submitted from June 19, 2007 [publication date], through July 19, 2007 [30 days after].

Dated: June 13, 2007.

David M. Kennedy,

Program Manager, Coral Reef Conservation Program, National Oceanic and Atmospheric Administration

[FR Doc. 07–2990 Filed 6–18–07; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Nationwide TRICARE Demonstration Project

AGENCY: Department of Defense.

ACTION: Notice extending deadline for demonstration project.

SUMMARY: The Demonstration is also referred to as the Operation Noble Eagle/Enduring Freedom Reservist and National Guard Benefits Demonstration. This notice is to advise interested parties of the continuation of the Demonstration in which the DoD Military Health System addresses unreasonable impediments to the continuity of healthcare encountered by certain family members of Reservists and National Guardsmen called to active duty in support of a Federal/contingency operation. The Demonstration scheduled to end on October 31, 2007, is now extended through October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, TRICARE Operations Directorate at (703) 681–0039.

SUPPLEMENTARY INFORMATION: On November 5, 2001, the Department of Defense (DoD) published a notice of a Nationwide TRICARE Demonstration Project (66 FR 55928–55930). On October 1, 2004, the Department of Defense (DoD) published a notice (69 FR 58895) to extend the Demonstration through October 31, 2005. On October 12, 2005, the Department of Defense (DoD) published a notice (70 FR 59320) to extend the Demonstration through October 31, 2007. The continued activation of Reserve Component members in support of Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom warrants the continuation of the Demonstration to support the healthcare needs and morale of family members of activated Reservists and guardsmen. The National Defense Authorization Act of 2005 amended existing statutes to authorize the Secretary of Defense to provide these benefits permanently by regulation. The Demonstration needs to be extended to allow sufficient time to complete the rule-making process. The impact, if the Demonstration is not extended before the regulation is completed, includes higher out-of-pocket costs and potential inability of beneficiaries to continue to use the same provider for ongoing care. There are three separate components to the demonstration. First, those who participate in TRICARE Standard will not be responsible for paying the TRICARE Standard deductible. By law, the TRICARE Standard deductible for active duty dependents is $150 per individual, $300 per family ($50/$150 for E–4's and below).

The second component extends TRICARE payment up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient co-payment, for care received from a provider that does not participate (accept assignment) under TRICARE to the extent necessary to ensure timely access to care and clinically appropriate continuity of care.

Third, the Demonstration authorizes a waiver of the non-availability statement requirement of non-emergency impatient care. This Demonstration project is being conducted under the authority of 10 U.S.C. 1092. This Demonstration is extended through October 31, 2008.

Dated: June 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–2999 Filed 6–18–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Sunday, July 14, 2007.

Place of Meeting: The Superintendent's Conference Room, Building 600 (Taylor Hall), West Point, NY.

Time of Meeting: Approximately 12:30 p.m. through 4:30 p.m.

Board Mission: The Board, under the provisions of 10 U.S.C. 4355, and the Federal Advisory Committee Act of 1972, as amended, shall provide the President of the United States independent advice and recommendations on matters relating to the U.S. Military Academy, to include but not limited to morale and discipline, curriculum, instruction, physical equipment, and academic methods.

Board Membership: The Board is composed of 15 members, 9 of which are members of Congress and 6 persons designated by the President. The 2007 Chairman of the Board is Congressman John McHugh, New York—23rd District.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Kramer, United States Military Academy, West Point, NY 10996–5000, (845) 938–5078 or via e-mail: *Cynthia.kramer@usma.edu.*

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Summer Meeting of the Board of Visitors. The Board plans to inquire into instruction and physical equipment, and the BRAC relocation of the United States Military Academy Preparatory School. Board members will observe Cadet Summer Training and participate in roundtable discussions with cadet leadership. Members will receive tours and briefings on renovated Cadet Barracks, Jefferson Hall Library and Learning Center, the West Point Museum, and the BRAC-approved United States Military Academy Preparatory School (USMAPS) location at West Point. All Board meeting proceedings are open to the public. Picture identification is required to enter West Point.

Public Inquiry at Board Meetings: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration.

By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3000 Filed 6–18–07; 8:45 am]

BILLING CODE: 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Solicitation for Estuary Habitat Restoration Program

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of solicitation for project applications.

SUMMARY: Congress has appropriated limited funds to the U.S. Army Corps of Engineers (Corps) to implement the Estuary Habitat Restoration Program as authorized in Section 104 of the Estuary Restoration Act of 2000, Title I of the Estuaries and Clean Waters Act of 2000 (Pub. L. 106–457) (accessible at *http://era.noaa.gov/pdfs/act_s835.pdf*). On behalf of the Estuary Habitat Restoration Council (Council), the Corps is soliciting proposals for estuary habitat restoration projects. This document describes project criteria and evaluation criteria the Council will use to determine which projects to recommend. Recommended projects must provide ecosystem benefits, have scientific merit, be technically feasible, and be cost-effective. Proposals selected for Estuary Habitat Restoration Program funding will be implemented in accordance with a cost-share agreement with the Corps. This is not a grants program.

DATES: Proposals must be received on or before August 20, 2007.

ADDRESSES: Proposal forms may be accessed at *http://www.usace.army.mil/cw/cecwp/estuary_act/index.htm* or by contacting the individuals listed in the following section. Project proposals may be submitted electronically, by mail, or by courier. Electronic submissions are preferred and will facilitate processing. Please follow the detailed instructions

provided in Section X. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750, e-mail: *Ellen.M.Cummings@usace.army.mil;* or, Mr. Chip Smith, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 693–3655, e-mail: *Chip.Smith@HQDA.Army.Mil.*

SUPPLEMENTARY INFORMATION: Arrangements have been made for a conference call to answer questions regarding this solicitation. The call has been scheduled for July 16, 2007 at 1 p.m. EDT. This will be a long distance call but there will be no surcharge above each participant's normal costs for long distance calls. In order to assure adequate lines are available, please send an email with a subject line of ''EHRP solicitation conference call'' to Ms. Cummings or Mr. Smith by noon on July 11, 2007. A reply will be sent to each message containing the telephone number and access code for the call. A second call will be scheduled at a later date if necessary.

I. Introduction

Under the Estuary Habitat Restoration Program, the U.S. Army Corps of Engineers (Corps) is authorized to carry out estuary habitat restoration projects. However, the Estuary Habitat Restoration Council (Council) is responsible for soliciting, reviewing and evaluating project proposals. The Corps may only fund projects on the prioritized list provided by the Council. The Estuary Habitat Restoration Strategy prepared by the Council contains introductory information about the program and provides the context in which projects will be evaluated and the program will be conducted. The Strategy was published in the **Federal Register** (67 FR 71942) on December 3, 2002. It is also accessible at *http://www.usace.army.mil/cw/cecwp/estuary_act/index.htm* in PDF format.

An emphasis will be placed on achieving cost-effective restoration of ecosystems while promoting increased partnerships among agencies and between public and private sectors. Projects funded under this program will contribute to the Estuary Habitat Restoration Strategy goal of restoring 1,000,000 acres of estuary habitat.

For purposes of this program, *estuary* is defined as ''a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water from land drainage.'' Estuary also includes the ''* * * near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries * * *''. For this program, estuary is considered to extend from the head of tide to the boundary with the open sea (to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas will be considered to be estuaries. Estuary habitat includes the estuary and its associated ecosystems, such as: Salt, brackish, and fresh water coastal marshes; coastal forested wetlands and other coastal wetlands; maritime forests; coastal grasslands; tidal flats; natural shoreline areas; shellfish beds; sea grass meadows; kelp beds; river deltas; and river and stream corridors under tidal influence.

II. Eligible Restoration Activities

Section 103 of the Estuary Restoration Act of 2000 (the Act) defines the term *estuary habitat restoration activity* to mean ''an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.'' Projects funded under this program will be consistent with this definition.

Eligible habitat restoration activities include re-establishment of chemical, physical, hydrologic, and biological features and components associated with an estuary. Restoration may include, but is not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; appropriate reef/substrate/habitat creation; planting of native estuarine wetland and submerged aquatic vegetation; reintroduction of native species; control of invasive species; and establishment of riparian buffer zones in the estuary. Cleanup of pollution for the benefit of estuary habitat may be considered, as long as it does not meet the definition of excluded activities under the Act (see section III, Excluded Activities, below).

In general, proposed projects should clearly demonstrate anticipated benefits to habitats such as those habitats listed in the Introduction. Although the Council recognized that water quality and land use issues may impact habitat restoration efforts and must be considered in project planning, the Estuary Habitat Restoration Program is intended to fund physical habitat restoration projects, not measures such as storm water detention ponds, wastewater treatment plant upgrades or combined sewer outfall improvements.

III. Excluded Activities

Estuary Habitat Restoration Program funds will not be used for any activity that constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law, or that constitutes restoration for natural resource damages required under any Federal or State law. Estuary Habitat Restoration Program funds will not be used for remediation of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675). Additionally, Estuary Habitat Restoration Program funds will not be used to carry out projects on Federal lands.

IV. Project Sponsor and Cost Sharing

The Non-Federal Sponsor may be a State, a political subdivision of a State, a Tribe, or a regional or interstate agency. A non-governmental organization may serve as a Non-Federal Sponsor as determined by the Secretary of the Army (Secretary) in consultation with appropriate State and local governmental agencies and Tribes. For purposes of this act the term non-governmental organization does not include for profit enterprises. The Non-Federal Sponsor must be able to provide the real estate interests necessary for implementation, operation, maintenance, repair, rehabilitation and replacement of the project. In most cases this means the Non-Federal Sponsor must have fee title to the lands necessary for the project although in some cases an easement may be sufficient.

The Federal share of the cost of an estuary habitat restoration project shall not exceed 65 percent except that the Federal share shall be 85 percent of the incremental additional cost of pilot testing or demonstration of an innovative technology having the potential for improved cost-effectiveness. Innovative technology is defined as novel processes, techniques and/or materials to restore habitat, or the use of existing processes, techniques, and/or materials in a new restoration application.

Prior to initiation of a project, the Non-Federal Sponsor must enter into a written agreement with the Corps in which the Non-Federal Sponsor agrees to provide its share of the project cost. The Non-Federal Sponsor shall provide

necessary lands, easements, rights-of-way, and relocations. The value of the required real estate interests will be credited towards the Non-Federal Sponsor's share of the project cost. The Non-Federal Sponsor may also provide services and in-kind contributions for credit toward its share of the project cost. Credit for the value of in-kind contributions is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including but not limited to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), and the Copeland AntiKickback Act (40 U.S.C. 276c). Credit may be afforded for the value of required work undertaken by volunteers, using the hourly value in common usage for grants program but not to exceed the Federal estimate of the cost of activity. The Non-Federal Sponsor shall also have a long-term responsibility for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating these projects as well as for the required post-construction monitoring. The cost of these activities will not be included in the total project cost and will not count toward the Non-Federal Sponsor's minimum 35 percent share of the project cost.

Other Federal funds, i.e. funds appropriated to agencies other than the Corps, may not be used by the Non-Federal Sponsor to meet its share of the project cost unless the other Federal agency verifies in writing that expenditure of funds for such purpose is expressly authorized by statute. Otherwise, other Federal funds may be used for the proposed project if consistent with the other agency's authorities and will count as part of the Federal share of the project cost. Any non-Federal funds or contributions used as a match for these other Federal funds or any other Federal program may be used toward the project but will not be considered in determining the non-Federal share in relation to the Corps' costs.

Credit will be provided only for work necessary for the specific project being funded with Estuary Habitat Restoration Program funds. For example, a non-Federal entity is engaged in the removal of ten dams, has removed six dams, and now seeks assistance for the removal of the remaining four dams as an Estuary Habitat Restoration Program project. None of the costs associated with the removal of the six dams is creditable as part of the non-Federal share of the project for removal of four dams.

This is not a grants program. The Corps will not transfer funds to the Non-Federal Sponsor. The Corps will implement (construct) some portion of the proposed project. To the extent possible the Corps will use the planning, evaluation, and design products provided by the applicant. However, the Corps will be responsible for assuring compliance with Federal environmental statutes, assuring the project is designed to avoid adverse impacts on other properties and that the project can reasonably be expected to provide the desired benefits, and managing construction activities not performed by the Non-Federal Sponsor as in-kind contribution. These Corps activities will be part of the Federal cost of the project, and the Non-Federal Sponsor should consider these costs in developing the project cost estimate. It is recommended that the Non-Federal Sponsor coordinate with the appropriate Corps district office during preparation of the proposal. Information on district locations and boundaries may be found at *http://www.usace.army.mil/ContactUs.html.* If additional assistance is required please contact Ms. Cummings (see **FOR FURTHER INFORMATION CONTACT** section).

V. Funding Availability

Limited funds have been appropriated for implementation of projects under the Estuary Habitat Restoration Program. The Council will not accept proposals that indicate an estimated Federal cost of less than $100,000 or more than $1,000,000. There is no guarantee that sufficient funds will be available to fund all eligible proposals. The number of proposals funded as a result of this notice will depend on the number of eligible proposals received, the estimated amount of funds required for each selected project, and the merit and ranking of the proposals. The exact amount of the Federal and non-Federal cost share for each selected project will be specified in the written agreement discussed in Project Sponsor and Cost Sharing, Section IV above. Projects selected for funding must be capable of producing the ecosystem benefits described in the proposal in the absence of Federal funding beyond that established in the cost-share agreement.

VI. Proposal Review Process

Proposals will be screened as discussed in section VII.A. below to determine eligibility. The staff of the agencies represented on the Council will conduct a technical review of the eligible proposals in accordance with the criteria described in section VII.B. below. Agency scientists involved in estuarine research or the development and application of innovative methods for restoring estuary habitats will also review proposals that indicate the use of innovative technologies. Each agency will score and rank the proposals; the staff of the five agencies will use these rankings as the basis for a consolidated recommendation. The Council will consider the staff recommendation, the items discussed in sections VII.C. and D. below, and possibly other factors when preparing its prioritized list of recommended projects for the Secretary's use.

VII. Proposal Review Criteria

This section describes the criteria that will be used to review and select projects to be recommended to the Secretary for funding under the Act. It will benefit applicants to ensure that project proposals clearly address the criteria set forth under the following four subsections: Initial Screening of Project Proposals; Evaluation of Project Proposals; Priority Elements; and Other Factors.

A. Initial Screening of Project Proposals

Proposals will be screened according to the requirements listed in sections 104(b) and 104(c)(2) of the Act as described below. In addition, proposed projects must not include excluded activities as discussed in Section III above. Proposals that do not meet all of these initial screening criteria will not be evaluated further. To be accepted the proposal must:

(1) Originate from a Non-Federal Sponsor (section 104(b));

(2) address restoration needs identified in an estuary habitat restoration plan (section 104(c)(2)(A)). The Act defines ''estuary habitat restoration plan'' as any Federal or State plan for restoration of degraded estuary habitat that was developed with substantial participation of the public (section 103(6));

(3) be consistent with the Estuary Habitat Restoration Strategy (section 104(c)(2)(B)) by:

(a) including eligible restoration activities that provide ecosystem benefits;

(b) addressing estuary habitat trends (including historic losses) in the project region, and indicating how these were considered in developing the project proposal;

(c) involving a partnership approach, and

(d) clearly describing the benefits expected to be realized by the proposed project;

(4) include a monitoring plan that is consistent with standards developed by NOAA under section 104(c)(2)(C)) (available at: *http://era.noaa.gov/htmls/*

era/era_monitoring.html, or from the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section). Minimum monitoring requirements include monitoring over a period of five years and tracking of at least one structural and one functional element. Examples of structural and functional elements are contained in the monitoring document cited above, and;

(5) include satisfactory assurances that the Non-Federal Sponsor has adequate authority and resources to carry out items of local cooperation and properly maintain the project (section 104(c)(2)(D)).

B. Evaluation of Project Proposals

Proposals that meet the initial screening criteria in A. above will be eligible for further review using the criteria listed below. The following criteria are listed in order of relative importance with the most important criteria first. The first four criteria are the most important. If the reviewers find that a response to any of the first four criteria is completely inadequate, the proposals will be rejected. For each of the listed criteria the focus will be on the factors mentioned below but other factors may also be considered.

(1) Ecosystem Benefits

Proposals will be evaluated based on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. Following are specific factors that reviewers will consider as part of this criterion:

(a) Prevention or reversal of estuary habitat loss or degradation in the project area and the nature and extent of the proposed project's potential contribution to the long-term conservation of estuary habitat functions,

(b) benefits for Federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species or designated or proposed critical habitat in the project areas,

(c) extent to which the project will provide, restore, or improve habitat important for estuary-dependent fish and/or migratory birds (e.g. breeding, spawning, nursery, foraging, or staging habitat),

(d) prevention or reduction of nonpoint source pollution or other contaminants to estuary habits or restoration of estuary habitats that are already contaminated, and

(e) benefits or nearby existing habitat areas, or contribution to the creation of wildlife/ecological corridors connecting existing habit areas.

Examples of activities that would not qualify would be restoration of an oyster bed open to commercial harvest or a fish hatchery. Educational facilities such as classrooms, botanical gardens, or recreational facilities such as trails or boat ramps would also not qualify for cost sharing under this program although they may be included in the project if they do not conflict with the environmental benefits expected from project implementation.

(2) Cost-Effectiveness

Reviewers will evaluate the relationship between estimated project costs, including the costs of remaining planning, design, construction, required lands, and annual operation, maintenance, repair, rehabilitation and replacement and monitoring cost, to the monetary and non-monetary benefits described in the proposal. Clear quantitative and qualitative descriptions of the proposed outputs will facilitate this evaluation. Examples of units of measure include: acres restored, flood damage reduction levels, changes in water quality parameters, increases in the productivity of various species, and presence and absence of certain species. The estimated persistence of the proposed project outputs will be considered. For examples, will the area be maintained as a wetland, or allowed to erode or become upland? Will the proposed project produce additional benefits due to synergy between the proposed project and other ongoing or proposed projects? Reviewers will consider if the proposed project is a cost-effective way to achieve the proposed benefits. In some instances the costs and benefits of proposed projects may be compared to the costs and benefits of other similar projects in the area. The significance of the proposed outputs is also a factor to be considered as part of cost-effectiveness. The significance of restoration outputs should be recognized in terms of institutional (such as laws, adopted plans, or policy statements), public (such as support for the project), or technical (such as addresses scarcity, increases limiting habitat, or improves or increases biodiversity) importance.

(3) Technical Feasibility

Reviewers will evaluate the extent to which, given current and projected environmental conditions of the restoration site—e.g., soils, flood regime, presence of invasive species, surrounding land use—the proposed project is likely to be successfully implemented. Consideration will also be given to:

(a) Potential success of restoration techniques, based on history of successful implementation in field or pilot projects,

(b) implementation schedule.

(c) expected length of time before success can be demonstrated,

(d) proposed corrective actions using monitoring information,

(e) project management plans, and

(f) experience and qualifications of project personnel.

(4) Scientific Merit

Reviewers will evaluate the extent to which the project design is based on sound ecological principles and is likely to meet project goals. This may be indicated by the following factors:

(a) Goals of the project are reasonable considering the existing and former habitat types present at the site and other local influences,

(b) the proposed restoration methodology demonstrates an understanding of habitat function, and

(c) specific methods proposed (if successfully implemented—see criteria on technical feasibility) have a good chance of meeting project goals and achieving long-term sustainability.

(5) Agency Coordination

Reviewers will evaluate the degree to which the project will encourage increased coordination and cooperation among Federal, State, and local government agencies. Some of the indicators used to evaluate coordination are:

(a) The State, Federal, and local agencies involved in developing the project and their expected roles in implementation,

(b) the nature of agency coordination, e.g., joint funding, periodic multi-agency review of the project, collaboration on adaptive management decisions, joint monitoring, opportunities for future collaboration, etc., and

(c) whether a formal agreement, such as a Memorandum of Understanding (MOU), exists between/among agencies as part of the project.

(6) Public/Private Partnerships

One of the focuses of the Act is the encouragement of new public/private partnerships. Reviewers will evaluate the degree to which the project will foster public/private partnerships and uses Federal resources to encourage increased private sector involvement. Indicators of the success at meeting this criteria follow. How will the project promote collaboration or create partnerships among public and private entities, including potential for future

new or expanded public/private partnerships? What mechanisms are being used to establish the partnership, e.g., joint funding, shared monitoring, joint decision-making on adaptive management strategies? Is there a formal agreement, such as an MOU, between/among the partners as part of the project? Also important is the extent to which the project creates an opportunity for long-term partnerships among public and private entities.

(7) Level of Contribution

Reviewers will consider the level and type (cash or in-kind) of Non-Federal contribution. Providing more than the minimum 35-percent share will be rated favorably. It must be clear how much of the total project cost the Estuary Habitat Restoration Program is expected to provide, how much is coming from other Federal sources, how much is coming directly from the sponsor, and how much is available or expected to be provided by other sources (either cash or in-kind).

(8) Monitoring Plan

Reviewers will consider the following factors in evaluating the quality of the monitoring plan:

(a) Linkage between the monitoring methods and the project goals, including success criteria,

(b) how results will be evaluated (statistical comparison to baseline or reference condition, trend analysis, or other quantitative or qualitative approach),

(c) how baseline conditions will be established for the parameters to be measured,

(d) if applicable, the use and selection of reference sites, where they are located, how they were chosen, and whether they represent target conditions for the habitat or conditions at the site without restoration,

(e) the appropriateness of the nature, frequency, and timing of measurements and which areas will be sampled,

(f) provisions for adaptive management, and data reporting, and

(g) whether the length of the proposed monitoring plan is appropriate for the project goals. The minimum required monitoring period is five years.

(9) Multiple Benefits

In addition to the ecosystem benefits discussed in criterion (1) above, restored estuary habitats may provide additional benefits. Among those the reviewers will consider are: flood damage reduction, protection from storm surge, water quality and/or quantity for human uses, recreational opportunities, and benefits to commercial fisheries.

(10) Dedicated Funding Source

Reviewers will consider if the State in which the proposed project will be located has a dedicated source of funding to acquire or restore estuary habitat, natural areas, and open spaces for the benefit of estuary habitat restoration or protection.

(11) Supports Regional Restoration Goals

Reviewers will evaluate the extent to which the proposed project contributes to meeting and/or strengthening the needs, goals, objectives and restoration priorities contained in regional restoration plans, and the means that will be used to measure such progress.

(12) Supports Federal Plan

If the proposed project supports a Federal plan (examples of Federal plans are listed in section 103(b)(B) of the Act), reviewers will consider the extent to which the project would contribute to meeting and/or strengthening the plan's needs, goals, objectives and restoration priorities, and the means that will be used to measure such progress.

C. Priority Elements

Section 104(c)(4) of the Act directs the Secretary to give priority consideration to a project that merits selection based on the above criteria if it:

(1) Occurs within a watershed where there is a program being implemented that addresses sources of pollution and other activities that otherwise would adversely affect the restored habitat; or

(2) includes pilot testing or demonstration of an innovative technology having the potential to achieve better restoration results than other technologies in current practice, or comparable results at lower cost in terms of energy, economics, or environmental impacts.

The Council will also consider these priority elements in ranking proposals.

D. Other Factors

In addition to considering the composite ratings developed in the evaluation process and the priority elements listed in C. above, the Council will consider other factors when preparing its prioritized list for the Secretary's use. These factors include (but may not be limited to) the following:

(1) Readiness of the project for implementation. Among the factors to be considered when evaluating readiness are the steps that must be taken prior to project implementation, potential delays to project implementation, and the status of real estate acquisition.

(2) Balance between large and small projects, as defined in the Estuary Habitat Restoration Strategy.

(3) Geographic distribution of the projects.

VIII. Project Selection and Notification

The Secretary will select projects for funding from the Council's prioritized list of recommended projects after considering the criteria contained in section 104(c) of the Act, availability of funds and reasonable additional factors. It is expected that the Secretary will select proposals for implementation approximately 100 days after the close of this solicitation or 30 days after receiving the list from the Council, whichever is later. The Non-Federal Sponsor of each proposal will be notified of its status at the conclusion of the selection process. Staff from the appropriate Corps Districts will work with the Non-Federal Sponsor of each selected project to develop the cost-sharing agreements and schedules for project implementation.

IX. Project Application Form Clarifications

Most of the entries are relatively self-explanatory, however, based on experience some clarifying comments are provided to facilitate completion of the form.

A. Project name should be short but unique and descriptive.

B. Organization Point of Contact. The individual listed should be the person that can answer project specific questions and will be the day-to-day contact for the project. This may be a different individual than the individual signing the Non-Federal certification.

C. Item 8. Funding and Partners. Post-construction costs including monitoring do not count as a cost share for projects funded under the Estuary Restoration Act and should not be included in the estimated total project cost. In the table, list the share of the project cost being sought from the Estuary Habitat Restoration Program as from the Corps. For this entry the ''contribution type'' is in-kind and the entire amount originates from a Federal funding source.

D. Include the name of the organization as well as the title of the individual signing the Non-Federal Sponsor certification.

E. If submitting a proposal electronically, a hard copy of the Letter of Assurance and Certification may be submitted if it is post-marked by the closing date for this announcement and the electronic submission has the text of the Letter of Assurance and Certification with an indication of the date signed and name/title/organization of the

individual signing these documents. The Letter of Assurance should be addressed to ''Chairman, Estuary Habitat Restoration Council'' and sent to the address in Section X for hard copy submittals.

F. In the project description section of the project application form the phrase ''Estimated life cycle of the project'' refers to the functional life of the project. As an example a wetland may fill with sediment over time and its functionality diminished. The ''life-cycle'' would be the number of years until the project no longer provided the original benefits.

G. The proposed project should only be described as innovative if the Non-Federal Sponsor is requesting the special cost sharing for the incremental costs of including testing of or a demonstration of an innovative technology as defined as defined in the application form.

X. Application Process

Proposal application forms are available at *http://www.usace.army.mil/cw/cecwp/estuary_act/index.htm* or by contacting Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750, e-mail: *Ellen.M.Cummings@usace.army.mil*; or Chip Smith, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 693–3655, e-mail: *Chip.Smith@HQDA.Army.Mil.* The application form has been approved by OMB in compliance with the Paper Work Reduction Act and is OMB No. 0710–0014 with an expiration date of 04/30/2008. Electronic submissions are preferred and should be sent to *estuary.restoration@usace.army.mil.* Multiple e-mail messages may be required to ensure successful receipt if the files exceed 4MB in size. Questions may also be sent to the same e-mail address. Hard copy submissions may be sent or delivered to HQUSACE, ATTN: CECW–PB, 7701 Telegraph Road #3D72, Alexandria, VA 22315–3860. The part of the nomination prepared to address the ''proposal elements'' portion of the application should be no more than twelve double-spaced pages, using a 10 or 12-point font. Paper copies should be printed on one side only of an 8.5 in. X 11 in. page and not bound. Only one hard copy is required. A PC-compatible floppy disk or CD–ROM in either Microsoft Word or WordPerfect format may accompany the paper copy. Nominations for multiple projects submitted by the same applicant must be submitted in separate e-mail messages and/or envelopes.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3002 Filed 6–18–07; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–14–000]

Bridgeline Holdings, L.P.; Notice of Rate Filing

June 12, 2007.

Take notice that on June 1, 2007, Bridgeline Holdings, L.P. (Bridgeline) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Bridgeline requests the Commission to approve a maximum interruptible rate of $0.3452 per MMBtu, a maximum firm usage charge of $0.2449 per MMBtu, a monthly reservation charge of $3.05 per MMBtu, and fuel retention of 0.29 percent for transportation service under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time June 27, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11740 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–367–000]

Columbia Gas Transmission Corporation; Notice of Application

May 16, 2007.

Take notice that on May 3, 2007, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP07–367–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate facilities located in Ohio, West Virginia, and Virginia, for its Eastern Market Expansion (EME) Project. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

As part of the EME project, Columbia is seeking authorization to construct approximately 15.26 miles of pipeline, drill 9 new wells and recondition 14 existing wells at the Crawford, Coco A, and Coco C storage fields, install 12,280 horsepower at the Lanham, Lost River, and Seneca compressor stations, and upgrade various existing delivery points. When completed, the facilities will allow Columbia to provide up to 97,050 Dth per day of firm storage service, all as more fully set forth in the

application which is on file with the Commission and open for public inspection. Columbia, also, proposes to accelerate replacement and reliability facility construction originally scheduled to occur within 5 years at the three compressor sites. This construction will involve replacing 22,460 horsepower of existing compressor facilities, and be done at the same time as the EME units are installed.

Any questions regarding this Application should be directed to Fredric K. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or by fax at (304) 357–3206.

On September 25, 2006, the Commission staff granted Columbia's request to utilize the Commission's Pre-Filing Process and assigned Docket No. PF06–35–000 to staff activities involving Columbia's EME project. Now, as of the filing of Columbia's application on May 3, 2007, the Pre-Filing Process for this project has ended. From this time forward, Columbia's proceeding will be conducted in Docket No. CP07–367–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: June 6, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11735 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12726–001]

Eastern Oregon Light and Power, LLC.; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

June 12, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for an original License and Pre-Application Document.

b. *Project No.: 12726–001.*

c. *Dated Filed:* April 17, 2007.

d. *Submitted by:* Eastern Oregon Light and Power, LLC.

e. *Name of Project:* Rock Creek Hydroelectric Project.

f. *Location:* The proposed Rock Hydroelectric Project would be located on Rock Creek in Baker County, Oregon. The proposed project would likely occupy lands of the United States within the jurisdiction of the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mark A. Henderson. P.O. Box 247 Haines, OR 97833–0247, (541) 856–0247.

i. *FERC Contact:* Matt Buhyoff (202) 502–6824 or via e-mail at *matt.buhyoff@ferc.gov.*

j. We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph n below.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations there under at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Rock Creek filed a Pre-Application Document (PAD); including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. Copies of the PAD and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph n.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and SD1 as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Rock Creek Hydroelectric Project) and number (P–12726–001), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 13, 2007.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

o. At this time, Commission staff intends to prepare an Environmental Assessment for the project, in accordance with the National Environmental Policy Act. However, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the scoping meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

We will hold a daytime and night time scoping meeting at the times and places noted below. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The time and location of these meetings are as follows:

Date and Time: Thursday, July 12, 2007, 9:30 a.m. (PDT).

Location: Haines Branch Library, 818 Cole St., Haines, Oregon.

Date and Time: Thursday, July 12, 2007, 7 p.m. (PDT).

Location: Haines Branch Library, 818 Cole St., Haines, Oregon.

For Directions: Please call Mark Henderson, of Eastern Oregon Light and Power, LLC. at (541) 856–3605.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph p. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the proposed project on Wednesday, July 11, 2007, starting at 9 a.m. All participants should meet Haines Branch Library, located at 818 Cole St., Haines, Oregon 97833. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Mark Henderson, of Eastern Oregon Light and Power, LLC at (541) 856–3605 on or before June 27, 2006.

Scoping Meeting Objectives

At the scoping meeting, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource agency management objectives; (3) review and discuss existing information and identify preliminary information and potential study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meeting. Directions on how to obtain a copy of the PAD and SD1 are included in item m of this document.

Scoping Meeting Procedures

The scoping meeting will be recorded by a stenographer and will become part of the formal Commission record on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11741 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4851–005]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

May 16, 2007.

Take notice that the following transmission line only project Application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for Transmission Line Only.

b. *Project No:* P–4851–005.

c. *Date Filed:* March 30, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Sly Creek Transmission Line Project.

f. *Location:* The Sly Creek Transmission Line Project is located in the Sierra Nevada Range, Butte County, California within the South Fork Feather River watershed. The project affects less than 2 acres of federal lands administered by the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Forrest Sullivan, Project Manager, Pacific Gas and Electric Company, 5555 Florin-Perkins Road, Building 500, Sacramento, CA 95826. Tel: (916) 386–5580.

i. *FERC Contact:* John Mudre, (202) 502–8902, or *john.mudre@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Sly Creek Transmission Line Project is a transmission line only project that transmits electricity 5.4 miles from the Sly Creek Powerhouse (owned and operated by the South Feather Water and Power Agency under FERC Project No. 2088) to Pacific Gas and Electric Company's Woodleaf-Kanaka Junction Transmission Line Project (FERC Project No. 2281). The Sly Creek Powerhouse is a component of the South Feather Power Project which is a water supply/power project constructed in the late 1950s/early 1960s. The transmission line Project consists of an existing single-circuit, 115 kV transmission line, supported primarily on wood-pole, H-frame structures within a 75-foot-wide right-of-way, and appurtenant facilities.

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 e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11736 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2281–011]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 16, 2007.

Take notice that the following Transmission Line Only Application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No:* P–2281–011.

c. *Date Filed:* March 30, 2007.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Woodleaf-Kanaka Junction Transmission Line Project.

f. *Location:* The project is located in Butte County California, within the South Fork Feather River watershed. The project is not located within any designated cities, towns, subdivisions or Indian Tribe reservations. The project is located about 15 miles east of Oroville, California. The project affects 31.79 acres of federal lands that is administered by the Plumas National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Forrest Sullivan, Senior Project Manger, Pacific Gas & Electric Company, 5555 Florin-Perkins Road, Building 500, Sacramento, CA, 95826. Tel: (916) 386–5580.

i. *FERC Contact:* John Mudre, (202) 502–8902, or *john.mudre@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Woodleaf-Kanaka Junction Transmission Line Project is a transmission line only project that transmits electricity 6.2 miles from the Woodleaf Powerhouse (owned and operated by the South Feather Water and Power Agency under FERC Project No. 2088) to the Kanaka Junction. The Project also includes a 0.02-mile long tap line extending to Forbestown Powerhouse (also under FERC Project No. 2088). The Woodleaf-Kanaka Junction Transmission Line is composed of a single-circuit, 115-kV transmission line, supported primarily on wood-pole, H-frame towers within a 75-foot wide right-of-way. The project is linked to the Licensee's Sly Creek Transmission Line (FERC License No. 4851), via the Woodleaf Powerhouse Switchyard, a component of FERC Project No. 2088.

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 e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11738 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–67–000]

DC Energy, LLC, Complainant, v. H.Q. Energy Services (U.S.) Inc., Respondent; Notice of Complaint

June 12, 2007.

Take notice that on June 11, 2007, DC Energy, LLC (DC Energy) tendered for filing pursuant to sections 206 and 222 of the Federal Power Act, 16, U.S.C. 824e and 824v (Supp. 206) and Rule 206 of the Rules of Practice and Procedures of the Commission's Regulations 18 CFR 385.206 (2006), a complaint against H.Q. Energy Services (U.S.) Inc. (HQ Energy). DC Energy seeks relief from manipulation of the New York Independent System Operator (NYISO) energy and Transmission Congestion Contract markets by HQ Energy through its exercise of market power associated with congestion and energy pricing at the interface between the Hydro Quebec and NYISO Control Areas.

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, 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 2, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11742 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 739–020]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

June 12, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 739–020.

c. *Date Filed:* May 4, 2007.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Claytor Hydroelectric Project.

f. *Location:* The project is located on the New River in Pulaski County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Theresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, Virginia 24022–2121, (540) 985–2441.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* July 12, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–739–020) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee requests permission to allow John and Bonnie French (permittees) to construct a new private marina at Claytor Lake. The permittees would

install six floating docks with a total of 91 slips, a gasoline dispensing pump, and boat ramp. The site will be known as the French Marina, which will be located off State Route 653, in the upper portion of Claytor Lake.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing 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 field to access the document. 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, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11739 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–068]

South Feather Water and Power Agency; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 16, 2007.

Take notice that the following hydroelectric Application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No:* P–2088–068.

c. *Date Filed:* March 26, 2007.

d. *Applicant:* South Feather Water and Power Agency.

e. *Name of Project:* South Feather Power Project.

f. *Location:* On the South Fork Feather River (SFFR), Lost Creek and Slate Creek in Butte, Yuba and Plumas counties, California. The project affects 1,977.12 acres of Federal lands administered by the Plumas National Forest and 10.57 acres of Federal land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael Glaze, General Manager, South Feather Water and Power Agency, 2310 Oro-Quincy Highway, Oroville, CA 95966, (530) 533–4578.

i. *FERC Contact:* John Mudre, (202) 502–8902, or *john.mudre@ferc.gov.*

j. Deadline for filing motions to intervene and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The South Feather Power Project is a water supply/power project constructed in the late 1950s/early 1960s. The Project is composed of four developments: Sly Creek, Woodleaf, Forbestown and Kelly Ridge, each of which is described below. The Project can store about 172,000 acre-feet (af) of water (gross storage) and has generated an average of about 514.1 gigawatt hours (gWh) of power annually for the past 20 years, since the addition of Sly Creek Powerhouse.

The Sly Creek Development includes: (1) *Little Grass Valley Dam*—a 210-foot-high, 840-foot-long, rock filled dam on the SFFR with a crest elevation of 5,052 feet (all elevations are in National Geodetic Vertical Datum, or NGVD, unless otherwise specified) and with a 180-foot-long spillway controlled by two 14-feet-high by 40-feet-long steel radial gates that forms a 89,804 acre-foot (af) storage reservoir covering 1,650 acres at a maximum water surface (flood level) elevation of 5,047 feet with the spill gates closed; (2) *South Fork Diversion Dam*—a 60-foot-high, 167-foot-long, concrete overflow arch dam on the SFFR with a crest elevation of 3,557 to 3,559 feet and with four uncontrolled overflow spillway sections that forms an 87 af diversion impoundment covering about 9 acres at a normal maximum water surface elevation of 3,557 feet; (3) *South Fork Diversion Tunnel*—a 14,256-foot-long, 11-foot-diameter concrete lined and unlined horseshoe un-pressurized tunnel controlled by two 6-foot-high by 4-foot-long electric hoist slide gates that diverts up to 600 cubic feet per second (cfs) of water from the South Fork Diversion Dam to Sly Creek Reservoir; (4) *Slate Creek Diversion Dam*—a 62-foot-high, 223.5-foot-long, concrete overflow arch dam on Slate Creek with a crest elevation of 3,552 to 3,554 feet and with three uncontrolled overflow spillway sections that forms a negligible diversion impoundment due to sediment accumulation; (5) *Slate Creek Diversion Tunnel*—a 13,200-foot-long, 11-foot-diameter, concrete lined and unlined horseshoe un-pressurized tunnel controlled by two 8-foot-high by 6-foot-long manual slide gates that diverts up to a maximum flow capacity of 848 cfs of water (though water rights limit flows to 600 cfs and at times flows are limited to 500 cfs due to high storage volume in the receiving reservoir) from the Slate Creek Diversion Dam to Sly Creek Reservoir; (6) *Sly Creek Dam*—a 289-foot-high, 1,200-foot-long, zoned earth-filled dam on Lost Creek with a

crest elevation of 3,536 feet and with a 649-foot-long spillway controlled by one 16-foot-high by 54-foot-long steel radial gate that forms a 64,338 af storage reservoir covering 619 acres at a maximum water surface (flood level) elevation of 3,531 feet with the spill gates closed; (7) *Sly Creek Penstock*—a 1,100-foot-long, 90-inch-inside-diameter, steel penstock enclosed in the former outlet tunnel that delivers water to Sly Creek Powerhouse; (8) *Sly Creek Powerhouse*—a semi-outdoor, reinforced concrete, above ground powerhouse that releases water to Lost Creek Reservoir and that contains one reaction turbine rated at 17,690 horsepower (hp) directly connected to a 13,500-kilovolt-amperes (kVA) generator; (9) *Sly Creek Powerhouse Switchyard*—a switchyard adjacent to the Sly Creek Powerhouse that contains one 16,000 kVA transformer. Power generated at Sly Creek Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kilovolt (kV) Sly Creek Tap and Woodleaf-Kanaka Junction transmission line; (10) *Little Grass Valley Reservoir Recreation Facility*—the Little Grass Valley Reservoir Recreation Facility includes Little Beaver, Red Feather, Running Deer, Horse Camp, Wyandotte, Peninsula Tent, Black Rock Tent, Black Rock RV, and Tooms RV campgrounds; Black Rock, Tooms and Maidu Boat Launch areas; Pancake Beach and Blue Water Beach day use areas, Maidu Amphitheater and Little Grass Valley Dam ADA Accessible Fishing trail at Little Grass Valley Reservoir; and (11) *Sly Creek Reservoir Recreation Facility*—the Sly Creek Recreation Facility includes two campgrounds (Strawberry and Sly Creek), Strawberry Car-Top Boat Launch, Mooreville Boat Ramp and Mooreville Day Use Area on Sly Creek Reservoir. The Sly Creek Development does not include any roads except for the portions of the roads within the FERC Project Boundary that cross Little Grass Valley Dam (USFS Road 22N94) and Sly Creek Dam (USFS Road 21N16).

The Woodleaf Development includes: (1) *Lost Creek Dam*—a 122-foot-high, 486-foot-long, concrete overflow arch dam on the Lost Creek with a crest elevation of 3,279.05 feet and with a 251-foot-wide spillway controlled by 4-foot-high by 8-foot-long flashboards that forms a 5,361 af storage reservoir covering 137 acres at a normal maximum water surface elevation of 3,283 feet with the flashboards installed; (2) *Woodleaf Power Tunnel*—an 18,385-foot-long, 12-foot-diameter, concrete lined and unlined horseshoe pressurized tunnel controlled by one 6-foot-high by 12-foot-long electric hoist slide gate that diverts up to 620 cfs of water from Lost Creek Reservoir to the Woodleaf Penstock; (3) *Woodleaf Penstock*—a 3,519-foot-long, 97-inch reducing to 78-inch-inside-diameter, exposed steel penstock that delivers water to Woodleaf Powerhouse; (4) *Woodleaf Powerhouse*—a semi-outdoor, reinforced concrete, above ground powerhouse that releases water to the Forbestown Diversion Dam impoundment on the SFFR and that contains one 6-jet vertical shaft impulse Pelton turbine rated at 80,000 hp directly connected to a 65,500 kVA generator; and (5) *Woodleaf Powerhouse Switchyard*—a switchyard adjacent to the Woodleaf Powerhouse that contains one 70,000 kVA transformer. Power generated at Woodleaf Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kV Woodleaf-Kanaka Junction transmission line. The Woodleaf Development does not include any recreation facilities or roads.

The Forbestown Development includes: (1) *Forbestown Diversion Dam*—a 80-foot-high, 256-foot-long, concrete overflow arch dam on the SFFR with a crest elevation of 1,783 feet and with five 46-foot-wide uncontrolled overflow spillway sections with a combined width of approximately 240 feet that forms a 352 af diversion impoundment covering about 12 acres at a normal maximum water surface elevation of 1,783 feet; (2) *Forbestown Power Tunnel*—a 18,388-foot-long, 12.5-foot by 11-foot-diameter, concrete lined and unlined horseshoe pressurized tunnel that diverts up to 660 cfs of water from the Forbestown Diversion impoundment to the Forbestown Penstock; (3) *Forbestown Penstock*—a 1,487-foot-long, 97–inch reducing to 83-inch-inside-diameter exposed steel penstock that delivers water to Forbestown Powerhouse; (4) *Forbestown Powerhouse*—a semi-outdoor reinforced concrete above ground powerhouse that releases water to Ponderosa Reservoir on the SFFR and that contains one vertical reaction Francis turbine rated at 54,500 hp directly connected to a 40,500 kVA generator; and (5) *Forbestown Powerhouse Switchyard*—a switchyard adjacent to the Forbestown Powerhouse that contains one 35,200 kVA transformer. Power generated at Forbestown Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 115 kV Woodleaf-Kanaka Junction transmission line. The Forbestown Development does not include any recreation facilities or roads.

The Kelly Ridge Development includes: (1) Ponderosa Dam—a 160-foot-high, 650-foot-long, earth-filled dam that releases water into the 3.6 million af Lake Oroville (part of the California Department of Water Resources' Feather River Project, FERC Project No. 2100) with a crest elevation of 985 feet and with a 352-foot-long spillway controlled by two 7 foot 7.5-inch-high by 51-foot-long steel gates that forms a 4,178 af storage reservoir covering 103 acres at a normal maximum water surface elevation of 960 feet; (2) *Ponderosa Diversion Tunnel*—a 516-foot-long, 10-foot by 9-foot-diameter concrete lined and unlined horseshoe unpressurized tunnel controlled by one 6-foot-high by 8-foot-long hydraulic gate that diverts up to 300 cfs of water from Ponderosa Reservoir to Miners Ranch Conduit; (3) *Miners Ranch Conduit*—a 32,254-foot-long, 10-foot-wide concrete or gunite-lined canal and concrete or bench flume that includes two siphon sections across the McCabe and Powell creek sections of Lake Oroville and that diverts water from the Ponderosa Diversion Tunnel to the Miners Ranch Tunnel; (4) *Miners Ranch Tunnel*—a 23,946-foot-long, 10-foot by 9-foot-diameter, concrete lined horseshoe un-pressurized tunnel that diverts up to 300 cfs of water from the Miners Ranch Conduit to Miners Ranch Reservoir; (5) *Miners Ranch Dam*—a 55-foot-high, 1,650-foot-long, earth-filled off-stream dam with a crest elevation of 895 feet and with an 1,175-foot-long uncontrolled spillway that forms a 896 af storage reservoir covering 48 acres at a normal maximum water surface elevation of 890 feet; (6) *Kelly Ridge Power Tunnel*—a 6,736-foot-long, 9-foot by 8-foot-diameter, pressurized tunnel controlled by one 4-foot-high by 8-foot-long fixed wheel gate that diverts up to 260 cfs of water from Miners Ranch Reservoir to Kelly Ridge Penstock: (7) *Kelly Ridge Penstock*—a 6,064-foot-long 69-inch reducing to 57-inch-inside-diameter, exposed steel penstock that delivers water to Kelly Ridge Powerhouse; (8) *Kelly Ridge Powerhouse*—a semi-outdoor reinforced concrete above ground powerhouse that releases water to CDWR Feather River Project's Thermalito Diversion Pool downstream of Oroville Dam and that contains one vertical reaction Francis turbine rated at 13,000 hp directly connected to a 11,000 kVA generator; and (5) *Kelly Ridge Powerhouse Switchyard*—a switchyard adjacent to the Kelly Ridge Powerhouse that

contains one 11,000 kVA transformer. Power generated at the Kelly Ridge Powerhouse is delivered from the switchyard to the grid via Pacific Gas and Electric Company's 60 kV Kelly Ridge-Elgin Junction transmission line. The Kelly Ridge Development does not include any recreation facilities or roads.

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 e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–11737 Filed 6–18–07; 8:45 am]

BILLING CODE 6717–01–P

EVIRONMENTAL PROTECTION AGENCY

[FRL–8328–7]

Clean Air Act Advisory Committee (CAAAC); Request for Nominations to the CAAAC

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Request for Nominations: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to the Clean Air Act Advisory Committee and its subcommittees. Suggested deadline for receiving nominations is July 20, 2007. Appointments will be made by the Administrator of the Environmental Protection Agency. Appointments for the full CAAAC committee are expected to be announced in the fall of 2007. Nominee's qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

ADDRESSES: Submit nomination materials to: Pat Childers, Designated Federal Officer, Clean Air Act Advisory Committee, U.S. EPA (6102A) 1200 Pennsylvania Ave, Washington, DC 20004, T: 202 564–1082, F: 202 564–1352, e-mail *childers.pat@epa.gov.*

For Further Information concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, Fax (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. Additional Information on CAAAC and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

Dated: June 12, 2007.

Pat Childers,

Designated Federal Official, Office of Air and Radiation.

[FR Doc. E7–11786 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0242; FRL–8328–3]

Board of Scientific Counselors, Drinking Water Mid-Cycle Subcommittee Meeting—July 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Drinking Water Mid-Cycle Subcommittee.

DATES: The meeting (a teleconference call) will be held on Friday, July 13, 2007, from 1 p.m. to 3 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Edie Coates, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0242, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–0242.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–0242.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Drinking Water Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0242.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–0242. Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0242. 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.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Drinking Water Mid-Cycle Subcommittee Meeting—Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Edie Coates, Mail Drop B103–05, Neurotoxicology Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; via phone/voice mail at: (919) 541–3508; via fax at: (919) 541–3335; or via e-mail at: *coates.edie@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Edie Coates, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda item for the meeting (teleconference) includes, but is not limited to: Discussion of the draft report concerning the ORD drinking water research program's progress in response to recommendations from its 2005 BOSC review and other activities. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Edie Coates at (919) 541–3508 or *coates.edie@epa.gov.* To request accommodation of a disability, please contact Edie Coates, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 12, 2007.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E7–11775 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–1010; FRL–8328–2]

Board of Scientific Counselors, Technology for Sustainability Subcommittee Meeting—July 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Technology for Sustainability Subcommittee.

DATES: The meeting (teleconference call) will be held on Friday, July 6, 2007 from 1 p.m. to 3 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Clois Slocum, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–1010, by one of the following methods:

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

• *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2006–1010.

• *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–1010.

• *Mail:* Send comments by mail to: Board of Scientific Counselors, Technology for Sustainability Subcommittee Meetings—Winter/Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2006–1010.

• *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–1010.

Note: This is not a mailing address. Such deliveries are only accepted during the

docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–1010. 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.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Technology for Sustainability Subcommittee Meetings—Winter/Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Clois Slocum, USEPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; via phone/voice mail at: (513) 569–7281; via fax at: (513) 569–7549; or via e-mail at: *slocum.clois@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Clois Slocum, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: The discussion of the draft report from the review. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Clois Slocum (513) 569–7281 or *slocum.clois@epa.gov.* To request accommodation of a disability, please contact Clois Slocum, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 12, 2007.

Mary Ellen Radzikowski,

Acting Director, Office of Science Policy.

[FR Doc. E7–11784 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–RCRA–2007–0369; FRL–8328–4]

Adequacy of California Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Determination of Adequacy and Opportunity to Comment.

SUMMARY: The Environmental Protection Agency Region IX is proposing to approve a modification to California's municipal solid waste landfill (MSWLF) permit program to allow the State to issue research, development, and demonstration (RD&D) permits for new and existing MSWLF units and lateral expansions. The modification will allow the Director of the approved state program to provide a variance from certain MSWLF criteria, provided that the MSWLF owner/operator demonstrates that compliance with the RD&D permit will not increase risk to human heath and the environment. The Director may provide a variance from existing requirements of MSWLF criteria for run-on control systems, liquids restrictions, and final cover. EPA is seeking public comment on its tentative determination of adequacy of California's RD&D modification to its MSWLF permit program.

DATES: Comments must be received on or before August 13, 2007. EPA will hold a public hearing on August 13, 2007 in the first floor conference room of EPA Region IX, 75 Hawthorne Street, San Francisco, California, if sufficient public interest is expressed. If by August 1, 2007, EPA does not receive sufficient public interest for a public hearing, EPA may cancel the public hearing with no further notice. If you are interested in attending the public hearing, contact Karen Ueno at (415) 972–3317 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2007–0369 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ueno.karen@epa.gov.*
- *Fax:* (415) 947–3530.
- *Mail:* Karen Ueno (WST–7), Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery:* Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–RCRA–2007–0369. 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 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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. 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 materials, such as the State's prior applications for MSWLF permit program approval, are available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. This Docket facility is open from 9 a.m. to 4 p.m., Monday through Thursday, excluding legal holidays. It is located in a secured building. To review docket materials at the Docket facility, it is recommended that the public make an appointment by calling the Docket facility at (415) 947–4406 during normal business hours.

FOR FURTHER INFORMATION CONTACT: Karen Ueno, Waste Management Division, WST–7, Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972–3317; fax number: (415) 947–3530; e-mail address: *ueno.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria at 40 CFR 258.4 to allow for RD&D permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time. Specifically, the rule allows the Director of an approved State to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) The run-on control systems at 40 CFR 258.26, and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on liner. The rule also allows the Director of an approved State to issue a time-limited RD&D permit for a MSWLF unit for which the owner or operator proposes to use innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a)(1) and (2), and (b)(1), provided that the owner or operator demonstrates that the alternative cover system will not contaminate groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm. An RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the total term for an RD&D permit including renewals cannot exceed twelve years.

RD&D permits are only available in states with approved MSWLF permit programs that have been modified to incorporate the RD&D permit authority. Although a state is not required to seek approval for the RD&D permit provision, a state must obtain EPA approval before it may issue such a permit. Requirements for state program determination of adequacy and approval procedures are contained in 40 CFR part 239.

In 1993, EPA Region IX approved the State of California's MSWLF permit program pursuant to Subtitle D of the Federal Resource Conservation and Recovery Act (RCRA). With its application, dated March 28, 2006, and revised on February 21, 2007, the State of California is seeking EPA approval for a modification to the State's existing MSWLF permit program to incorporate RD&D permits.

II. EPA's Action

A. Tentative Determination

After completing a thorough review, EPA is proposing to tentatively approve California's RD&D permit program modification. California has lawfully promulgated and fully enacted regulations for the RD&D permit program, and these regulations are adequate to ensure compliance with the federal criteria at 40 CFR 258.4. In conformance with the federal regulations, and in addition to California-specific requirements, an owner or operator is required to maintain less than a 30-cm depth of leachate on liner and demonstrate that compliance with the RD&D permit will not increase risk to human heath and the environment over compliance with a standard MSWLF permit.

Following the close of the public comment period and in consideration of comments received, EPA will issue a final determination. If approved, California will be able to issue variances for run-on control systems, liquid restrictions, and final cover criteria to allow for innovative and new methods, such as bioreactor landfills.

B. Submitting Comments on EPA's Tentative Determination

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Submitting Confidential Business Information (CBI). Do not submit this information to EPA through *www.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.

Docket Copying Costs. Copying arrangements will be made through the Docket Facility and billed directly to the recipient. Copying costs may be waived depending on the total number of pages copied.

Authority: Sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, and 6949(a). Delegation 8–46. State/Tribal Permit Programs for Municipal Solid Waste Landfills.

Dated: June 6, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–11773 Filed 6–18–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7–11296) published on page 32296 of the issue for Tuesday, June 12, 2007.

Under the Federal Reserve Bank of St. Louis heading, the entry for Gaylon M. Lawrence, Jr., Franklin, Tennessee, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Gaylon M. Lawrence, Jr., Nashville, Tennessee; to acquire control of Farmers Bancorp, Inc., and thereby indirectly acquire control of Farmers Bank and Trust Company, both of Blytheville, Arkansas.

Comments on this application must be received by June 27, 2007.

Board of Governors of the Federal Reserve System, June 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11762 Filed 6–18–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. William Sexton, Incline Village, Nevada, as an individual, and as part of a group acting in concert with Kevin Noble, Minnetonka, Minnesota, Brian Schoenborn, Saint Joseph, Minnesota, and Jason Noble, Clara City, Minnesota; to acquire control of Kensington Bancorp, Inc., Kensington, Minnesota, and thereby indirectly acquire control of First State Bank of Kensington, Kensington, Minnesota.

Board of Governors of the Federal Reserve System, June 14, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–11763 Filed 6–18–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07AZ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

US-Mexico Border Diabetes Community Health Worker/Promotores de Salud Intervention Pilot Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Pan American Health Organization (PAHO), El Paso field office, in collaboration with the United States/Mexico Border Diabetes Prevention and Control Programs and the Mexico Secretariat of Health is requesting approval for the US-MEXICO BORDER DIABETES COMMUNITY HEALTH WORKER/PROMOTORES de SALUD INTERVENTION PILOT PROJECT (CHW/PdS IPP) of the US-Mexico Diabetes Prevention and Control Project.

The purpose of the project is to diminish the impact of diabetes on the border population by conducting activities to address the high prevalence of diabetes, related behavioral risk factors and improve the health services for the border population. This project is targeted for completion by September 2009. CHW/PdS IPP will be implemented in eleven pilot communities, where persons living with diabetes will be randomized to either intervention group participant (IGP) or delayed intervention control group participant (DICGP). The DICGP will receive usual diabetes self management education by the health care provider in a community health center setting, and the IGP will be assigned to receive diabetes self management education reinforcement and coaching social support at the community/home level, by a Community Health Worker/Promotor de Salud. These programs will be culturally and linguistically appropriate and will include the participation of community health workers (*promotores*) and primary

healthcare providers working as a team approach.

Activities will include implementation of family centered community interventions that will provide biweekly site visits to the person living with diabetes and provide follow-up and support for the participant and their family. Two family members, found with the highest risk factor rating, will also be intervened by the CHW/PdS. The CHW will reinforce educational messages on balance nutrition and physical activity and provide social support and coaching to the person living with diabetes and their family members. The CHW/PdSs will be trained in diabetes and community mobilization skills.

A person living with diabetes and one high risk blood relative family members will receive an initial survey, to establish baseline to evaluate the model's effectiveness. Participants will receive a nutrition questionnaire to assess their nutrition knowledge and practice to tailor the nutrition education information, and will also receive a questionnaire to assess the cost effectiveness of the CHW/PdS model. The Diabetes Intervention Group (DIG) and the 1st Degree Blood Relative Intervention Group (BRIG), will receive tri-weekly visits, lasting approximately 2 hours. During these sessions the initial survey, the nutrition questionnaire and the cost effectiveness questionnaire will be given by the CHW/PdS to the participants.

The Diabetes Delayed Intervention Group (DDIG) and the 1st Degree Blood Relative Delayed Intervention Group (BRDIG), will receive an initial site visit, lasting approximately 2 hours. At this time the initial participant and family member survey will be administered by the CHW/PdS. After the intervention phase is completed, estimated time line being 18 months, the DDIG and the BRDIG will receive group educational sessions for a period of one hour for 16 weeks.

There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Types of visits	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hours)
Diabetes Intervention Group (DIG)	Every three weeks visit	363	17	2	12,342
1st Degree Blood Relative Intervention Group (BRIG).	Every three weeks visit	363	17	2	12,342
Diabetes—Delayed Intervention Group (DDIG)	First visit	363	1	2	726
	Weekly visits		16	1	5,808
1st Degree Blood Relative—Delayed Intervention Group (BRDIG).	First visit	363	1	2	726
	Weekly visit		16	1	5,808
CHW/PdS, for 5 days during the intervention section, the CHW/PdS will complete a tool to determine the time and effort by the clinic personnel in serving the DIG, BRIG, DDIG, BRDIG members explain.	Five (5) working days	11	1	1	55
Total		1463			37,807

Dated: June 13, 2007.

Catina Conner,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–11779 Filed 6–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

Correction: This notice was published in the **Federal Register** on May 4, 2007, Volume 72, Number 86, page 25318. The matters to be discussed have been changed.

Matters To Be Discussed: The agenda will include discussions on Vaccine Financing; Hepatitis A Post-Exposure Prophylaxis which will include a VFC Vote; Cold Adapted Influenza Vaccine; Immunization Safety; Tdap-IPV-Hib Combination Vaccine (Pentacel); MCV4 Dose to 2 years; Vaccine Shortages; Economic Analyses of Vaccines; Evidence-Based Recommendations; Human Papillomavirus Vaccine; Update on HIV Vaccines; Childhood Immunization Schedule; Adult Immunization Schedule; Update on Pneumococcal Vaccines Working Group; Update on Vaccines during Pregnancy and Breastfeeding Working Group; Hepatitis B update on Adult Recommendations; and Agency updates. VFC Votes will be taken to add Pentacel to the Diphtheria, Tetanus, Pertussis Resolution; to the Haemophilus Influenza Type B Resolution and to the Polio Resolution pending the Food and Drug Administration approval for licensure of Pentacel. Amended to include a VFC Vote on FluMist.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Demetria Gardner, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., (E–05), Atlanta, Georgia 30333, telephone 404/639–8836, fax 404/639–6258.

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 CDC and ATSDR.

Dated: June 12, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–11789 Filed 6–18–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to Employ Demonstration and Evaluation: Kansas and Missouri 36–Month Data Collection.

OMB NO. New Collection.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) seeks to learn what services improve the employment prospects of low-income persons who face serious obstacles to steady work. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) within the Administration for Children and Families (ACF) and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), both within the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The HtE project is a multi-year, multi-site evaluation that employs an experimental longitudinal research design to test four strategies aimed at promoting employment among hard-to-employ populations. The four include: (1) Intensive care management and job services program for Rhode Island Medicaid recipients with serious depression; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term participants receiving Temporary Assistance for Needy Families (TANF); and (4) two-generational Early Head Start (EHS) services providing enhanced self-sufficiency services for parents, parent skills training, and high-quality child care for children in low-income families in Kansas and Missouri.

The purpose of this document is to request public comment on the proposed 36–month parent survey and direct child assessments in Kansas and Missouri. The research team plans to collect parent-reported surveys assessing parents' employment, education and economic outcomes, child outcomes, as well as aspects of parental psychological well-being, parenting, family functioning and routines, and child care use. This data collection effort will also include direct assessments of young children's cognitive, socioemotional and behavioral development.

The follow-up survey and direct child assessments at the 36-month follow-up in Kansas and Missouri will be used for the following purposes: To study the extent to which EHS services with enhanced self-sufficiency services (enhanced EHS services) affect employment, earnings, income, and welfare dependence of low-income parents with young children; to study the impacts of enhanced EHS services on child well-being and school readiness; to examine the impacts of enhanced EHS services on key aspects of parental psychological well-being, parenting, family functioning and routines, and child care that might account for the effects of the intervention on young children; to collect data on a wider range of outcome measures than is available through welfare, Medicaid, Food Stamps, Social Security, and Unemployment Insurance records.

The 36-month data collection efforts draws heavily from the 15-month survey and direct child assessments conducted in this site. Materials for the survey and direct child assessments for the 15-month data collection effort were previously submitted to OMB and were approved (OMB Control No. 0970–0276).

Respondents: The target population of the HtE project in Kansas and Missouri is low-income pregnant women and families with infants and toddlers.

The respondents to the 36-month data collection effort will be all participants in the program and the control groups of the HtE project in Kansas and Missouri. Parents will be responding to a survey. Children between the ages of 2 and 7 years old at the 36-month follow-up will be asked to participants in direct child assessments aimed at understanding their emotional, behavioral, and cognitive development and school readiness.

The annual burden estimates are detailed below, and the substantive content of each component will be detailed in the supporting statement attached to this 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
KS/MO 36-month parent survey	610	1	.75	457.50
KS/MO 36-month direct child assessments	610	1	.50	305.00

Estimated Total Annual Burden Hours: 762.50.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: (202) 395–3674, Attn: Desk Officer for the Administration for Children and Families.

Dated: June 13, 2007.

Brendan Kelly

OPRE Reports Clearance Officer.

[FR Doc. 07–2996 Filed 6–18–07; 8:45 am]

BILLING CODE 4184–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Rhode Island 36-Month Data Collection.

OMB No. New Collection.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) seeks to learn what services improve the employment prospects of low-income persons who face serious obstacles to steady work. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) within the Administration for Children and Families (ACF) and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), both within the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The HtE project is a multi-year, multi-site evaluation that employs and experimental longitudinal research design to test four strategies aimed at promoting employment among hard-to-employ populations. The four include: (1) Intensive care management and job services program for Rhode Island Medicaid recipients with serious depression; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term participants receiving Temporary Assistance for Needy Families (TANF); and (4) two-generational Early Head Start (EHS) services providing enhanced self-sufficiency services for parents, parent skills training, and high-quality child care for children in low-income families in Kansas and Missouri.

The purpose of this document is to request public comment on the proposed 36-month participant survey in Rhode Island for participating parents and their children.

The follow-up survey and direct child assessments at the 36-month follow-up in Rhode Island will be used for the following purposes: Detecting the long-term effects of a telephonic care management intervention on parents' depression and general health, as well as their employment, income, and earnings; detecting effects of a telephonic care management intervention for parents' depression on parents' parenting and on children's health, behavior, and development over time, and determining the extent to which long-term intervention effects on children's development can be attributed to changes in their parents' depressive symptomatology that result from the intervention.

Respondents: The respondents to these follow-up surveys will be low-income parents from the Rhode Island site currently participating in the HtE Project, and some of their children.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RI 36–month, parent survey	400	1	.75	300.00
RI 36–month, youth survey	298	1	.75	223.50
RI 36–month, direct child assessment	164	1	.75	123.00

Estimated Total Annual Burden Hours: 646.50.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 13, 2007.

Brendan Kelly,

OPRE Reports Clearance Officer.

[FR Doc. 07–2997 Filed 6–18–07; 8:45 am]

BILLING CODE 4184–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Philadelphia 36-Month Data Collection.

OMB No. New Collection.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) seeks to learn what services improve the employment prospects of low-income persons who face serious obstacles to steady work. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) within the Administration for Children and Families (ACF) and the Office of the Assistant Secretary for Planning and Evaluation (ASPE), both within the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL). The HtE project is a multi-year, multi-site evaluation that employs an experimental longitudinal research design to test four strategies aimed at promoting employment among hard-to-employ populations. The four include: (1) Intensive care management and job services program for Rhode Island Medicaid recipients with serious depression; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term participants receiving Temporary Assistance for Needy Families (TANF); and (4) two-generational Early Head Start (EHS) services providing enhanced

self-sufficiency services for parents, parent skills training, and high-quality child care for children in low-income families in Kansas and Missouri.

The purpose of the current document is to request public comment on the 36-month participant survey in Philadelphia. The research team plans to collect participant-reported surveys assessing participants' employment, education and economic outcomes, participation in employment and training services, receipt of benefits and services such as food stamps and mental health services, housing and household information, health and health care coverage, child care, and child outcomes.

The follow-up survey at the 36-month follow-up in Philadelphia will be used for the following purposes: To study the extent to which pre-employment services and transitional employment affect employment, earnings, income, and welfare dependence of low-income TANF recipients; to examine the impacts of these services on participants' health, receipt of benefits such as food stamps, Medicaid, and child-care subsidies, and participation in services such as substance abuse treatment and mental health services; and to collect data on a wider range of outcomes measures than is available through welfare, Medicaid, Food Stamps, Social Security, and Unemployment Insurance records.

The 36-month data collection effort draws heavily from the 15-month survey conducted in this site. Materials for the 15-month data collection effort were previously submitted to OMB and were approved (OMB Control No. 0970–0276).

Respondents: TANF recipients without a high school diploma and/or recipients who have received TANF for at least 12 months.

The fielded sample of the 36-month data collection effort will be all 1,944 participants in the two program groups and the control group of the HtE project in Philadelphia. The burden estimates below assume an 80 percent response rate of the fielded sample.

The annual burden estimates are detailed below, and the substantive content of each component will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Philadelphia 36-month participant survey	1,555	1	0.75	1,166

Estimated Total Annual Burden Hours: 1,166.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 13, 2007.

Brendan Kelly,

OPRE Reports Clearance Officer.

[FR Doc. 07–2998 Filed 6–18–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant.

OMB No.: 0970–0173.

Description: 42 U.S.C. 612 (Section 412 of the Social Security Act) gives federally recognized Indian Tribes the opportunity to apply to operate a Tribal Temporary Assistance for Needy Families (TANF) program. The Act specifies that the Secretary shall use State-submitted data to determine the amount of the grant to the Tribe. This form (letter) is used to request those data from the States. ACF is proposing to extend this information collection without change.

Respondents: States that have Indian Tribes applying to operate a TANIF program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Request for State Data Needed to Determine the Amount of a Tribal Family Assistance Grant	15	1	42	630

Estimated Total Annual Burden Hours: 630.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, FAX: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: June 14, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–3004 Filed 6–18–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cellular, Tissue, and Gene Therapies 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue, and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held by teleconference on July 26, 2007 from 11 a.m. to approximately 3:15 p.m.

Location: National Institutes of Health, Bldg. 29B, Conference rms. A/B, 9000 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the specified location. A speakerphone will be provided at the specified location for public participation in the meeting. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Gail Dapolito or Danielle Cubbage, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 26, 2007, the committee will meet in open session to hear updates of research programs in: (1) The Division of Therapeutic Proteins and the Division of Monoclonal Antibodies, Office of Biotechnology Products, Center for Drug Evaluation and Research, FDA and (2) the Division of Cellular and Gene Therapies, Office of Cellular, Tissue, and Gene Therapies, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days 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: On July 26, 2007, from 11 a.m. to approximately 2 p.m., the meeting is open to the public. 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 July 12, 2007. Oral presentations from the public will be scheduled between approximately 1 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 July 18, 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 July 19, 2007.

Closed Committee Deliberations: On July 26, 2007, from approximately 2:15 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

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 Gail Dapolito 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: June 11, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–11728 Filed 6–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0195]

Science Board to the Food and Drug Administration; Amendment of Notice; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of June 7, 2007 (72 FR 31587). The document announced an amendment to the notice of meeting of the Science Board to the Food and Drug Administration. The meeting was originally announced in the **Federal Register** of May 21, 2007 (72 FR 28499). The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 07–2829, appearing on page 31587 in the **Federal Register** of Thursday, June 7, 2007, the following correction is made:

1. On page 31587, in the first column, in the heading of the document, ''[Docket No. 2007N–0208]'' is corrected to read ''[Docket No. 2007N–0195]''.

Dated: June 11, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–11727 Filed 6–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0012]

Guidance for Industry and Food and Drug Administration Staff; Pharmacogenetic Tests and Genetic Tests for Heritable Markers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Pharmacogenetic Tests and Genetic Tests for Heritable Markers.'' This document is intended to provide guidance on preparing and reviewing premarket approval applications (PMAs) and 510(k) submissions for pharmacogenetic and other genetic tests, whether testing is for single markers or for multiple markers simultaneously (multiplex tests).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Pharmacogenetic Tests and Genetic Tests for Heritable Markers'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. You may also obtain the guidance by mail by calling the Center for Biologics Evaluation and Research at 1–800–835–4709 or 301–827–1800, or by faxing your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert Becker, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–0493, ext. 212.

For use of the guidance in relation to applications to CBER contact: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

For use of the guidance in relation to applications to CDER contact: Felix Frueh, Office of Clinical Pharmacology and Biopharmaceutics (HFD–850), 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–1530.

SUPPLEMENTARY INFORMATION:

I. Background

The draft of this guidance document was published in the **Federal Register** of February 9, 2006 (71 FR 6779). The guidance provides recommendations on preparing and reviewing PMAs and 510(k) submissions for pharmacogenetic and other human genetic tests, whether testing is for single markers or for multiple markers simultaneously (multiplex tests). FDA received several sets of comments on the guidance and considered all comments. The guidance was revised where needed to provide additional clarification.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on pharmacogenetic tests and genetic tests for heritable markers. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive ''Pharmacogenetic Tests and Genetic Tests for Heritable Markers'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 1594 to identify the guidance you are requesting.

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. Search capabilities for guidance documents are available at *http://www.fda.gov/cdrh/guidance.html* (for CDRH guidances) and *http://www.fda.gov/cber/guidelines.htm* (for CBER guidances). Guidance documents are also available on the Division of Dockets Management

Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–11817 Filed 6–18–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–48]

Notice of Submission of Proposed Information Collection to OMB; Restriction on Assistance to Noncitizens

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.

Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits HUD from making financial assistance available for noncitizens, unless they meet one of the categories of eligible immigration status specified in Section 214. Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.

DATES: *Comments Due Date:* July 19, 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 (2501–0014) 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: Restriction on Assistance to Noncitizens.

OMB Approval Number: 2501–0014

Form Numbers: HUD–9886, HUD–9887.

Description of the Need for the Information and Its Proposed Use: Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits HUD from making financial assistance available for noncitizens, unless they meet one of the categories of eligible immigration status specified in Section 214. Prior to being admitted, all eligible noncitizens younger than age 62 must sign a declaration of their status and a verification consent form and provide their original Immigration and Naturalization Service (INS) documentation.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,886,392	3.74		.0333		360,214

Total Estimated Burden Hours: 360,214.

Status: Extension of a currently collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–11745 Filed 6–18–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–49]

Notice of Submission of Proposed Information Collection to OMB; Federal Labor Standards Questionnaire(s) Complaint Intake Form

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.

The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

DATES: *Comments Due Date:* July 19, 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 (2501–0018) 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: Federal Labor Standards Questionnaire(s) Complaint Intake Form.

OMB Approval Number: 2501–0018.

Form Numbers: HUD–4730, HUD–4730–E, HUD–4730–SP, HUD–4731.

Description of the Need for the Information and Its Proposed Use: The information is used by HUD to fulfill its obligation to enforce Federal labor standards provisions, especially to act upon allegations of labor standards violations.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,500	1		0.5		1,250

Total Estimated Burden Hours: 1,250.

Status: Extension of a currently collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 12, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–11746 Filed 6–18–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5076–D–15]

Redelegation of Authority to the Director of the HUD Office of Healthy Homes and Lead Hazard Control Regarding Lead-Based Paint Enforcement

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to the Director of the Office of Healthy Homes and Lead Hazard Control authority presently residing with the Assistant Secretary for Housing—Federal Housing Commissioner or the Assistant Secretary's designee under 24 CFR 30.45 and 30.68 with respect to enforcement of lead-based paint requirements. These lead-based paint regulations, which are set out in 24 CFR part 35, subparts B, G, H, and R, require the notification, evaluation, and reduction of lead-based paint hazards in (1) multifamily residential properties for which HUD is the owner of the mortgage or for which a lender receives mortgage insurance, including non-residential properties being converted to multifamily residential properties and (2) multifamily residential properties for which the owner receives project-based housing assistance.

DATES: *Effective Date:* June 8, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Ammon, Deputy Director, Office of Healthy Homes and Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 8236, Washington, DC 20410–3000; telephone (202) 755–1785, extension 4337 (this is not a toll-free number). Speech- or hearing-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

HUD regulations at 24 CFR part 35, subparts B through R, set out general lead-based paint requirements for all federally-assisted pre-1978 housing. Specifically, subparts B and R set forth general requirements applying to all HUD programs and subparts G and H describe the procedures for notification, evaluation, and reduction of lead-based paint hazards in (1) multifamily residential properties for which HUD is the owner of the mortgage or for which a lender receives mortgage insurance, including non-residential properties being converted to multifamily residential properties and (2) multifamily residential properties for which an owner receives project-based housing assistance, respectively.

HUD regulations at 24 CFR 30.45 and 30.68 authorize the Assistant Secretary for Housing—Federal Housing Commissioner, or the Assistant Secretary's designee, to initiate civil money penalty actions for violations of section 537(c)(1)(B) of the National Housing Act (12 U.S.C. 1735f–15(c)(1)(B)) and for violations of Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), including the failure to provide decent, safe, and sanitary housing, as set out by 24 CFR 5.703. Pursuant to this authority, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Director of the Office of Healthy Homes and Lead Hazard Control authority to initiate civil money penalty actions pursuant to 24 CFR 30.45 and 30.68 against a property owner who fails to provide information documenting compliance with or fails to comply with HUD regulations that require the notification, evaluation, and reduction of lead-based paint hazards in (1) multifamily residential properties for which HUD is the owner of the mortgage or for which a lender receives mortgage insurance, including non-residential properties being converted to multifamily residential properties and (2) multifamily residential properties for which an owner receives project-based housing assistance as set out in 24 CFR part 35, subparts B, G, H, and R.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner hereby retains and redelegates authority as follows:

I. Redelegation of Authority

The Director of the Office of Healthy Homes and Lead Hazard Control is hereby authorized to initiate a civil money penalty action pursuant to and within the scope of 24 CFR 30.45 and 30.68 against property owners who fail to provide information documenting compliance with or fail to comply with HUD regulations that require the notification, evaluation, and reduction of lead-based paint hazards in (1) multifamily residential properties for which HUD is the owner of the mortgage or for which a lender receives mortgage insurance, including non-residential properties being converted to multifamily residential properties and (2) multifamily residential properties for which an owner receives project-based housing assistance as set out in 24 CFR part 35, subparts B, G, H, and R.

II. Authority To Redelegate

The Director of the Office of Healthy Homes and Lead Hazard Control is not authorized to redelegate the authority described herein.

III. Revocation

The Assistant Secretary for Housing—Federal Housing Commissioner may revoke the authority authorized herein, in whole or in part, at any time.

Dated: June 8, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–11747 Filed 6–18–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of the Annual Price Threshold Determination

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of annual price threshold determination and annual average oil and gas market price calculations, along with their effects for the Gulf of Mexico royalty relief programs.

SUMMARY: This notice provides the official MMS documentation of which Gulf of Mexico price thresholds have been exceeded by annual market prices for oil or gas, by lease vintage, for calendar year 2006. This notice also explains in detail how MMS calculates the annual oil and gas prices and applicable price thresholds used to determine whether royalty relief applies in calendar year 2006 for our various deepwater and deep depth royalty relief programs.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division at (703) 787–1536.

SUPPLEMENTARY INFORMATION: By various laws (Outer Continental Shelf Lands Act, Deep Water Royalty Relief Act, Energy Policy Act) and regulations (30 CFR 203.47, 203.54, 203.78, 260.110, and 260.122), MMS has authority to impose price thresholds for royalty relief. As prescribed in applicable regulations or lease terms, notwithstanding any provisions for royalty relief, companies are required to pay royalties for those calendar years when annual average New York Mercantile Exchange (NYMEX) market prices for oil or gas exceed the adjusted price thresholds levels. As a courtesy, MMS tracks, calculates, and posts on its website a variety of relevant information about applicable oil and gas prices and the price threshold levels to be used in determining whether a particular lease continues to be eligible for deep gas, deep water, or other royalty relief. The information contained in this published notice was posted on MMS Web site previously.

The following table represents the official MMS price threshold and market price calculation determinations made for calendar year 2006. Any subsequent inflation adjustments or market price adjustments will not affect these official results or their implication for royalty relief on the designated categories of leases.

APPLICABLE PRICE THRESHOLDS AND MARKET PRICES FOR CALENDAR YEAR 2006

Product	Lease vintage (sales held in)	Annual average NYMEX price ($/bbl or $/mmbtu)	Adjusted price threshold level ($/bbl or $/mmbtu)	Royalty relief suspended
Deepwater oil	Before 1996; 1996–1997; 2000; 2002–3/2004	$66.22	$35.75	Yes

APPLICABLE PRICE THRESHOLDS AND MARKET PRICES FOR CALENDAR YEAR 2006—Continued

Product	Lease vintage (sales held in)	Annual average NYMEX price ($/bbl or $/mmbtu)	Adjusted price threshold level ($/bbl or $/mmbtu)	Royalty relief suspended
Deepwater oil	2001	66.22	32.06	Yes
Deepwater oil	8/2004–2006	66.22	41.36	Yes
Deepwater gas	Before 1996; 1996–1997; 2000; 2002–3/2004	6.99	4.47	Yes
Deepwater gas	2001	6.99	4.00	Yes
Deepwater gas	8/2004–2006	6.99	6.88	Yes
Deep gas	3/2001	6.99	4.00	Yes
Deep gas	8/2001–2003	6.99	5.72	Yes
Deep gas	2004–2006	6.99	9.88	No
Deep gas	Reg 30 CFR 203.47	6.99	9.88	No

bbl = barrel, mmbtu = million British Thermal Units.

Technical Documentation

The data and methodology used for making the 2006 calculations and determinations are discussed below. This same information for all years since 1996 is available at the Economics Division Web site *http://www.mms.gov/econ/DWRRAPrice1.htm*. Additional information and notes about understanding this Web site are included at the end of this notice.

Methodology for Calculation of the Actual Annual Average NYMEX Nearby Delivery Price

1. We use the price for the nearby delivery month. That is, the price for the first contract or earliest month that you can get the delivery/inventory for buying and selling today's product. For example, on September 1, 2006, the nearby delivery month was October 2006. There are prices for other delivery months that can be bought and sold on September 1, 2006, such as November 2006, December 2006, etc., but the ''nearby delivery month'' would be October 2006. However, the nearby delivery month is not always the next month because trading days may differ for oil and gas futures. For example, on September 28, 2006, the nearby delivery month was November 2006.

2. The daily NYMEX closing price is listed as the settle price at the end of business trading hours for each commodity. These are listed at *http://www.nymex.com* and also summarized at *http://www.oilnergy.com*.

3. The daily closing average is used to calculate the monthly average. For holidays and weekends, we use the previous business day's closing average. For example, Table A illustrates the calculation of the average NYMEX oil price for the month of September 2006. (**Note**—this methodology is different from the Minerals Revenue Management's Royalty In-Kind Program that excludes weekends and holidays.) Our analysis indicates that inclusion or exclusion of weekends and holidays does not bias the annual average price calculation in either direction. We chose to include the weekends and holidays, as highlighted in Table A, because our source summarizes the monthly price data with the inclusion.

TABLE A.—EXAMPLE OF MONTHLY AVERAGE PRICE CALCULATION

Day	Date	Daily closing price ($/bbl)	Day	Date	Daily closing price ($/bbl)
Friday	9/1/2006	$69.19	Saturday	9/16/2006	$63.33
Saturday	9/2/2006	69.19	Sunday	9/17/2006	63.33
Sunday	9/3/2006	69.19	Monday	9/18/2006	63.80
Monday (Holiday)	9/4/2006	69.19	Tuesday	9/19/2006	61.66
Tuesday	9/5/2006	68.60	Wednesday	9/20/2006	60.46
Wednesday	9/6/2006	67.50	Thursday	9/21/2006	61.59
Thursday	9/7/2006	67.32	Friday	9/22/2006	60.55
Friday	9/8/2006	66.25	Saturday	9/23/2006	60.55
Saturday	9/9/2006	66.25	Sunday	9/24/2006	60.55
Sunday	9/10/2006	66.25	Monday	9/25/2006	61.45
Monday	9/11/2006	65.61	Tuesday	9/26/2006	61.01
Tuesday	9/12/2006	63.76	Wednesday	9/27/2006	62.96
Wednesday	9/13/2006	63.97	Thursday	9/28/2006	62.76
Thursday	9/14/2006	63.22	Friday	9/29/2006	62.91
Friday	9/15/2006	63.33	Saturday	9/30/2006	62.91
Average					64.29

4. The monthly average is used to calculate the annual average. For example, Table B illustrates the calculation of the NYMEX oil price for 2006. The calculation for the year-to-date average consists of the monthly averages so far in the year. The dollar amount of the result is rounded to the nearest tenth decimal point (i.e., cents).

TABLE B. EXAMPLE OF ANNUAL AVERAGE PRICE CALCULATION

Month	Average closing price ($/bbl)
January	$65.33
February	62.02
March	62.89
April	70.11
May	70.86
June	71.03
July	74.45
August	73.11
September	64.29
October	59.22
November	59.14
December	62.22
Average	66.22

Methodology for Calculation of the Applicable Oil and Natural Gas Price Thresholds

1. The price thresholds are estimates until they are locked in for a calendar year based on the most current inflation data available after the close of the year. In conjunction with the calculation of the annual market prices for oil and gas above, once the price thresholds are locked in, MMS makes an official determination regarding whether these market prices have exceeded the applicable price thresholds for the calendar year for a given vintage of lease and royalty relief program. After this official MMS determination is made, any subsequent revisions in the underlying source of the inflation figures will not affect the locked-in price thresholds or the determination of eligibility for royalty relief for that calendar year.

2. The source for inflation data is the Department of Commerce, Bureau of Economic Analysis (BEA) *http://www.bea.gov.* U.S. Economic Accounts—Gross Domestic Product (GDP). National Income and Products Account (NIPA) Table 1.1.9. The 4th quarter implicit price deflator is usually not available from BEA until March of the subsequent calendar year.

3. The implicit price deflator for GDP is used to calculate the applicable annual inflation rate, as illustrated in Table C. The deflator from the applicable year is divided by the deflator from the previous year and subtracted by one. For example, the inflation rate used to set the 2003 price threshold is calculated as {(106.40/104.19) − 1 = 2.1%}

TABLE C.—INFLATION RATES (CURRENT AND LOCKED-IN)

[Derived from BEA data]

Calendar year	Implicit price deflator for GDP (base=1996)	Implicit price deflator for GDP (base=2000)	Current annual inflation rate	Locked-in annual inflation rate
1994	96.01			
1995	98.10			
1996	100.00			
1997	101.95			
1998	103.20			
1999	104.65			
2000	107.04	100.00		
2001		102.40	2.2	2.3
2002		104.19	1.2	1.2
2003		106.40	2.1	1.6
2004		109.43	2.8	2.3
2005		112.74	3.0	3.5
2006		116.04	2.9	2.9

4. Because price thresholds are fixed for previous years, the current inflation rate displayed in Table C above may not correspond precisely to the rate actually employed to calculate previous price thresholds. For example, the GDP deflator posted on the BEA Web site in March 2007 shows an inflation rate for 2004 of 2.8 percent. However, back in March 2005, when the 2004 price threshold was locked-in, the BEA Web site showed an inflation rate of 2.3 percent, resulting in a change for the deepwater oil price threshold for lease vintage 1996–2000*; 2002–3/2004*, as shown in the Deepwater Table on the Web site, from $32.80/bbl in 2003 to $33.55/bbl in 2004. Note that the figures that were shown on the BEA Web site in March of each year would be consistent with the adjustments made in the price thresholds from year to year. Rounding explains any remaining small differences between calculated locked-in inflation rates and those rates depicted on the MMS Web site. Therefore, to replicate the calculation for previous price thresholds, use the locked-in inflation rate. To replicate the calculation for the estimated price threshold, prior to March of the subsequent year, use the current inflation rate.

Additional Information and Notes About the Web Site

1. The MMS will estimate the average market price at which oil or gas would have to sell during the remainder of the calendar year for the estimated price threshold to be exceeded for that year. If that estimated market price is shown in the table as a negative number, the average price at which oil or gas would have to be sold during the rest of the calendar year as of that time is guaranteed to exceed the estimated price threshold for the calendar year.

2. The bold font shown for selected actual annual market prices indicates years in which at least some leases were not eligible for royalty relief because actual prices exceeded the applicable price thresholds set for those leases. For example, in calendar year 2004, the actual average price of natural gas of $6.18 (per million Btu) exceeded the

shallow water, deep natural gas price threshold levels of $3.76 for leases issued in Sale 178 (2001), and $5.37 for leases issued in all other Gulf of Mexico Sales held from 2001–2003 that did not exercise the option to switch terms offered under 30 CFR 203.48.

3. Production generated royalty-free under the deep gas program counts against the remaining royalty suspension volume, with one exception. That exception involves production from March 1, 2004, through May 2, 2004, from deep wells that qualified for royalty suspension under 30 CFR 203.40 through 48 (see **Federal Register**, Volume 69, Number 84, page 24055).

4. Regulations pertaining to price thresholds include 30 CFR 203.47, 203.54, 203.78, 260.110, and 260.122.

Dated: May 22, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. 07–2991 Filed 6–18–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 2, 2007.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 5, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

COLORADO

Las Animas County

Aultman House, 711 Colorado Ave., Trinidad, 07000673

DISTRICT OF COLUMBIA

District of Columbia

Sixteenth Street Historic District (Boundary Increase), 16th St., NW., Washington, 07000671

KENTUCKY

Bracken County

Baker Vineyard and Wine Cellar (Boundary Increase), 4465 W. Augusta–Chatham Rd., Augusta, 07000679

Campbell County

Weber, John, Farm, (German Settlement, Four Mile Creek Area TR) 6231 Four Mile Rd., Camp Springs, 07000672

Clark County

Corinth Christian Methodist Episcopal Church, 1180 L & E Junction Rd., Winchester, 07000678

Jefferson County

Olympic, The, 223 W. Breckinridge St., Louisville, 07000677

Knott County

Bolen Building, 85 W. Main St., Hindman, 07000676

Hindman Ben Franklin, 16 W. Main St., Hindman, 07000675

Pulaski County

Gover–Hardin House, 307 W. Mt. Vernon St., Somerset, 07000674

MASSACHUSETTS

Middlesex County

Old Billerica Road Historic District, 229–301 Old Billerica Rd., Bedford, 07000681

Plymouth County

Wright Memorial Library, 147 St. George St., Duxbury, 07000680

Worcester County

Pan Burying Ground, 477 Main St., Bolton, 07000682

MISSOURI

Cape Girardeau County

Cape Girardeau Commercial Historic District (Boundary Increase), (Cape Girardeau, Missouri MPS) 101 N. Main St., Cape Girardeau, 07000683

TENNESSEE

Davidson County

McGavock—Gatewood Webb House, 908 Meridian St., Nashville, 07000688

Sevier County

Settlement School Community Outreach Historic District, (Pi Beta Phi Settlement School MPS) 556 Parkway, Gatlinburg, 07000686

White Oak Flats Cemetery, Cemetery Rd., Gatlinburg, 07000685

Shelby County

Vollintine Hills Historic District, (Memphis MPS) Roughly bounded by Bollintine, Brown, McLean, and Evergreen, Memphis, 07000684

Wilson County

Lebanon Woolen Mills, 218 N. Maple St., Lebanon, 07000687

TEXAS

Galveston County

USS STEWART, East End of Seawolf Park, Galveston, 07000689

La Salle County

La Salle County Courthouse, 101 Courthouse Square, Cotulla, 07000690

Rockwall County

First Methodist Church of Rockwall, 303 E. Rusk, Rockwall, 07000691

VERMONT

Orange County

Foundry Bridge, VT 25, Tunbridge, 07000692

Rutland County

Crown Point Road:Socialborough South Line to Otter Creek Crossing, (Crown Point Road MPS) Address Restricted, Clarendon, 07000693

Crown Point Road: Stevens Site South Road Segment, (Crown Point Road MPS) Address Restricted, Proctor, 07000694

[FR Doc. E7–11726 Filed 6–18–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0005]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program (Campus Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0005. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 100 grantees (institutions of higher education) of the Grants to Reduce Violent Crimes Against Women on Campus Program whose eligibility is determined by statute. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Campus Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 200 hours, that is 100 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 14, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–11788 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0008]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review:

Semi-Annual Progress Report for Enhanced Training and Services To End Violence and Abuse of Women Later in Life Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Enhanced Training and Services to End Violence and Abuse of Women Later in Life Program (Training Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0008. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Training Program. Training Program grants may be used for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals. Grantees fund

projects that focus on providing training for criminal justice professionals to enhance their ability to address elder abuse, neglect and exploitation in their communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Training Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Training Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 14, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–11790 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0009]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Safe Havens: Supervised Visitation and Exchange Grant Program (Supervised Visitation Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0009. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 33 grantees of the Supervised Visitation Program who are States, Indian tribal governments, and units of local government. The Supervised Visitation Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 33 respondents (Supervised Visitation Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Supervised Visitation Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 66 hours, that is 33 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 14, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–11791 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0010]

Office on Violence Against Women; Agency Information Collection Activities: Extension of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for Grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0010. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 88 grantees from the State Coalitions Program. The State Coalitions Program provides federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 88 respondents (State Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A State Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 176 hours, that is 88 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 14, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–11793 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0006]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine DEA Form 189.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 189.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 826 and 21 CFR 1303.22 and 1315.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who

desires to manufacture a quantity of such class, or who desires to manufacture using the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, must apply on DEA Form 189 for a manufacturing quota for such quantity of such class or List I chemical.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that each form takes 0.5 hours (30 minutes) to complete. In total, 37 firms submit 298 responses, with each response taking 0.5 hours (30 minutes) to complete. This results in a total public burden of 149 hours annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* In total, 37 firms submit 298 responses, with each response taking 0.5 hours (30 minutes) to complete. This results in a total public burden of 149 hours annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 12, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–11782 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Procurement Quota for Controlled Substances and Ephedrine, Pseudoephedrine, and Phenylpropanolamine DEA Form 250.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing collection.

(2) *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances and Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 250.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 826 and 21 CFR 1303.12 and 1315.32 require that U.S. companies who desire to use any basic class of controlled substances listed in Schedule I or II or the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for procurement quota for such class or List I chemical.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that each form takes 1 hour to complete. DEA estimates that 495 individual respondents will respond to this form. DEA estimates that 1,346 responses are received annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden for this collection is 1,346 hours annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 12, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–11783 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0047]

Agency Information Collection Activities

ACTION: 60–Day Notice of Information Collection Under Review. Proposed collection; comments requested: Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine DEA Form 488.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 20, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief,

Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Import Quota for Ephedrine, Pseudoephedrine, and Phenylpropanolamine.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 488.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 952 and 21 CFR 1315.34 require that persons who desire to import the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine during the next calendar year shall apply on DEA Form 488 for import quota for such List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that ninety-one (91) individual respondents will apply for import quotas. DEA estimates that each response will take one hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection will involve ninety-one (91) annual public burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 12, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–11785 Filed 6–18–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 13, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain,* or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov.*

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Job Corps Placement and Assistance Record.

OMB Number: 1205–0035.

Frequency: On occasion.

Affected Public: Individuals or Households.

Type of Response: Reporting.

Number of Respondents: 48,318.

Annual Responses: 48,318.

Average Response time: 7.43 minutes.

Total Annual Burden Hours: 5,979 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: The purpose of this collection is to gather information about a student's training and subsequent placement in a job, higher education or the military. It is used to evaluate overall program effectiveness. This form is critical to the program's effectiveness evaluation process. It is the only form which documents a student's post-center status. This form is completed by either the Job Corps center records staff or a career transition specialist for each student.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E7–11774 Filed 6–18–07; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2007–1]

Section 109 Report to Congress

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of Time to File Reply Comments

SUMMARY: The Copyright Office is extending the time in which reply

comments can be filed in response to its Notice of Inquiry requesting information for the preparation of the Section 109 Report to the Congress, as required by the Satellite Home Viewer Extension and Reauthorization Act of 2004.

DATES: Reply Comments are due no later than October 1, 2007.

ADDRESSES: If hand delivered by a private party, an original and five copies of reply comments should be brought to the Library of Congress, U.S. Copyright Office, Public Information Office, LM 401, James Madison Building, 101 Independence Ave, Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Ben Golant, Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, D.C. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 401, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Senior Attorney, and Tanya M. Sandros, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On December 8, 2004, the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004, a part of the Consolidated Appropriations Act of 2004. See Pub. L. No. 108–447, 118 Stat. 3394 (2004) (hereinafter ''SHVERA''). Section 109 of the SHVERA requires the Copyright Office to examine and compare the statutory licensing systems for the cable and satellite television industries under Sections 111, 119, and 122 of the Copyright Act and recommend any necessary legislative changes no later that June 30, 2008.

Earlier this year, we released a Notice of Inquiry (NOI) seeking comment on several issues associated with the matters identified in Section 109 of the SHVERA. *See* 72 FR 19039 (April 16, 2007). To further supplement the record, the Office announced the scheduling of public hearings for the purpose of taking testimony from interested persons. The hearings are to be held during the week of July 23, 2007. *See* 72 FR 28998 (May 23, 2007).

On June 11, 2007, the Copyright Office received a Motion for an Extension of Time to File Comments and Reply Comments in this proceeding from the following parties: (1) Program Suppliers; (2) Joint Sports Claimants; (3) Public Television Claimants; (4) NAB; (5) BMI; (6) SESAC; (7) Michael Remington of Drinker Biddle; and (8) John Beiter of Loeb & Loeb. The parties have also requested that the Office move the date of its public hearings as originally announced in the **Federal Register** on May 23, 2007.

The parties have proposed to move the dates for: (1) the filing of initial comments from July 2, 2007, to September 7, 2007; (2) the filing of reply comments from September 13, 2007, to November 16, 2007; and (3) the hearing from July 23–26, 2007, to the week of September 24, 2007. Under their proposed schedule, witnesses would be identified on August 24, 2007, instead of June 15, 2007, and written questions of testimony would be filed on September 7, 2007, instead of July 2, 2007. They add that moving the dates of the public hearings into the month of August would create ''numerous scheduling problems.''

The parties state that the issues raised in this proceeding, ''besides being so wide–ranging, are of substantial importance to the industries that will be affected by Congress's ultimate resolution'' of the matters enumerated in Section 109 of the SHVERA and discussed by the Copyright Office in the NOI. For this reason, and this reason alone, the parties urge the Office to provide more time to allow further consideration of these issues within their respective industry groups before initial comments are filed.

We deny all of the extension requests, except for the date by which reply comments are due. The parties have failed to provide a substantive reason why most of the extensions are necessary. They have not adequately stated why the 75 day time frame for filing comments set forth by the Office in the Section 109 NOI was insufficient nor have they adequately explained why they need over seven months to file reply comments. It is important for the parties to recognize that the Office will need time to draft the Report to Congress, which will be a considerable effort given the limited amount of administrative resources available. Nevertheless, to provide all parties with more time to make a meaningful rebuttal to the comments and testimony filed in July 2007, we will extend the dates reply comments are due for an additional two and a half weeks. We will also consider whether to hold additional hearings or permit the filing of surreplies after reply comments are filed in October.

Conclusion

We hereby extend the time by which interested parties may file reply comments from September 13, 2007, to October 1, 2007.

Dated: June 14, 2007

Tanya M. Sandros,

Acting General Counsel

[FR Doc. E7–11816 Filed 6–18–07; 8:45 am]

[BILLING CODE: 1410–30–S]

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 07–05]

Notice of the June 27, 2007 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 11:45 a.m., Wednesday, June 27, 2007.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss and consider proposed Millennium Challenge Account (''MCA'') Compacts under the provisions of Section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7704(a); a Threshold Country Program submission for FY 2007 MCA assistance under Section 616 of the Millennium Challenge Act of 2003 (the ''Act'') codified at 22 U.S.C. 7715; Compact and Threshold Program issues; and certain administrative matters.

The agenda items are expected to involve the discussion of classified

information and the meeting will be closed to the public.

Dated: June 15, 2007.

William G. Anderson, Jr.,

Vice President and General Counsel.

[FR Doc. 07–3044 Filed 6–15–07; 2:35 pm]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 161st Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on July 12 and July 13, 2007 in Rooms 527 and M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet in closed session on July 12th, from 2 p.m. to 5 p.m., in Room 527 for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of February 16, 2007, this session will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

The July 13th meeting, from 9 a.m. to 12 p.m. (ending time is approximate), will be open to the public on a space available basis. Opening remarks and announcements will include a musical tribute to Mstislav Rostropovich and the swearing in of a new Council member. After the swearing in, there will be a recitation by the national Poetry Out Loud winner, Amanda Fernandez, followed by an update on Congressional/White House activities. The meeting will include a presentation on Regional Arts Organizations, followed by review and voting on applications and guidelines. The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY-TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: June 14, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E7–11777 Filed 6–18–07; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Sunshine Act Meetings

DATES: Weeks of June 18, 25; July 2, 9, 16, 23, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 18, 2007

There are no meetings scheduled for the Week of June 18, 2007.

Week of June 25, 2007—Tentative

Thursday, June 28, 2007

12:55 p.m.

Affirmation Session (Public Meeting) (Tentative):

a. Consumers Energy Co. (Big Rock Point ISFSI); License Transfer Application; Petition for Reconsideration of CLI–07–19 (Tentative).

b. Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application; Petition for Reconsideration (Tentative).

Week of July 2, 2007—Tentative

There are no meetings scheduled for the Week of July 2, 2007.

Week of July 9, 2007—Tentative

There are no meetings scheduled for the Week of July 9, 2007.

Week of July 16, 2007—Tentative

Wednesday, July 18, 2007

1 p.m.

Briefing on Digital Instrumentation and Control (Public Meeting) (*Contact:* William Kemper, (301) 415–7585).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 23, 2007—Tentative

Tuesday, July 24, 2007

2 p.m.

Briefing on Palo Verde, Unit 3 (Public Meeting) (Contact: Michael Markley, (301) 415–5723).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, July 25, 2007

2 p.m.

Discussion of Management Issues (Closed—Ex. 2).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 14, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3033 Filed 6–15–07; 11:51 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 24, 2007, to June 6, 2007. The last biweekly notice was published on June 5, 2007 (72 FR 31097).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or

fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) 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. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: May 10, 2007.

Description of amendment request: In 2004, the Nuclear Regulatory Commission (NRC) imposed a license condition that requires the submission of a coupon surveillance program for the Unit 1 Spent Fuel Pool (SFP) racks. The coupon surveillance program is necessary to support an approved license amendment which established acceptable boron concentrations in the Unit 1 SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed surveillance program supports evaluation of degradation of the neutron absorbing material in the Unit 1 Spent Fuel Pool (SFP). The function of the neutron absorbing material is to provide one means of maintaining criticality safety of the nuclear fuel stored in the SFP.

The postulated accidents for the SFP are basically five types; (1) dropped fuel assembly on top of the storage rack, (2) a misloading accident, (3) an abnormal location of a fuel assembly, (4) loss-of-normal cooling to the SFP, and (5) dilution of boron in the SFP water.

The proposed change in the coupon surveillance program for the Unit 1 SFP racks does not affect any of these previously evaluated accidents. The coupon trees have been evaluated as required by our plant modifications program and have been determined to have no effect on accidents in the SFP.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed surveillance program supports evaluation of degradation of the neutron absorbing material in the Unit 1 SFP. The function of the neutron absorbing material is to provide one means of maintaining criticality safety of the nuclear fuel stored in the SFP.

The coupon trees have been evaluated as required by our plant modifications program and do not create the possibility of a new or different kind of accident in the SFP. The surveillance coupons have existed in the SFP since the Unit 1 SFP racks were installed. The form and function of the surveillance coupon trees is not changed because of the need to change the coupon surveillance program. The interaction of the coupons with the spent fuel racks and the SFP is not changed due to the proposed surveillance program change.

The proposed change will not result in any other change in the plant configuration or equipment design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed coupon surveillance program supports evaluation of degradation of the neutron absorbing material in the Unit 1 SFP. The function of the neutron absorbing material is to provide one means of maintaining criticality safety of the nuclear fuel stored in the SFP. Evaluation of the coupons as part of an ongoing surveillance program provides assurance that the fuel will remain subcritical under all postulated conditions.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: May 2, 2007.

Description of amendments request: The proposed amendment would modify Technical Specification (TS) requirements for unavailable barriers by adding Limiting Condition for Operation (LCO) 3.0.9. The changes are consistent with the Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF)–427, Revision 2. The availability of this TS improvement was published in the **Federal Register** on October 3, 2006 (71 FR 58444) as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP and ICLERP) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation (71 FR 58449). Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Operations, Inc., Docket No. 50–003, Indian Point, Unit 1, Buchanan, New York

Date of application for amendment: February 22, 2007.

Description of amendment request: The proposed amendment would enable the licensee to make changes to the Final Safety Analysis Report (FSAR) to reflect use of the non-single-failure-proof Fuel Handling Building (FHB) 75 ton crane for dry spent fuel cask handling operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

i. Will operation of the facility in accordance with this proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed amendment introduces no new mode of plant operations and does not affect Structures, Systems, and Components (SSCs) associated with power production, accident mitigation, or safe plant shutdown. The SSCs affected by this proposed amendment are the Indian Point, Unit 1 (IP–1) FHB 75-ton crane, the FHB concrete structure, the spent fuel storage canister, the spent fuel transfer cask, and the spent fuel inside the storage canister. A hypothetical drop of a 30 ton spent fuel shipping cask has been previously evaluated by the NRC and found to be acceptable based on the physical arrangement of plant equipment and the fact that the load path is entirely over concrete floors founded on bedrock or engineered fill over bedrock. The increased mass of the HI–TRAC transfer cask containing a fuel-loaded Multi-Purpose Canister (MPC)consequently results in no change to the basis for the original cask handling approval.

With this amendment, fewer HI–TRAC casks will be required to be loaded, lifted, and handled, a planned total of five, than the previous cask handling effort which involved loading and handling 120 casks. The HI–TRAC cask is within the design capability of the IP–1 FHB 75 ton crane, therefore the probability of an accident is not increased.

The new analyses of hypothetical drops of a loaded transfer cask confirm that there is no release of radioactive material from the storage canister and no unacceptable damage to the fuel, MPC, or transfer cask.

The hypothetical drop of a spent fuel canister lid into an open, fuel-filled canister in the cask loading pool during fuel loading has been evaluated. [Additionally, the drop of a single spent fuel assembly into an open fuel-filled canister in the cask loading pool, due to the potential damage of spent fuel assemblies in the canister, has been evaluated.] The radiological consequences of these events are less than 2% of regulatory requirements and are bounded by the licensing basis of IP–1.

Since the hypothetical drops result in lesser g loads on the fuel than the design criterion, there is no rearrangement of the fuel or deformation of the fuel basket in the canister such that a critical geometry is created.

ii. Will operation of the facility in accordance with this proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment introduces no new mode of plant operations and does not affect SSCs associated with power production, accident mitigation, fuel pool cooling, or SAFSTOR configuration. The SSCs affected by this proposed amendment are the non-single-failure proof 75 ton crane, structural portions of the FHB, the spent fuel canister, the spent fuel transfer cask, and the spent fuel inside the canister.

The design function of the IP–1 FHB 75 ton crane is not changed. The HI–STORM System

load drops create the possibility of a new initiator of an accident previously evaluated (failure of fuel cladding) caused by the postulated non-mechanistic single failure of a component in the FHB 75 ton crane.

The current licensing basis includes evaluations of the consequences of a spent fuel cask drop into the cask load pool. The new initiators include the drop of a fuel transfer cask and a drop of a spent fuel canister lid into the open, fuel filled canister in the cask loading pool and a drop of individual assemblies into the MPC. These new initiators create hypothetical accidents that are comparable in consequences to and bounded by those previously evaluated. For the drop of a spent fuel transfer cask, the consequences of cask impact on facility SSCs are bounded by the current licensing scenario of a shipping cask drop. That is, there is no significant damage to the FHB structure or on any SSCs used for safe storage of spent fuel, and there is no release of radioactive material. These new analyses of the drop of a loaded transfer cask confirm that there is no release of radioactive material from the storage container and no unacceptable damage to the fuel, MPC, or transfer cask.

For the drop of the spent fuel canister lid, with the maximum number of assemblies in the canister at 32, or the drop of a single spent fuel assembly into a fuel-filled canister, doses are calculated to be less than 2% of regulatory limits. Further the previously analyzed 100 percent cladding failure of 160 assemblies bounds the event. There is no rearrangement of the fuel in the canister such that a critical geometry is created as a result of an MPC lid drop.

iii. Will operation of the facility in accordance with this proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment introduces no new mode of plant operations and does not affect SSCs associated with spent fuel storage, spent fuel pool cooling, or the integrity of SSCs in the SAFSTOR mode. The SSCs affected by this proposed amendment are the non-single-failure-proof FHB 75 ton crane, structural portions of the FHB, the spent fuel storage canister, the spent fuel transfer cask, and the spent fuel inside the canister. This amendment does not affect the fuel stored in the spent fuel pool or any SSC associated with safe storage of the fuel. The design function of the 75 ton crane is not changed. The proposed changes to plant procedures needed to implement dry cask storage do not exceed or alter a design basis or safety limit associated with accident mitigation, SAFSTOR, or fuel clad integrity.

This proposed amendment results in a net benefit based upon the larger capacity cask being used to move and store the fuel (32 assemblies per canister versus two assemblies). All the fuel can be removed from the spent fuel pool with far fewer cask lifts, welding evolutions, and storage placement. Because the maximum weight of the cask loaded with spent fuel is the same as the original design and tested capacity of the crane, design safety margins for use of the 75 ton crane remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. Attorney for licensee: General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: John Buckley.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 15, 2007.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 1.4 and Section 5. Changes to TS 1.4 would incorporate Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard Technical Specification Changes TSTF–284, ''Add 'Met vs. Perform' to Specification 1.4, Frequency,'' Revision 3, TSTF–485–A, ''Correction Example 1.4–1,'' Revision 0, and make administrative changes. Changes to TS Section 5 would incorporate NRC-approved TSTF–258, ''Changes to Section 5.0, Administrative Controls,'' Revision 4, NRC-approved TSTF–273, ''[Safety Functions Determination Program] SFDP Clarifications,'' Revision 2, as amended by Westinghouse Owners Group (WOG) editorial change WOG–ED–23, and make administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative or provide clarification only.

The proposed changes do not have any impact on the integrity of any plant system, structure, or component that initiates an analyzed event. The proposed changes will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Thus, the probability of any accident previously evaluated is not significantly increased.

The proposed changes do not affect the ability to mitigate previously evaluated accidents, and do not affect radiological assumptions used in the evaluations. The proposed changes do not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. The proposed amendment does not involve operation of the required structures, systems, or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not affect any margin of safety. The proposed amendment does not involve any physical changes to the plant or manner in which the plant is operated.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: L. Raghavan.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 18, 2007.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Surveillance Requirement (SR) 3.5.2.9, to support resolution of containment sump issues raised in Nuclear Regulatory Commission (NRC) Generic Letter (GL) 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors.'' The proposed change to TS SR 3.5.2.9 would make the surveillance consistent with the plant design following planned modifications to the containment sump.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to TS SR 3.5.2.9 do not have any impact on the integrity of any plant system, structure, or component (SSC) that initiates an analyzed event. The proposed changes do not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Thus, the probability of any accident previously evaluated is not significantly increased.

The proposed changes do not affect the ability to mitigate previously evaluated accidents, and do not affect radiological assumptions used in the evaluations. The proposed changes to TS SR 3.5.2.9 do not change or alter the design criteria for the systems or components used to mitigate the consequences of any design basis accident. The proposed amendment does not involve operation of the required structures, systems, or components in a manner or configuration different from those previously recognized or evaluated. The proposed changes to TS SR 3.5.2.9 provide assurance that the sump flowpath is unrestricted and stays in proper operating condition. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment to modify TS SR [3.]5.2.9 does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed changes do not adversely affect any plant safety limits, set points, or design parameters. The proposed changes do not adversely affect the fuel, fuel cladding, primary coolant system (PCS), or containment integrity. The proposed TS SR 3.5.2.9 changes ensure that the containment sump is unrestricted and stays in proper operating condition. The proposed changes would make the surveillance consistent with the plant design following planned modifications to the containment sump.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: L. Raghavan.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: April 22, 2007.

Description of amendment request: The proposed amendments would delete the Unit 2 license condition that requires reporting violations of other requirements conditions and delete Technical Specifications (TS) 6.6 for both units that require the NRC be notified of reportable events pursuant to 10 CFR 50.73. This request also includes an administrative TS change for both Units by changing references of the ''Topical Quality Assurance Report'' to the ''Quality Assurance Topical Report.'' The NRC staff issued a notice of opportunity to comment in the **Federal Register** on August 29, 2005 (70 FR 51098), on possible amendments to eliminate the license condition involving reporting of violations of other requirements (typically in License Condition 2.C) in the operating license, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the model for referencing in license amendment applications in the **Federal Register** on November 4, 2005 (70 FR 67202).

The licensee affirmed the applicability of the NSHC determination in its application dated April 22, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves the deletion of a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in that it deletes a reporting requirement. The change does not add new plant equipment, change existing plant equipment, or affect the operating practices of the facility. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change deletes a reporting requirement. The change does not affect plant equipment or operating practices and therefore does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit 1 and 2, Berrien County, Michigan

Date of amendment request: May 11, 2007.

Description of amendment request: The proposed amendment would modify Surveillance Requirement (SR) 3.3.1.18, pertaining to the reactor trip on turbine trip function, in the Technical

Specifications (TS). The existing SR requires that the SR be met before reaching the P–7 interlock (approximately at 10 percent reactor power). The licensee proposed to change the SR such that the SR will be met before reaching the P–8 interlock (approximately at 31 percent reactor power). This proposed change would ensure consistency between the SR and the mode of applicability for the reactor trip on turbine trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed change revises a Technical Specification (TS) [s]urveillance [r]equirement (SR) [f]requency associated with the reactor trip on turbine trip function to be consistent with the mode of applicability for the function. The change to the frequency from prior to exceeding the P–7 interlock to prior to exceeding the P–8 interlock does not create any new credible single failure. The P–7 and P–8 interlocks are not accident initiators. The reactor trip on turbine trip function is an anticipatory trip, and the safety analysis does not credit this trip for protecting the reactor core. The consequences of accidents previously evaluated are unaffected by this change because no change to any accident mitigation scenario has resulted and there are no additional challenges to fission product barrier integrity.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed change to the interlock at which the surveillance is performed in support of a reactor trip on turbine trip does not adversely affect previously identified accident initiators and does not create any new accident initiators. The change does not affect how the associated trip function operates. No new single failures or accident scenarios are created by the proposed change and the proposed change does not result in any event previously deemed incredible being made credible.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No safety analyses were changed or modified as a result of the proposed change in the surveillance frequency. All margins associated with the current safety analyses acceptance criteria are unaffected. The current safety analyses remain bounding. The safety systems credited in the safety analyses will continue to be available to perform their mitigation functions. The proposed change does not affect the availability or operability of safety-related systems and components.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Travis L. Tate.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 16, 2007.

Description of amendment request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant-specific technical specifications (TS), to strengthen TS requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS change are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. The proposed revision to the TS and associated Bases is consistent with STS as revised by STS change traveler TS Task Force (TSTF)–448, Revision 3, ''Control Room Envelope Habitability.''

The proposed amendment would revise the TS to modify requirements regarding CRE habitability using the Consolidated Line Item Improvement Process, based on the NRC-approved to TSTF–448, Revision 3. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments adopting TSTF–448, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022). The licensee affirmed the applicability of the following NSHC determination in its application dated May 16, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its

functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Thomas G. Hiltz.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 21, 2007.

Description of amendment request: The proposed amendment would add Technical Specification (TS) Limiting Condition for Operation (LCO) 3.0.8 to allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4).

The NRC staff issued a notice of availability of a model safety evaluation and model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252) for model safety evaluation and November 24, 2004 (69 FR 68420) for NSHC. The licensee affirmed the applicability of the model NSHC determination in its application dated May 21, 2007.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

RC Branch Chief: Evangelos C. Marinos.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 14, 2007, as supplemented by letters dated April 18 and May 9, 2007.

Description of amendment request: The amendment would revise Technical Specifications (TSs) 3.3.2, ''Engineered Safety Features Actuation System Instrumentation''; 3.7.2, ''Main Steam Isolation Valves (MSIVs)''; and 3.7.3, ''Main Feedwater Isolation Valves (MFIVs).'' The proposed TS changes address the following changes to the plant and/or plant TSs: (1) The modification of the main steam and feedwater isolation system (MSFIS), which provides the signal to actuate the MSIVs and MFIVs, and changes to TS 3.3.2; (2) the replacement of the MSIVs and MFIVs, and associated actuators; (3) the addition of the main feedwater regulating valves (MFRVs), and associated MFRV bypass valves, to TS 3.7.3; (4) the relocation of the MSIV and MFIV isolation times from TSs 3.7.2 and 3.7.3 to the TS Bases; and (5) the changes to page numbers in the TS Table of Contents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Evaluations and/or reanalysis assessing the impact of the replacement MSFIS, MSIVs and MFIVs and actuators, and the increased closure time on non-LOCA [non-loss-of-coolant accident] transients; SBLOCA [small-break LOCA] transients; main steam line break mass and energy releases inside and outside containment; containment pressure and temperature response to a postulated main steam line break; environmental qualification of equipment; and the steam generator tube rupture transients and associated radiological consequences, were performed. The increase in closure times and the changes to the MSFIS, MSIVs, and MFIVs either do not provide an adverse impact or do not result in accident acceptance criteria being challenged.

The modifications to the MSFIS controls will not affect any design basis accidents since the logic which currently exists will continue to be performed. The replacement controls are functionally the same as the current system since the same logic functions are performed, the same inputs received, and the same outputs produced.

The replacement of the MSFIS controls, replacement of the MSIV and MFIVs, and replacement of the electro-hydraulic actuators with system-medium actuators [with the longer closure time] will not result in a significant increase in the probability or consequence of an accident previously evaluated. [The replacement equipment for the MSFIS, MSIVs, and MFIVs does not reduce the reliability of the existing equipment being replaced.]

The relocation of the specific isolation times from the TSs to the TS Bases does not impact the design safety function of the valves to close. The TS requirements continue to provide the same level of assurance as before that the MSIVs and MFIVs are capable of performing their intended safety function. The addition of the MFRVs and MFRV bypass valves and extending the Completion Time for one or more MFIVs inoperable, is not an accident initiator and does not change the probability that an accident will occur. The increase in time that the MFIV is unavailable is small and the probability of an event occurring during this time period which would require isolation of the flow path is low. The redundancy provided by the MFRVs and MFRV bypass valves, which have the same actuation signals, provides adequate assurance that automatic feedwater isolation will occur.

Based on all of the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

(2) [Do] the proposed change[s] create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The increase in MSIV and MFIV closure time as a result of the replacement of the MSFIS controls, MSIVs and MFIVs and associated actuators, will not prevent the Main Steam System, Main Feedwater System, or Auxiliary Feedwater System from performing their safety functions. The increased closure time will not affect the normal method of plant operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced with the proposed modifications and increased closure times. Although the modification does alter the design of the MSFIS and MSIV and MFIV actuators, it does not prevent the systems, subsystems, and components from performing their safety functions. [The replacement equipment for the MSFIS, MSIVs, and MFIVs are not initiators of accidents.]

The relocation of the specific isolation times from the TSs to the TS Bases and the addition of the MFRVs and MFRV bypass valves and extending the Completion Time for one or more MFIVs inoperable does not affect the assumptions of any accident analysis or the OPERABILITY of plant equipment.

Therefore, the proposed change[s] [do] not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) [Do] the proposed change[s] involve a significant reduction in a margin of safety?

Response: No.

The replacement of the MSFIS controls, replacement of the MSIVs and MFIVs and associated actuators and resulting increased closure time, does not affect the manner in which safety limits or limiting safety system settings are determined, nor will there be any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no significant impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor, nuclear enthalpy rise hot channel factor, LOCA peak cladding temperature, peak local density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed change[s] [do] not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Thomas G. Hiltz.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket No. 50–250, Turkey Point Plant Unit 3, Miami-Dade County, Florida

Date of application for amendments: May 17, 2007.

Description of amendments request: The proposed amendment would allow the use of an alternate method of determining rod position for a control rod with inoperable rod position indication.

*Date of publication of individual notice in the **Federal Register***: May 24, 2007 (72 FR 29186).

Expiration date of individual notice: June 25, 2007 (Public comments) and July 23, 2007 (Hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has

made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 30, 2006.

Brief description of amendment: The amendment revises the note preceding Technical Specification Surveillance Requirement 3.4.6.1 to be consistent with the wording in NUREG–1434, ''Standard Technical Specifications for General Electric Plants, BWR/6,'' Revision 3. Specifically, the note will be revised to read, ''Not required to be performed in MODE 3.''

Date of issuance: May 24, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 176.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** August 15, 2006 (71 FR 46930) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2007.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit Nos. 2, New London County, Connecticut

Date of application for amendments: June 13, 2006, as supplemented by letter dated March 6, 2007.

Brief description of amendments: The amendment revised the Millstone Power Station, Unit No. 2 (MPS2) Technical Specifications to modify the MPS2 licensing basis in the area of radiological dose analysis for design-basis accidents using the alternative source term permitted by Title 10 of the *Code of Federal Regulations* 50.67, ''Accident source term''. Additionally, the amendment revises the MPS2 Technical Specifications consistent with the amended licensing-basis.

Date of issuance: May 31, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No: 298.

Facility Operating License Nos. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 29, 2006 (71 FR 51226). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2007.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: May 31, 2006, as supplemented by letters dated February 14 and April 26, 2005.

Brief description of amendments: The amendments revised the Millstone Power Station, Unit Nos. 2 and 3 Technical Specifications (TSs) related to steam generator (SG) tube integrity. Specifically, the amendment revises the SG tube surveillance program consistent with the Nuclear Regulatory Commission-approved TS Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' Revision 4. TSTF–449 is part of the consolidated line item improvement process.

Date of issuance: May 31, 2007

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos: 299 and 238

Facility Operating License Nos. DPR–65 and NPF–49: Amendments revised the TSs.

Date of initial notice in ***Federal Register***: December 19, 2006 (71 FR 75992).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2007. No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 8, 2007.

Brief description of amendment: The amendment modified Grand Gulf Nuclear Station, Unit 1 (GGNS) technical specifications (TSs) requirements for MODE change limitations in Limiting Condition of Operation (LCO) 3.0.4 and Surveillance Requirement (SR) 3.0.4. The TS changes are consistent with Revision 9 of NRC-approved Industry TS Task Force (TSTF) Standard TS Change Traveler, TSTF–359, ''Increase Flexibility in MODE Restraints.'' In addition, the amendment also changed TS Section 1.4, ''Frequency,'' Example 1.4–1, ''Surveillance Requirements,'' to accurately reflect the changes made by TSTF–359, which is consistent with NRC-approved TSTF–485, Revision 0, ''Correct Example 1.4–1.''

Date of issuance: May 30, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 175.

Facility Operating License No. NPF–29: The amendment revises the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* March 27, 2007 (72 FR 14304).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 2007.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: May 25, 2006, as supplemented January 22, and April 16, 2007.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) consistent with the NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard TS Change Traveler, TSTF–449, ''Steam Generator Tube Integrity.''

Date of Issuance: May 29, 2007.

Effective Date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 147.

Renewed Facility Operating License No. NPF–16: Amendment revised the TSs.

*Date of initial notice in **Federal Register**:* July 18, 2006 (71 FR 40747). The January 22, and April 16, 2007, supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 2007.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: December 13, 2006.

Brief description of amendment: The amendment deletes Technical Specification 6.8.1.3, which provided the requirement for submittal of the annual occupational radiation exposure report.

Date of issuance: May 25, 2007.

Effective date: May 25, 2007.

Amendment No.: 62.

Possession Only License No. DPR–73: The amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register**:* February 13, 2007 (72 FR 6780)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation Report, dated May 25, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 21, 2005, supplemented by letters dated June 16, August 31, September 29, and October 30, 2006, March 15, and May 10, 2007.

Brief description of amendments: The amendments extend the Required Action Completion Times (CT) specified in technical specification (TS) 3.8.1, ''AC Sources—Operating,'' to restore an inoperable emergency diesel generator (EDG) to operable status from the current 7 days to 14 days. Specifically, the proposed changes would revise the current 7-day CT specified in TS 3.8.1 Required Action B.4 to allow 14 days to restore an inoperable EDG to operable status.

Date of issuance: May 30, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 178 and 168.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 3, 2006 (71 FR 151).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 2007.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 20, 2006.

Brief description of amendment: The amendment deleted the Technical Specification requirements associated with the hydrogen purge system. The change is consistent with revisions of 10 CFR 50.44, ''Combustible gas control for nuclear power reactors,'' that became effective on October 16, 2003. This operating license improvement was made available by the U.S. Nuclear Regulatory Commission on September 25, 2003 (68 FR 55416) as part of the consolidated line item improvement process (CLIIP).

Date of issuance: June 6, 2007.

Effective date: As of its date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment No.: 250.

Renewed Facility Operating License No. DPR–40: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* January 30, 2007 (72 FR 4309)

The Commission's related evaluation of the amendment is contained in a safety evaluation dated June 6, 2007.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: November 7, 2006.

Brief description of amendments: The amendments revise TS 3.7.1, ''Main Steam Safety Valves,'' operability requirements and Linear Power Level High Trip setpoints.

Date of issuance: June 5, 2007.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment Nos.: Unit 2–212; Unit 3–204.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* December 19, 2006 (71 FR 75999).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 5, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee.

Date of application for amendments: February 15, 2006, as supplemented August 7, 2006, August 30, 2006, November 30, 2006, and April 2, 2007.

Brief description of amendments: The amendment revises the existing steam generator (SG) tube surveillance program through technical specification (TS) changes modeled after TS Task Force (TSTF) traveler TSTF–449, Revision 4, ''Steam Generator Tube Integrity,'' and the model safety evaluation prepared by the NRC and published in the **Federal Register** on March 2, 2005 (70 FR 10298). The amendment includes changes to the definition of leakage, changes to the primary-to-secondary leakage requirements, changes to the SG tube surveillance program, changes to the SG reporting requirements, and associated changes to the TS Bases.

The amendment also deletes condition 2.C(8)(b) of Facility Operating License No. DPR–79.

This license condition references previous commitments for SG inspection that are bounded by the above TS changes.

Date of issuance: May 22, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 305.

Facility Operating License No. DPR–79: Amendment revised the license and technical specifications.

*Date of initial notice in **Federal Register**:* March 28, 2006 (71 FR 15488).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 2007.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: January 31, 2006, as supplemented on February 23, June 21, and July 28, 2006.

Brief Description of amendments: These amendments revised the Technical Specifications to incorporate the changes to the operation of the containment, as discussed in Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design-Basis Accidents at Pressurized-Water Reactor,'' dated September 13, 2004.

Date of issuance: October 12, 2006.

Effective date: Unit 1 (fall 2007 refueling outage) and Unit 2 (fall 2006 refueling outage).

Amendment Nos.: 250 and 249.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments changed the license and the technical specifications.

*Date of initial notice in **Federal Register**:* March 14, 2006 (71 FR 13182).

The February 23, June 21, and July 28, 2006, supplements contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 2006.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of June 2007.

For The Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–11567 Filed 6–18–07; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400 License No. NPF–63]

Carolina Power & Light Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director of the Office of Nuclear Reactor Regulation has issued a director's decision with regard to a petition dated September 20, 2006, filed by Mr. John D. Runkle, attorney for North Carolina Waste Awareness and Reduction Network and numerous other organizations, hereinafter referred to as the ''Petitioners.'' The petition was supplemented by documents dated September 21, October 30, November 29, 2006, and February 8, 2007. The petition concerns longstanding fire protection issues at the Shearon Harris Nuclear Power Plant (SHNPP or the Licensee).

The Petitioners requested that the Nuclear Regulatory Commission (NRC) staff take enforcement action in the form of an order that would revoke SHNPP's operating license or impose maximum fines for each violation for each day the plant has been in violation of fire protection regulations.

As the basis for this request, the Petitioners discussed several fire safety issues at SHNPP that they believe could affect the safe operation of the plant and safe shutdown of the plant in emergency situations. The Petitioners' concerns focused on noncompliances, the risk associated with the noncompliances, reliance on compensatory measures, the NRC's policy on the use of enforcement discretion regarding certain fire protection issues, and intentional acts of sabotage or terrorism.

On November 13, 2006, the NRC conducted a public meeting at NRC headquarters regarding fire protection issues at SHNPP. The meeting gave the Petitioners and the SHNPP Licensee an opportunity to provide additional information to the NRC's Petition Review Board and to clarify issues raised in the petition.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioners and to the SHNPP Licensee for comment by letters dated April 2, 2007. The Petitioners and the Licensee submitted comments by letters dated May 1, 2007, and these comments are addressed in the final Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the requests to revoke SHNPP's Operating License or impose maximum fines for each violation for each day the plant has been in violation of fire protection regulations are denied. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 (DD–07–03), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room) using Accession Number ML071490145.

In summary, the Director's Decision denies the Petitioners' requests due to the determination by the NRC staff that the plant may continue operation and the Licensee's efforts to transition to the risk-informed, performance-based standards in 10 CFR 50.48(c). In addition, the Licensee is actively identifying and completing corrective actions, including plant modifications and reanalysis efforts associated with meeting the new standards in 10 CFR 50.48(c), and has in place compensatory measures to account for existing noncompliances. The Licensee continues to have available several levels of defense-in-depth in fire protection. The Licensee has been granted enforcement discretion under the NRC's ''Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48(c)).'' The NRC has followed and continues to follow existing regulatory processes, policies and programs to verify that the Licensee is properly implementing its fire protection program at SHNPP in accordance with NRC rules and regulations.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 13 day of June, 2007.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E7–11814 Filed 6–18–07; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission of OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection

request for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review, OMB control number 3420–0015, is summarized below.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *Agency Submitting Officer:* Essie Bryant, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; (202) 336–8563.

Summary of Form Under Review

Type of Request: Revised Form.
Title: Application for Financing.
Form Number: OPIC–115.
Frequency of Use: One per investor, per project.
Type of Respondents: Business or other institution (except farms); individuals.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3.15 hours per project.
Number of Responses: 150 per year.
Federal Cost: $21,975.
Authority for Information Collection: Section 231 and 234(b) and (c) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The OPIC 115 form is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting and worker rights analysis.

June 14, 2007.

John Crowley, III,

Senior Administrative Counsel, Department of Legal Affairs.

[FR Doc. 07–3006 Filed 6–18–07; 8:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: C. Penn, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between May 1, 2007, and May 31, 2007. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for May 2007.

Schedule B

No Schedule B appointments were approved for May 2007.

Schedule C

The following Schedule C appointments were approved during May 2007.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS70009 Confidential Assistant to the Deputy Director for Management. Effective May 04, 2007.

Office of National Drug Control Policy

QQGS70009 Special Assistant to the Director to the Chief of Staff. Effective May 24, 2007.

Section 213.3304 Department of State

DSGS61228 Special Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs. Effective May 11, 2007.

DSGS61226 Staff Assistant to the Assistant Secretary for Public Affairs. Effective May 14, 2007.

DSGS61231 Special Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective May 23, 2007.

Section 213.3305 Department of the Treasury

DYGS00492 Special Advisor (Legislative Affairs) to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs. Effective May 11, 2007.

DYGS00493 Executive Secretary Officer to the Executive Secretary. Effective May 11, 2007.

DYGS00494 Special Assistant to the Director of the Mint. Effective May 16, 2007.

DYGS00495 Associate Director of Operations for Advance to the Director of Operations. Effective May 23, 2007.

DYGS00496 Special Advisor for Business Affairs and Public Liaison to the Deputy Assistant Secretary for Business Affairs and Public Liaison. Effective May 23, 2007.

DYGS00497 Senior Advisor to the Assistant Secretary (Financial Institutions). Effective May 24, 2007.

Section 213.3306 Department of Defense

DDGS17026 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective May 01, 2007.

DDGS17032 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective May 02, 2007.

DDGS17038 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective May 02, 2007.

DDGS17042 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 04, 2007.

DDGS17039 Confidential Assistant to the Secretary of Defense. Effective May 09, 2007.

DDGS17040 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 18, 2007.

DDGS17041 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective May 21, 2007.

DDGS17043 Special Assistant to the Under Secretary of Defense (Comptroller). Effective May 24, 2007.

Section 213.3307 Department of the Army

DWGS60033 Special Assistant to the General Counsel. Effective May 18, 2007.

DWGS60034 Confidential Assistant to the Assistant Secretary of the Army (Civil Works). Effective May 21, 2007.

Section 213.3308 Department of the Navy

DNGS07166 Residence Manager and Social Secretary to the Vice President to the Secretary of the Navy. Effective May 01, 2007.
DNGS07259 Special Assistant to the Secretary of the Navy. Effective May 14, 2007.

Section 213.3310 Department of Justice

DJGS00292 Deputy Privacy and Civil Liberties Officer to the Counselor and Chief of Staff. Effective May 03, 2007.
DJGS00336 Special Assistant to the Assistant Attorney General to the Chief of Staff. Effective May 16, 2007.
DJGS00284 Research Assistant to the Deputy Director. Effective May 23, 2007.
DJGS00295 Special Assistant to the United States Attorney, Massachusetts. Effective May 23, 2007.

Section 213.3311 Department of Homeland Security

DMGS00661 Advisor to the Chief of Staff. Effective May 03, 2007.
DMGS00664 Advance Representative to the Director of Scheduling and Advance. Effective May 03, 2007.
DMGS00663 Director, Transition and Transformation to the Director of Policy and Program Analysis. Effective May 09, 2007.
DMGS00667 Confidential Assistant to the Assistant Secretary for Intergovernmental Programs. Effective May 10, 2007.
DMGS00668 Program Director to the Assistant Secretary for Intergovernmental Programs. Effective May 16, 2007.
DMGS00660 Director of Communications, Immigration and Customs Enforcement to the Assistant Secretary, Immigration and Customs Enforcement. Effective May 24, 2007.
DMGS00670 Advisor to the Deputy Administrator, Federal Emergency Management Agency. Effective May 24, 2007.

Section 213.3312 Department of the Interior

DIGS05003 Special Assistant to the Deputy Director. Effective May 16, 2007.

Section 213.3314 Department of Commerce

DCGS00447 Confidential Assistant to the Director of Scheduling. Effective May 09, 2007.
DCGS00587 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 09, 2007.
DCGS60573 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services. Effective May 09, 2007.
DCGS00202 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 10, 2007.
DCGS60574 Confidential Assistant to the Director, Office of Business Liaison. Effective May 24, 2007.

Section 213.3315 Department of Labor

DLGS60245 Staff Assistant to the Executive Assistant to the Secretary. Effective May 03, 2007.
DLGS60253 Special Assistant to the Deputy Secretary of Labor. Effective May 07, 2007.
DLGS60195 Special Assistant to the Assistant Secretary for Employment Standards. Effective May 10, 2007.
DLGS60257 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 11, 2007.
DLGS60260 Staff Assistant to the Deputy Chief of Staff. Effective May 11, 2007.
DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 14, 2007.
DLGS60003 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs. Effective May 24, 2007.
DLGS60261 Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective May 24, 2007.

Section 213.3316 Department of Health and Human Services

DHGS60016 Confidential Assistant to the Director, Center for Faith Based and Community Initiatives. Effective May 25, 2007.
DHGS60546 Special Assistant to the Executive Secretary to the Department. Effective May 25, 2007.

Section 213.3317 Department of Education

DBGS00619 Confidential Assistant to the Deputy Assistant Secretary. Effective May 15, 2007.
DBGS00514 Special Assistant to the Director, Faith-Based and Community Initiatives Center. Effective May 24, 2007.
DBGS00617 Confidential Assistant to the Chief of Staff. Effective May 24, 2007.
DBGS00621 Confidential Assistant to the Senior Advisor to the Under Secretary. Effective May 31, 2007.

Section 213.3318 Environmental Protection Agency

EPGS07009 Special Assistant to the Regional Administrator. Effective May 23, 2007.

Section 213.3325 United States Tax Court

JCGS60049 Secretary (Confidential Assistant) to the Chief Judge. Effective May 02, 2007.

Section 213.3327 Department of Veterans Affairs

DVGS00082 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective May 08, 2007.

Section 213.3331 Department of Energy

DEGS00585 Special Assistant to the Associate Director. Effective May 09, 2007.
DEGS00592 Small Business Specialist to the Associate Director. Effective May 22, 2007.
DEGS00593 Congressional Affairs Specialist to the Director, Congressional Affairs. Effective May 31, 2007.

Section 213.3337 General Services Administration

GSGS00087 Senior Advisor to the Regional Administrator, (Region IX-San Francisco). Effective May 15, 2007.

Section 213.3339 United States International Trade Commission

TCGS00012 Staff Assistant (Legal) to a Commissioner. Effective May 14, 2007.
TCGS60007 Staff Assistant (Economics) to a Commissioner. Effective May 14, 2007.

Section 213.3384 Department of Housing and Urban Development

DUGS60588 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer. Effective May 09, 2007.
DUGS60468 Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective May 24, 2007.

Section 213.3389 National Mediation Board

NMGS60056 Confidential Assistant to a Board Member. Effective May 18, 2007.

Section 213.3391 Office of Personnel Management

PMGS60009 Special Assistant to the Director, Office of Communications and Public Liaison. Effective May 03, 2007.

Section 213.3394 Department of Transportation

DTGS60357 Special Assistant to the White House Liaison and Scheduling and Advance to the Director for Scheduling and Advance. Effective May 11, 2007.

DTGS60292 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective May 23, 2007.

DTGS60364 Special Assistant to the Assistant Secretary for Transportation Policy. Effective May 23, 2007.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Tricia Hollis,

Chief of Staff/Director of External Affairs.

[FR Doc. E7–11823 Filed 6–18–07; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–3(a)(16), SEC File No. 270–452, OMB Control No. 3235–0508.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Sec. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–3(a)(16) (17 CFR Sec. 240.17a–3(a)(16)) under the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78a *et. seq.*) identifies the records required to be made by broker-dealers that operate internal broker-dealer systems. Those records are to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulative rules, as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 105 active broker-dealer respondents registered with the Commission incur an average burden of 2,835 hours per year (105 respondents multiplied by 27 burden hours per respondent equals 2,835 total burden hours) to comply with this rule. The average cost per hour is $197. Therefore the total cost of compliance for the respondents is $558,495.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed 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.* Comments must be submitted within 60 days of this notice.

Dated: June 11, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11743 Filed 6–18–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55903; File No. SR–BSE–2007–24]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow NMS Cross Order Type To Be Sent to the Boston Equities Exchange

June 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 June 7, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) [3] of the Act and Rule 19b–4(f)(6) 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 BSE proposes amending the BSE Rules to allow the NMS Cross Order type to be sent to the Boston Equities Exchange (''BeX''). The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and on the Exchange's Web site (*http://www.bostonstock.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 IV below. The 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 purpose of the proposed rule change is to allow NMS Cross Orders to be sent to BeX. An NMS Cross Order is an order that contains an instruction to execute a cross transaction at a specific price and an instruction to execute all displayed and undisplayed orders or undisplayed portions of orders already in BeX at their limit prices (up to a specified number of shares) against a specified party to allow the cross transaction to occur and/or to route outbound orders to other Trading Centers to the extent necessary to prevent an improper trade-through.

An NMS Cross may represent interest of one or more Members of the Exchange but, to the extent that it represents interest of the Member sending the order to BeX, the Member shall not be eligible to satisfy existing

[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).

bids or offers in BeX at a price that is better than the cross price (when a Member's customer is on the same side of the order as the Member) and could only satisfy bid or offers in other markets at a price that is better than the cross price if the cross is for at least 10,000 shares or has a value of at least $200,000 (a ''block size order'') or is for the account of an institutional customer (as that term is defined in Interpretation and Policy .03 of Chapter XXXVII, Section 2(Q)) [5] and the Member's customer has specifically agreed to that outcome. Members must handle their customer limit orders with due care so as to comply with Chapter II, Section 11 of the BSE Rules prohibiting a Member from trading ahead of customer orders.

The NMS Cross Order provides a Member with an efficient mechanism to clear out orders in BeX that would otherwise have time or price priority (and/or displayed bids or offers in other Trading Centers that would otherwise have price priority) and then to effect a cross transaction at a particular price. If an NMS Cross Order is sent with a share size that is too small to satisfy orders in BeX or bids or offers in other markets, as applicable, the order will be automatically cancelled. The share size necessary to satisfy orders in BeX or bids and offers in other markets is separate and distinct from the cross quantity and the cross quantity may not be diminished in order to supplement the share size intended to satisfy orders in BeX or bids and offers in other markets. Once the satisfying execution has occurred (or, for orders sent to other Trading Centers, those orders have been sent), the cross will be executed at a price that is better than the best bid or offer in BeX.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] that an Exchange have rules that are 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 would 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 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 the 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–BSE–2007–24 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–2007–24. 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 BSE. 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–BSE–2007–24 and should be submitted on or before July 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11744 Filed 6–18–07; 8:45 am]

BILLING CODE 8010–01–P

[5] Proposed Interpretation and Policy .03 of Chapter XXXVII, Section 2(Q) defines the term ''institutional customer'' as ''the account of: (a) A bank, savings and loan association, insurance company or registered investment company; (b) an investment advisor registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency office performing like functions); or (c) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.''

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55899; File No. SR–ISE–2007–30]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Registration of Representatives and Options Principals and Related Fee Changes

June 12, 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 May 25, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. 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 receipt of this filing by 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 ISE is proposing to amend its rules governing Registration of Options Principals, Registration of Representatives, and Termination of Registered Persons to conform them to similar rules of other exchanges and to amend related fees to be consistent with those of other exchanges. The text of the rule proposal is available on the Exchange's Web site (*http://www.iseoptions.com*), at the Exchange, 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, ISE 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. ISE 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 ISE rules currently contain a requirement that members who do business with the public qualify and register their options principals and representatives. This requirement is the same as the NASD qualification and registration requirements [5] and is uniform across exchanges. ISE Rules 601 (Registration of Options Principals), 602 (Registration of Representatives), and 603 (Termination of Registered Persons) have remained unchanged since they were adopted in 2000 at the time the ISE was initially approved as a registered national securities exchange. At that time, the language of these rules was the same as that contained in the rules of the Chicago Board Options Exchange (''CBOE'') and the rules of other options exchanges. However, the CBOE and other options exchanges have since amended their rules to specify that registration and termination of registered persons must be accomplished by use of the Form U4 electronically filed with the NASD's ''Web CRD'' system.[6]

Accordingly, the ISE seeks to update its rule language in Rules 601, 602, and 603 to make it consistent with the other exchanges and to make it clear that ISE members have the same obligation to indicate ISE registrations and terminations on Form U4 as they do for other exchanges. The amended rules addressing registered representatives will apply to both our options members and our Equity EAMs [7] that do business with the public. In this respect, the Exchange proposes to amend Appendix A to Chapter 21 (''ISE Stock Exchange, LLC Trading Rules'') to include ISE Rules 602 and 603.

The Exchange also proposes to increase the initial registration, annual and transfer fees related to registered options principals and registered representatives, and to adopt a termination fee. All of the proposed fees are equal to those charged by other options exchanges.[8] The Exchange is amending the following fees for registered representatives: (1) Increasing the initial registration and transfer fees from $25 to $55; (2) increasing the annual fee from $30 to $55; and (3) adding the termination fee of $30. These fees are automatically collected by the NASD and remitted to the ISE.

Finally, the Exchange proposes to make non-substantive changes to reformat the way it has incorporated certain rules by reference in Chapter 21. Specifically, the Exchange proposes to amend Rule 2100 to remove reference to certain specific rules contained in other chapters of the ISE Rules that are applicable to ISE Equity EAMs and add reference to such rules to Appendix A to Chapter 21 and to make clean-up changes to Rule 2100. Currently, some rules applicable to ISE Equity EAMs are listed in Rule 2100, while others are listed in Appendix A. The Exchange believes it will be easier for Equity EAMs to identify which ISE rules apply to them if the applicable rules are consolidated in Appendix A to Chapter 21.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b).[9] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(4) [10] of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and of Section 6(b)(5) [11] of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, serve 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 particular, the Exchange believes this proposed rule change will remove any confusion in the marketplace regarding the requirement to register options principals and representatives on Form U4 by adopting language that is uniform among the exchanges.

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.

[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* NASD Rules 1021 and 1031 (Registration Requirements).

[6] *See, e.g.*, CBOE Rule 9.2 (Registration of Options Principals) and CBOE Rule 9.3 (Registration and Termination of Representatives).

[7] Defined in Rule 2100(c)(6).

[8] The proposed registration, annual, transfer and termination fees are the same as those charged by the CBOE and Philadelphia Stock Exchange. *See* the Schedule of Fees, available at: *http://www.cboe.com* and *http://www.phlx.com*, respectively.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received any comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

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–ISE–2007–30 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-ISE–2007–30. 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 ISE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE–2007–30 and should be submitted on or before July 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11718 Filed 6–18–07; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that ISE has satisfied the five-day pre-filing notice requirement.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55896; File No. SR–NYSEArca–2007–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of Primary Sweep Orders

June 11, 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 May 25, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation'') 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. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] On June 4, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules in order to add a new order type known as the Primary Sweep Order (''PSO''). The changes described in this rule proposal would add a new Exchange Rule 7.31(kk). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 NYSE Arca 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 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

In order to provide additional flexibility and increased functionality to its system and its Users,[6] the Exchange proposes to add a new and complimentary variation to an existing order type. The existing order type, the Primary Only Order (''PO Order''), is a market or limit order that is routed to the primary, listing market, without

[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)(6).

[5] Amendment No. 1 replaced and superseded the original filing in its entirety.

[6] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of ''User.''

sweeping the NYSE Arca book.[7] The new corollary to this order type, the PSO, will sweep the NYSE Arca book prior to being directed to the primary, listing market.

The PO Order

Presently, PO Orders are restricted to participation in the primary market opening and must be entered before 6:28 a.m. (Pacific Time), or a cut-off time as determined from time to time by the Corporation. In addition, these orders do not sweep the NYSE Arca book. In an effort to enhance order execution opportunities for its Users, the Exchange proposes adding a new variation on this order type that may be entered at any time and that first sweeps the NYSE Arca book.

PSO Features

The proposed PSO is a PO Order that may be entered at any time, and which first sweeps the NYSE Arca book.[8] After sweeping the book, the PSO (or any unexecuted portion thereof) shall be routed directly to the primary, listing market. If the order is not designated as immediate-or-cancel, the order is not returned to the book and remains at the venue routed to, until executed or cancelled. In addition, PSOs may be designated as intermarket sweep orders thereby providing the entering party the ability to trade-through any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act)[9] and execute first at NYSE Arca and then at the primary, listing market. Of course, a broker-dealer that designates an order as an ISO has the responsibility of complying with Rules 610 and 611 of Regulation NMS.[10]

The Exchange believes that the addition of the proposed order type, as a variation of the existing PO Order, will enhance flexibility and order execution opportunities for its Users. The Exchange also believes that the proposed PSO will also allow its Users to comply with their obligation to avoid trading through any protected bid or offer within the meaning of Rule 600(b) of Regulation NMS.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5)[12] 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.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[13] and Rule 19b–4(f)(6) thereunder.[14] 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.[15]

NYSE Arca has asked the Commission to waive the 30-day operative delay. The Commission believes such a waiver is consistent with the protection of investors and the public interest because it would permit the Exchange to codify the proposed order type, the PSO, which represents an expansion of an existing order type, the PO Order, without further delay.[16] For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–50 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–NYSEArca–2007–50. 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 will also be available for inspection and copying at the principal office of the NYSE Arca. 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

[7] *See* NYSE Arca Equities Rule 7.31(x) for the definition of ''PO Order.''

[8] Users would be able to enter PSOs into the system for execution during any of the Exchange's trading sessions (Opening, Core and Late Sessions). Users also would be able to designate a PSO to participate in any of the Exchange's auctions (Opening, Market Order and Closing Auctions).

[9] 17 CFR 242.600(b).

[10] 17 CFR 242.610 and 17 CFR 242.611, respectively.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 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 June 4, 2007, the date on which the Exchange submitted Amendment No. 1.

[16] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SR–NYSEArca–2007–50 and should be submitted on or before July 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11719 Filed 6–18–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55898; File No. SR–Phlx–2007–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Rules Pertaining to Training Requirements and Floor Procedure Advices

June 12, 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 May 25, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend: (a) Rule 625, Training; (b) Equity Floor Procedure Advices and Order & Decorum Regulations (''EFPA''), F–30 Training; and (c) Options Floor Procedure Advices and Order & Decorum Regulations (''OFPA''), F–30 Options Trading Floor Training, to clarify and expand the Exchange's training requirements. The Exchange also proposes to update the language in Rule 970, Floor Procedure Advices: Violations, Penalties and Procedures, to delete the reference to the now-obsolete Market Surveillance Department and to provide that any authorized official of the Exchange may sign a citation for a floor procedure advice violation.

The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com*, at the Phlx'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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Rule 625 and EFPA F–30 and OFPA F–30 set forth the provisions relating to mandatory training. The Exchange currently requires and conducts mandatory training sessions at various times throughout the year.[3] The purpose of this proposal is to expand the category of individuals who are required to attend the mandatory training sessions and the training topics that will be covered and to specifically set forth the mandatory training requirements, which will take place on at least a semi-annual basis, for floor members. Mandatory training should provide a means for keeping members and persons employed by or associated with such members or member organizations, and Participant Authorized Users (''PAUs''), up-to-date with, among other things, current rules and regulations and trading-related Exchange systems.

The Exchange also proposes to add the words ''and thereafter'' to EFPA F–30 to make the language in that fine schedule consistent with the language in the fine schedule in OFPA F–30 and, more specifically, to address how violations will be handled after the fourth violation on a three-year running calendar basis.

Finally, the Exchange proposes to update the language in Exchange Rule 970 to provide that any authorized official of the Exchange may sign a citation for a floor procedure advice violation. The Exchange restructured its surveillance department and no longer has a department titled ''Market Surveillance Department.'' Therefore, amending Rule 970 will delete the reference to the now-obsolete Market Surveillance Department and will allow any authorized Exchange officials to issue citations for violations of floor procedure advices.[4] This should, in turn, promote efficiency in connection with the issuance of citations. Administration of the citation process will continue to be centralized so that citation issuance, payments, and appeals are tracked and managed consistently.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative 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.

Expanding the Exchange's current mandatory training program should provide a means for keeping members and persons employed by or associated with such members or member organizations, and PAUs, up-to-date with, among other things, current rules and regulations and trading-related Exchange systems. Additionally, updating the language in Exchange Rule 970 should promote efficiency in connection with the issuance of citations.

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 not necessary or appropriate in furtherance of the purposes of the Act.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Each time a member (including a floor member), person employed by or associated with such member or a member organization, or a PAU, fails to attend a mandatory training session, that missed training session will be deemed an ''occurrence'' as set forth on the EFPA F–30 and OFPA F–30 fine schedules.

[4] Since the restructuring of the Exchange's surveillance department, which rendered the Market Surveillance Department obsolete, almost all of the citations for violations of floor procedure advices have been issued by authorized officials from the Exchange's Regulatory Group. The Exchange's Regulatory Group is comprised in part of individuals formerly in the Exchange's Market Surveillance Department. Telephone call between Cynthia Hoekstra, Vice President and Counsel, Exchange, and Kristie Diemer, Special Counsel, Division of Market Regulation, Commission, on June 11, 2007.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

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

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 Phlx 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–Phlx–2007–16 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–2007–16. 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–Phlx–2007–16 and should be submitted on or before July 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–11720 Filed 6–18–07; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment on the membership of a standing victims advisory group; requests to be considered for initial membership; and proposed amendment to the Sentencing Commission's Rules of Practice and Procedure.

SUMMARY: After considering the request of the Judicial Conference of the United States regarding the formation of a victims advisory group, the United States Sentencing Commission has decided to establish a standing victims advisory group pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. The purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide the Commission its views on the Commission's activities as they relate to victims of crime; (3) to disseminate information regarding sentencing issues to organizations represented by the advisory group and to other victims of crime and victims advocacy groups, as appropriate; and (4) to perform any other functions related to victims of crime as the Commission requests. The Commission anticipates that the victims advisory group will consist of not more than 9 members, each of whom may serve not more than two consecutive 3-year terms. The Commission also anticipates establishing a charter for the victims advisory group to govern the group's activities.

The Commission hereby requests comment on the potential membership of the victims advisory group. The Commission also invites any person or group who has knowledge, expertise, or experience in the area of federal crime victimization to apply to become a member of the advisory group. Requests to be considered for the initial membership of the victims advisory group must be received by the Commission not later than July 30, 2007. Applications may be sent to Michael Courlander at the address listed below.

The Commission also hereby gives notice of a proposed amendment to its Rules of Practice and Procedure, at Rule 5.4, to include the victims advisory group as a standing advisory group of the Commission.

DATES: Public comment should be received not later than July 30, 2007.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Amendment of Rules Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Section 995(a)(1) of title 28, United States Code, authorizes the Commission to establish general policies and promulgate rules and regulations as necessary for the Commission to carry out the purposes of the Sentencing Reform Act of 1984. The Commission originally adopted the Rules of Practice and Procedure in July 1997 and most recently amended the Rules in November 2001. A new amendment is now proposed. In accordance with Rule 1.2 of its Rules of Practice and Procedure, the Commission hereby invites the public to provide comment on the proposed amendment. In response to a request from the Judicial Conference of the United States, the Commission has decided to establish a standing advisory group related to the impact of the federal sentencing guidelines on victims. The Commission requests comment on the potential membership of such advisory group and invites any person or group who has knowledge, expertise, or experience in the area of federal crime victimization to request consideration for initial membership to the advisory group.

Authority: 28 U.S.C. 994(a), (o), (p); USSC Rules of Practice and Procedure 1.2, 5.2.

Ricardo H. Hinojosa,
Chair.

1. Amendment:

Rule 5.4 of the Rules of Practice and Procedure of the United States Sentencing Commission is amended by striking ''and the Probation Officers Advisory Group'' and inserting '', the Probation Officers Advisory Group, and the Victims Advisory Group''.

[FR Doc. E7–11804 Filed 6–18–07; 8:45 am]

BILLING CODE 2211–01–P

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 August 20, 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 Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, 202–205–7530 *gail.hepler@sba.gov.* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''SBA Express and Patriot Express Information Collection.''

Description of Respondents: SBA Express and Patriot Express Lenders.

Form Nos: 1919, 1920SX, A, B, C, 2237, 2238.

Annual Responses: 2,240.

Annual Burden: 91,660.

Jacqueline White,
Chief, Administrative Information Branch.

[FR Doc. E7–11767 Filed 6–18–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

American Public Transportation Association

[Docket Number FRA–2007–28306]

The American Public Transportation Association (APTA), on behalf its member railroads, seeks a permanent waiver of compliance from certain provisions of the *Passenger Equipment Safety Standards* of 49 CFR part 238. Specifically, the APTA requests to change the time interval requirements of 49 CFR 238.309, *Periodic brake equipment maintenance,* for all locomotives equipped with 26–L-type brake systems and air dryers by extending the testing interval to 4 years (1,472 days).

In 1981, FRA granted a test waiver (H–80–7) to eight railroads, permitting them to exceed the annual and biennial testing requirements of 49 CFR sections 229.27 and 229.29, in order to conduct a study of the safe service life and reliability of the locomotive brake components. On January 29, 1985, FRA expanded the waiver to permit all railroads to inspect the 26–L-type brake equipment on a triennial basis. In the 1990's, Canadian Pacific Railway (CP) and the Canadian National Railway (CN) petitioned FRA to allow them to operate locomotives into the United States that received periodic attention every 4 years. The requests were based on a decision by Transport Canada to institute a 4-year inspection program following a thorough test program in Canada. In November 2000, FRA granted conditional waivers to both CN and CP, extending the testing interval to 4 years for Canadian-based locomotives equipped with 26–L-type brake systems and air dryers. The waiver also requires all air brake filtering devices to be changed annually and the air compressor to be overhauled not less than every 6 years. In December, 2005, FRA granted the Association of American Railroads a similar waiver request to allow freight locomotives operating in the U.S. with 26–L-type brakes and functioning air dryers to operate up to 4 years (1,472 days) between periodic air brake attention.

APTA did not see any rational basis for permitting freight locomotives with 26–L-type brakes and air dryers to operate 4 years between inspections, while subjecting passenger locomotives with the same brake systems and air dryers to a 3-year inspection interval. APTA makes this conclusion based on the fact that FRA has permitted this practice without any accidents caused by the malfunctioning of a 26–L-type brake system. Accordingly, APTA requests that the inspection interval be extended to 4 years (1,472 days) for passenger locomotives equipped with 26–L-type brake systems and air dryers, and for cab cars equipped with 26–L-type brakes only when operated with locomotives with functional air dryers.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2007–28306) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on June 13, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–11760 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2007–28294]

Applicant: CSX Transportation, Incorporated, Mr. C.M. King, Chief Engineer, Communications and Signals, 500 Water Street, SC J–350, Jacksonville, Florida 32202.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed modification of the signal system on the single main track at CP Belt Junction, Milepost BD–26.9, near Hamilton, Ohio, on the Louisville Division, Cincinnati Terminal Subdivision. The proposed changes consist of the conversion of the power-operated switch to hand operation, the removal of the associated controlled signals, and the exchange of the method of operation from a traffic control system to Direct Traffic Control (DTC) authority under the direction of the Jacksonville dispatcher supplemented by signal indications of an automatic block signal (ABS) system.

The reason given for the proposed changes is that present day operation does not warrant retention of the power-operated switch and signals at Belt Junction.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28294 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC on June 13, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–11761 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA–2007–28295]

Applicant: Union Pacific Railroad, Mr. Thomas T. Ogee, AVP Engineering Design, 1400 Douglas Street, Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of the traffic control system on the UP International Industrial Lead between Milepost 0.0 and Milepost 1.0 in or near El Paso, Texas. Train movements on the affected portion of track will be governed by Rule 6.28 of the General Code of Operating Rules, *Movement on Other than Main Track.*

The reason given for the proposed changes is that the traffic control system is no longer needed for safe train operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–28295 and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building

Ground Floor, Room W12–140, Washington, DC 20590; or

• *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Issued in Washington, DC on June 13, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–11755 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2007–28504]

Meeting Notice

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Meeting notice.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in Washington, DC. This notice announces the date, time and location of the meeting, which will be open to the public.

DATES: The meeting will be held on June 26, 2007, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration (FAA), 800 Independence Avenue, SW., the Bessie Coleman Room, 2nd floor, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number 202–366–9966; E-mail: *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The agenda will include:

• Consideration of the FICEMS Technical Working Group report and recommendations.

• Draft report to Congress.

• EMS Research Update.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *Drew.Dawson@dot.gov* or by telephone at 202–366–9966 no later than June 22, 2006. Pre-registration is necessary to comply with security procedures. Picture I.D. must also be provided to enter the FAA Building and it is suggested that visitors arrive 45 minutes early in order to facilitate entry. The Visitor entrance is on the C Street side of the building.

Minutes of the FICEMS Meeting will be available to the public online through the DOT Document Management System at: *http://dms.dot.gov* under the docket number listed at the beginning of this notice.

Marilena Amoni,

Associate Administrator for Research & Program Development.

[FR Doc. E7–11812 Filed 6–18–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–100–88]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–100–88 (TD 8540), Valuation Tables (§§ 1.7520–1 through 1.7520–4, 20.7520–1 through 20.7520–4, and 25.7520–1 through 25.7520–4).

DATES: Written comments should be received on or before August 20, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Valuation Tables.

OMB Number: 1545–1343.

Regulation Project Number: PS–100–88.

Abstract: Internal Revenue Code section 7520 provides rules for determining the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest. Code section 7530(a) allows a respondent to make an election to value

an interest that qualifies, in whole or in part, for a charitable deduction, by use of a different interest rate component that is more favorable to the respondent. This regulation requires individuals or fiduciaries making the election to file a statement with their estate or gift tax return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Hours: 4,500.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–11732 Filed 6–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–79–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–79–91 (TD 8573), Information Returns Required of United States Persons With Respect to Certain Foreign Corporations (§§ 1.6035–1, 1.6038–2 and 1.6046–1).

DATES: Written comments should be received on or before August 20, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–91.

Abstract: This regulation amends the existing regulations under sections 6035, 6038, and 6046 of the Internal Revenue Code. The regulation amends and liberalizes certain requirements regarding the format in which information must be provided for purposes of Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations. The regulation provides that financial statement information must be expressed in U.S. dollars translated according to U.S. generally accepted accounting principles and permits functional reporting of certain items.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–11733 Filed 6–18–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 19, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0609'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–00609'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Survey of Veteran Enrollees' Health and Reliance Upon VA, VA Form 10–21034g.

OMB Control Number: 2900–0609.

Type of Review: Extension of a currently approved collection.

Abstract: Public Law 104–262, The Veterans Health Care Eligibility Reform Act of 1996, requires VA implement a priority-based enrollment system. VA must enroll veterans by specified priorities as far down the priorities as the available resources permit. The number of priority levels to which VHA will be able to deliver care will be a function of annual funding levels and utilization of health care services by enrollees. Additionally, eligibility reform has brought about the ever-increasing need for VA to plan and budget for the evolving clinical care needs of its extremely dynamic enrollee population at risk of need or use of VA care.

There is no valid, recent information available in administrative databases on all enrollees' health status, income, and their reliance upon the VA system. The magnitude of changes each year in enrollees, their characteristics, and system policies make annual surveys necessary to capture this critical information for input into VHA's Health Care Services Demand Model. The survey will provide VA with current information for sound decisions that affect the entire VA health care delivery system and the veterans it serves. VA Form 10–21034g will be used to provide the survey data on morbidity and reliance that is critical to obtaining accurate projections of VA's ability to service veterans who are seeking VA health care services. The projections will also be used to support VA's Capital Asset Realignment for Enhanced Services initiative and will also served as the basis for VA's new emphasis on population-based budget formulation, policy scenario testing, and strategic planning.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 27, 2007, at pages 8838–8839.

Affected Public: Individuals or Households and Federal Government.

Estimated Annual Burden: 10,900 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 42,200.

Dated: June 7, 2007.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–11768 Filed 6–18–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 19, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0012'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0012.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Cash Surrender, Government Life Insurance, VA Form 29–1546.

b. Application for Policy Loan, Government Life Insurance, 29–1546–1.

OMB Control Number: 2900–0012.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 29–1546 and 29–1546–1 to request a cash surrender or policy loan on his or her Government Life Insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 27, 2007 at page 8837.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Dated: June 7, 2007.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–11769 Filed 6–18–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0021]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 19, 2007.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0021'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, fax (202) 565–7870 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0021'' In any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Notice of Default, VA Form 26–6850.

b. Notice of Default and Intention to Foreclose, VA Form 26–6850a.

c. Notice of Intention to Foreclose, VA Form 26–6851.

OMB Control Number: 2900–0021.

Type of Review: Extension of a currently approved collection.

Abstract: Holders of guaranteed loans are required to notify VA within 45 days of a loan default due to nonpayment of any installment for a period of 60 days from the date of the first uncured default. Holders are also required to notify VA of their intention to foreclose. After delivery of such notice to VA and 30 days has passed, the holder can begin court proceedings, give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security.

VA Forms 26–6850 and 26–6851 require that servicing efforts are fully explained so that VA can determine whether supplemental servicing could develop further information to justify the extension of forbearance to the veterans-borrower as opposed to foreclosure. The information provided is used to coordinate the actions of VA and the holder to ensure that all legal requirements regarding foreclosure and claim payment are met. VA Form 26–6850a is filed by holders when defaults are determined insoluble by holders at the time the notice of default is filed with VA. This form provides both notice of default and intent to foreclosure together on one form.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 2, 2007 at page 15768.

Affected Public: Business or other for profit, and Individuals or households.

Estimated Annual Burden: 66,166.

a. VA Form 26–6850—20,166 hours.

b. VA Form 26–6850a—26,000 hours.

c. VA Form 26–6851—20,000 hours.

Estimated Average Burden per Respondent:

a. VA Form 26–6850—10 minutes.

b. VA Form 26–6850a—20 minutes.

c. VA Form 26–6851—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 279,000 hours.

a. VA Form 26–6850—121,000 hours.

b. VA Form 26–6850a—78,000 hours.

c. VA Form 26–6851—80,000 hours.

Dated: June 7, 2007.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–11770 Filed 6–18–07; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 72, No. 117

Tuesday, June 19, 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.

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Managing Gas Intrusion in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems

Correction

In notice document 07–2557 beginning on page 29010 in the issue of Wednesday, May 23, 2007, make the following correction:

On page 29010, in the second column, in the third paragraph, in the last line, ''ML0704001003'' should read ''ML070400103''.

[FR Doc. C7–2557 Filed 6–18–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–123365–03]

RIN 1545–BC94

Guidance Regarding the Active Trade or Business Requirement under Section 355(b)

Correction

In proposed rule document 07–2269 beginning on page 26012 in the issue of Tuesday, May 8, 2007, make the following corrections:

1. On page 26016, in the third column, in the first paragraph, in the next to last line, '''solely in'' should read '''solely in''.

2. On page 26020, in the third column, in the first paragraph, in the next to last line, ''moot'' should read ''boot''.

§ 1.355–3 [Corrected]

3. On page 26033, in the second column, in § 1.355–3(d)(2), in *Example 24*, in the second line, ''Example 23'' should read ''*Example 23*''.

4. On page 26034, in the first column, in the same section, in *Example 29*, in the third line, ''Example 28'' should read ''*Example 28*''.

[FR Doc. C7–2269 Filed 6–18–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 19, 2007

Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the San Bernardino Kangaroo Rat (Dipodomys merriami parvus); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV07

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the San Bernardino Kangaroo Rat (Dipodomys merriami parvus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) under the Endangered Species Act of 1973, as amended (Act). Currently, approximately 33,295 acres (ac) (13,485 hectares (ha)) are designated as critical habitat for the San Bernardino kangaroo rat in San Bernardino and Riverside counties, California. Under this proposal, approximately 9,079 ac (3,674 ha) of land located in San Bernardino and Riverside counties, California would fall within the boundaries of the revised critical habitat designation. Further, of the 9,079 ac of revised critical habitat, we are proposing to exclude 2,544 ac (1,029 ha) of land covered by the Woolly-Star Preserve Area Management Plans, the Former Norton Air Force Base Conservation Management Plan, the Cajon Creek Habitat Conservation Management Area Habitat Enhancement and Management Plan, and the Western Riverside County Multiple Species Habitat Conservation Plan from the final designation under section 4(b)(2) of the Act.

DATES: We will accept comments from all interested parties until August 20, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by August 3, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may mail or hand-deliver your written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. You may send comments by electronic mail (e-mail) to *fw8cfwocomments@fws.gov.* Please include ''Attn: San Bernardino kangaroo rat'' in your e-mail subject header. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at 760–431–9440.

3. You may fax your comments to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at 760–431–5901.

4. You may go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760–431–9440).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal to revise critical habitat for the San Bernardino kangaroo rat will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are areas we previously designated, but are not proposing for designation here, that should be designated as critical habitat;

(2) Specific information on the amount and distribution of San Bernardino kangaroo rat habitat; what areas occupied at the time of listing and that contain features essential for the conservation of the subspecies should be included in the designation and why; and what areas that were not occupied at the time of listing are essential to the conservation of the subspecies and why;

(3) Specific information on dispersal areas important for habitat connectivity, their role in the conservation and recovery of the subspecies, and reasons why such areas should or should not be included in the critical habitat designation;

(4) Our proposed exclusions totaling 2,544 ac (1,029 ha) of San Bernardino kangaroo rat habitat and whether the benefits of excluding these areas would outweigh the benefits of their inclusion under section 4(b)(2) of the Act (see Exclusions Under Section 4(b)(2) of the Act section for a detailed discussion). If the Secretary determines that the benefits of including these lands would outweigh the benefits of excluding them, they will not be excluded from final critical habitat;

(5) Any proposed critical habitat areas covered by existing or proposed conservation or management plans that we should consider for exclusion from the final designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans for the San Bernadino kangaroo rat that have been prepared under section 10(a)(1)(B) of the Act, as well as any other management or conservation plan or agreement that benefits the kangaroo rat or its primary constituent elements;

(6) Specific information regarding the current status of plan implementation for the following management plans: the Woolly-Star Preserve Area Management Plans; the Former Norton Air Force Base CMP; the Cajon Creek Habitat Conservation Management Area HEMP; and Western Riverside MSHCP;

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat;

(8) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

(9) Whether our approach to designating critical habitat could be improved or modified in any way as to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please note that comments must be received by the date specified in the **DATES** section in order to be considered and that the e-mail address *fw8cfwocomments@fws.gov* will be closed out at the termination of the public comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you may ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

It is our intent to discuss only those topics directly relevant to the revision of designated critical habitat for the San Bernardino kangaroo rat in this proposed rule. For more information on the biology and ecology of the San Bernardino kangaroo rat, refer to the final listing rule published in the **Federal Register** on September 24, 1998 (63 FR 51005), and the proposed and final critical habitat rules published in the **Federal Register** on December 8, 2000, and April 23, 2002, respectively (65 FR 77178 and 67 FR 19812).

Species Description

The San Bernardino kangaroo rat is one of the most highly differentiated of 19 recognized subspecies of Merriam's kangaroo rat (Dipodomys merriami). The subspecies occurs primarily on alluvial fans with appropriate physical and vegetative characteristics in San Bernardino and Riverside counties, California (Hall 1981, p. 586; Lidicker 1960, p. 190; Williams *et al.* 1993, p. 62).

Species Distribution

The historical range of the San Bernardino kangaroo rat extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Hall and Kelson 1959, p. 532; Lidicker 1960, p. 190). From the early 1880s to the early 1930s, the subspecies was a common resident of the San Bernardino and San Jacinto Valleys of southern California (Lidicker 1960, p. 190). Prior to 1960, the San Bernardino kangaroo rat was known from more than 25 localities within this range (McKernan 1997, p. 3; McKernan 1993, p. 36). Based on the distribution of apparent suitable soils and museum collections, the Service estimated at the time of emergency listing in 1998 that the historical range of the subspecies encompassed approximately 326,467 ac (130,587 ha) (63 FR 51005, September 24, 1998). Recent studies indicate that the San Bernardino kangaroo rat occupies a wider range of soil and vegetation types than was previously thought (Braden and McKernan 2000, p. 17), which suggests that the subspecies' historical range may have been larger than previously estimated at the time of listing. However, only portions of the historical range would have been occupied at any given time due to the dynamic nature of alluvial habitat and resultant variation in habitat suitability.

At the time of emergency listing in 1998, the extant range of the San Bernardino kangaroo rat was thought to encompass approximately 3,247 ac (1,299 ha) of suitable habitat divided unequally among seven geographically distinct locations (63 FR 3835, January 27, 1998; McKernan 1997, p. 11). The extent of occupied habitat within San Bernardino County included 1,725 ac (690 ha) within the Santa Ana River, 20 ac (8 ha) in City Creek, 1,140 ac (456 ha) in Lytle and Cajon creeks, 5 ac (2 ha) within Etiwanda Creek, 5 ac (2 ha) in Reche Canyon, and 2 ac (0.8 ha) in South Bloomington. San Bernardino kangaroo rat distribution within Riverside County was limited to 350 acres (140 ha) within the San Jacinto River (McKernan 1997 as cited in 63 FR 3836). This determination was based upon the then-current understanding of what constituted suitable habitat for the subspecies and an evaluation of landscape-scale changes (*e.g.*, dams, flood-control channels, water diversions, roadway construction) that had altered the fluvial processes and/or habitat for this subspecies. Subsequently, we evaluated new information and the results of live-trapping that documented the occurrence of the San Bernardino kangaroo rat within mature alluvial fan sage scrub habitat (*sensu* Smith 1980 and Hanes et al. 1989). As a result, in the final rule to list the subspecies, we estimated the extant range of the San Bernardino kangaroo rat to encompass approximately 9,797 ac (3,919 ha) of suitable habitat within the Santa Ana River, Lytle and Cajon creeks, and the San Jacinto River (63 FR 51005, September 24, 1998).

When the final rule designating critical habitat for the San Bernardino kangaroo rat was published in 2002 (67 FR 19812, April 23, 2002), the rule reported that the designated critical habitat area is 33,295 ac (13,485 ha). However, the total area for each of the four critical habitat units given in that rule add up to 33,290 ac (13,480 ha) and we recognize this total as the existing critical habitat area in this revised rule. At the time of publication of the final critical habitat rule, research indicated that San Bernardino kangaroo rats can occupy mature alluvial sage scrub, coastal sage scrub, and even chaparral vegetation types (Braden and McKernan 2000, p. 16). Thus, within the 33,290 ac (13,480 ha) designated as critical habitat in 2002, approximately 32,480 ac (13,155 ha) were believed to be occupied by the subspecies (67 FR 19812). In the final designation, we stated that systematic and general biological surveys resulted in the documentation of additional occurrences within and outside of areas previously known to be occupied by the subspecies and that based on this information, the San Bernardino kangaroo rat occupied a larger area than was known at the time of listing. However, since these additional occurrences are within the general areas described as occupied in the listing rule (Santa Ana River wash, Lytle and Cajon washes, and the San Jacinto River wash and adjacent upland areas), we consider the areas supporting these occurrences to have been occupied at the time of listing.

New occurrences of San Bernardino kangaroo rat have also been found since the final critical habitat designation in 2002. These occurrences are also within the general areas of the Santa Ana River wash, Lytle and Cajon washes, and San Jacinto River wash that were known to be occupied at the time of listing and known to be occupied at the time of the final critical habitat rule. Therefore, we consider the areas supporting these new occurrences to have been occupied at the time of listing.

Previous Federal Actions

On March 30, 2005, the Pacific Legal Foundation filed suit against the Service challenging our failure to provide adequate delineation, justification, or sufficient analysis of economic and other impacts in the designation of critical habitat for the San Bernardino kangaroo rat and 26 other species. On March 23, 2006, a settlement agreement was reached requiring the Service to propose to revise critical habitat for the San Bernardino kangaroo rat as appropriate. The settlement stipulated that on or before June 1, 2007, the Service shall submit for publication in the **Federal Register** a proposed rule regarding any revisions to the designation of critical habitat, and that a final rule shall be submitted for publication in the **Federal Register** on or before June 1, 2008. For more information on previous Federal actions concerning the San Bernardino kangaroo rat, refer to the final listing rule published in the **Federal Register** on September 24, 1998 (63 FR 51005), and the final designation of critical habitat published in the **Federal Register** on April 23, 2002 (67 FR 19812).

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 that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) 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(a)(2) of the Act 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(a)(2) of the Act 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 at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied by the species at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations 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 under section 4(b)(2) of the Act.) Furthermore, 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. However, an area currently occupied by the species, but not occupied at the time of listing, will likely, but not always, be essential to the conservation of the species, and therefore, may be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub.L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources may 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 and make revisions thereto on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all habitat areas eventually determined necessary for the recovery of the species. For these reasons, critical habitat designations do not imply that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of the San Bernardino kangaroo rat, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas occupied at the time of listing that contain features essential to the conservation of the San Bernardino kangaroo rat, and areas unoccupied at the time of listing that are essential to the conservation of the subspecies, or both. We have also reviewed available information pertaining to the habitat requirements of this subspecies. These data included: research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; Riverside County Multiple Species Habitat Conservation Program (MSHCP) database; the University of California, Riverside, species database; the California Natural Diversity Database; and data from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, including results from ongoing research on the San Bernardino kangaroo rat by the San Bernardino County Museum. We are not currently proposing any areas outside the geographical area presently occupied by the subspecies.

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 within areas occupied by the species at the time of listing, we consider those physical and biological features (primary constituent elements) that are essential to the

conservation of the subspecies and that may require special management considerations or protection. These include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing (or development) of offspring; and (5) habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

The specific primary constituent elements (PCEs) required for the San Bernardino kangaroo rat are derived from the biological needs of the San Bernardino kangaroo rat as described below.

Space for Individual and Population Growth and Normal Behavior

San Bernardino kangaroo rats are typically found on alluvial fans, which are relatively flat or gently sloping masses of loose rock, gravel, and sand deposited by a stream as it flows into a valley or upon a plain (McKernan 1993, p. 1). This subspecies is also found on floodplains, washes, areas with braided channels, and in adjacent upland areas containing appropriate physical and vegetative characteristics (McKernan 1993, p. 1). These areas consist of sand, loam, sandy loam, or gravelly soils (McKernan 1993, p. 1) that are associated with alluvial processes (i.e., the scour and deposition of clay, silt, sand, gravel, or similar material by running water such as rivers and streams; or debris flows). San Bernardino kangaroo rats have a strong preference for, and are more abundant on, soils deposited by alluvial processes (McKernan 1997, p. 36). These soils allow San Bernardino kangaroo rats to dig simple, shallow burrow systems for shelter and rearing offspring, and surface pits for food storage that provide for individual and population growth and for normal behavior of this subspecies.

Few studies have been conducted on the burrowing behavior of the San Bernardino kangaroo rat; however, their burrowing habits are similar to the Merriam's kangaroo rat (of which the San Bernardino kangaroo rat is a subspecies) which has been extensively studied. Merriam's kangaroo rats have weak forelegs and are poor diggers; as a result, they dig simple shallow burrow systems where they spend approximately 75 percent of their lives (Reynolds 1958, pp. 113 and 122). Burrows consist of one or two chambers and average 6 inches in depth (Reynolds 1960, p. 51). Kenagy (1973, p. 1207) observed that Merriam's kangaroo rats occupied one to three simple burrows depending on the season. Merriam's kangaroo rats do not have the ability to burrow into hard soils, and because of this, the highest numbers of kangaroo rats can be found on loose, sandy soils (Reynolds 1958, p. 113; Huey 1951, p. 212). Light, textured soil that is favorable to burrowing is an important factor limiting the range of Merriam's kangaroo rats (Reynolds 1958, p. 114). Sandy loam soils are not too heavy to discourage digging, yet they are not light enough to facilitate tunnel cave-ins that can occur in other soil types (Reynolds 1958, p. 113). For these reasons, sandy loam soils found on alluvial fans and maintained by alluvial processes are crucial to the survival and normal behavior of the San Bernardino kangaroo rat.

Alluvial sage scrub habitat is necessary for normal behavior of the San Bernardino kangaroo rat because this plant community provides cover and food resources within areas containing suitable soils for burrowing. Alluvial sage scrub is considered a distinct and rare plant community that dominates major outwash fans at the mouths of canyons along the coastal side of the San Gabriel, San Bernardino, and San Jacinto Mountains and some smaller floodplain and riverine areas of southern California (Hanes *et al.* 1989, p. 187). Described as a variant of coastal sage scrub (Smith 1980, p. 135), alluvial sage scrub is also referred to as alluvial scrub, Riversidean alluvial fan scrub, alluvial fan sage scrub, cismontane alluvial scrub, alluvial fan scrub, or Riversidean alluvial fan sage scrub. Alluvial sage scrub occurs on two types of floodplain soils, Riverwash Association soils and Soboba Association soils (Hanes *et al.* 1989, p. 188). Comprised of an assortment of low growing drought-deciduous shrubs, larger evergreen woody shrubs, and other perennial species tolerant of a relatively sterile, rapidly draining substrate, this relatively open vegetation type is adapted to periodic severe flooding and erosion (Hanes *et al.* 1989, p. 187; Smith 1980, p. 126).

Alluvial sage scrub vegetation includes plant species that are often associated with coastal sage scrub, chaparral, or desert transition communities (Smith 1980, p. 126). Common plant species found within these plant communities may include: *Lepidospartum squamatum* (scalebroom), *Eriogonum fasciculatum* (California buckwheat), *Eriodictyon crassifolium* (woolly yerba santa), *Eriodictyon trichocalyx* (hairy yerba santa), *Yucca whipplei* (our Lord's candle), *Rhus ovata* (sugar bush), *Rhus integrifolia* (lemonadeberry), *Malosma laurina* (laurel sumac), *Juniperus californicus* (California juniper), *Baccharis salicifolia* (mulefat), *Penstemon spectabilis* (showy penstemon), *Heterotheca villosa* (golden aster), *Eriogonum elongatum* (tall buckwheat), *Encelia farinosa* (brittle bush), *Opuntia* spp. (prickly pear and cholla), *Adenostoma fasciculatum* (chamise), *Prunus ilicifolia* (holly-leaf cherry), *Quercus* spp. (oaks), S*alvia apiana* (white sage), annual forbs (*e.g.*, *Phacelia* spp. (phacelia), *Lupinus* spp. (lupine), and *Plagiobothrys* spp. (popcorn flower)), and native and nonnative grasses.

Three phases of alluvial sage scrub have been described: pioneer, intermediate, and mature. The phases are thought to correspond to factors such as flood scour, distance from flood channel, time since last flood, and substrate features (Smith 1980, p. 136; Hanes *et al.* 1989, p. 187). Under natural conditions, flood waters periodically break out of the main river channel in a complex pattern, resulting in a braided appearance to the floodplain and a mosaic of vegetation stages. Pioneer sage scrub, the earliest phase, is subject to frequent hydrological disturbance and the sparse vegetation pattern is usually renewed by frequent floods (Smith 1980, p. 136; Hanes *et al.* 1989, p. 187). The intermediate phase, which is typically found on benches between the active channel and mature floodplain terraces, is subject to periodic flooding at longer intervals. The vegetation of early and intermediate stages is relatively open (less than 50 percent canopy cover) and supports the highest densities of the San Bernardino kangaroo rat (McKernan 1997, p. 50), likely due in part to few root systems to interfere with burrowing. Areas like these, with a significant amount of bare ground, can also facilitate movement for a bipedal species like the San Bernardino kangaroo rat. For Merriam's kangaroo rats, an abundance of perennial grass cover can create an unfavorable environment by interfering with ease of travel and escape from predators (Reynolds 1958, p. 114).

The oldest, or mature phase of alluvial sage scrub, which is found on elevated floodplain terraces, is rarely affected by flooding and supports the highest plant density (Smith 1980, p. 137). Although mature areas are generally used less frequently or occupied at lower densities by San Bernardino kangaroo rats (likely due to extensive root systems and heavy vegetative cover that inhibit burrowing

and predator escape) than those supporting earlier phases, these areas are essential for the conservation of the subspecies. Lower portions of the floodplain, where higher densities of San Bernardino kangaroo rats are found, are likely to become inundated or lost due to scour and sediment deposition during flooding events, and some animals may drown during the event. In a study to determine the effects of flooding on Merriam's kangaroo rats and two other heteromyid (family of rodents that includes the kangaroo rats, kangaroo mice, and pocket mice) species, Kenagy (1973, p. 1205) noted heavy burrow damage, and a 23 percent reduction in the number of chisel-toothed kangaroo rats (*Dipodomys microps*) trapped compared to pre-flood numbers. Elevated upland portions of the floodplain containing mature phase alluvial sage scrub with patches of suitable soils and vegetative cover can support some individuals, but the low density of animals suggests these areas likely remain occupied only because of their proximity to the more densely occupied lower elevation portions of the floodplain. More importantly for the preservation of the subspecies in channelized systems where bank-to-bank flooding can occur, individuals occupying the upland areas may be the only San Bernardino kangaroo rats remaining for recolonization of the lower floodplain after flooding has subsided (Pavelka 2006). Research conducted by Braden and McKernan (2000, p. 16) during 1998 and 1999 demonstrated that areas with late phases of floodplain vegetation, such as mature alluvial fan sage scrub and associated coastal sage scrub and chaparral, including some areas of moderate to dense vegetation such as nonnative grasslands, are at least periodically occupied by the subspecies. Due to the dynamic nature of the alluvial floodplain, all elevations within the floodplain and the associated phases of alluvial sage scrub habitat are essential to the conservation and long-term survival of the San Bernardino kangaroo rat.

A limited amount of data exists pertaining to population dynamics of the San Bernardino kangaroo rat. Information is not currently available on several aspects of the subspecies' life history such as fecundity (the capacity of an organism to produce offspring), survival, population age and sex structure, intra- and interspecific competition, and causes and rates of mortality. With respect to population density, Braden and McKernan (2000) documented substantial annual variation on a trapping grid in San Bernardino County, where densities ranged from 2 to 26 animals per ha (2.47 ac). The reasons for these greatly disparate values during the 15-month study are unknown. These fluctuations bring to light several important aspects of the subspecies' distribution and life history which should be considered when identifying areas essential for the conservation of the subspecies: (1) A low population density observed in an area at one point in time does not mean the area is occupied at the same low density during any other month, season, or year; (2) a low population density is not an indicator of low habitat quality or low overall value of the land for the conservation of the subspecies; (3) an abundance of San Bernardino kangaroo rats can decrease rapidly; and (4) one or more factors (*e.g.*, food availability, fecundity, disease, predation, genetics, environment) are strongly influencing the subspecies' population dynamics in one or more areas. High-amplitude, high-frequency fluctuations in small, isolated populations make the San Bernardino kangaroo rat extremely susceptible to local extirpation.

Areas that contain low densities of San Bernardino kangaroo rats may be important for dispersal, genetic exchange, colonization of newly suitable habitat, and re-colonization of areas after severe storm events. The dynamic nature of the alluvial habitat leads to a situation where not all of the habitat associated with alluvial processes is suitable for the species at any point in time. However, areas generally considered unsuitable habitat, such as out-of-production vineyards and margins of orchards, can and do develop into suitable habitat for the subspecies through natural processes (67 FR 19812). The San Bernardino kangaroo rat has been documented in areas containing suitable soils that have been altered due to human disturbance not typically associated with the subspecies, including nonnative grasslands; margins of orchards and out-of-use vineyards from adjacent, mature stage alluvial sage scrub with greater than 50 percent canopy cover; and areas of wildland/urban interface within floodplains or terraces and adjacent to occupied habitat (67 FR 19812, April 23, 2002). These upland areas can support individuals for repopulation of wash areas extirpated by flood events (Pavelka 2006). This can occur directly by dispersal of adult individuals, or indirectly through dispersal of offspring (Pavelka 2006).

Little is known about home range size, dispersal distances, or other spatial requirements of the San Bernardino kangaroo rat. However, home ranges for the Merriam's kangaroo rat in the Palm Springs, California, area averaged 0.8 ac (0.3 ha) for males and 0.8 ac (0.3 ha) for females (Behrends *et al.* 1986, p. 204). Furthermore, Blair (1943, p. 26) reported much larger home ranges for Merriam's kangaroo rats in New Mexico, where home ranges averaged 4.1 ac (1.7 ha) for males and 3.9 ac (1.6 ha) for females. Space requirements for the San Bernardino kangaroo rat likely vary according to season, age and sex of animal, food availability, and other factors. Although outlying areas of their home ranges may overlap, *Dipodomys* adults actively defend small core areas near their burrows (Jones 1993, p. 583). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993, p. 584). The degree of competition between San Bernardino kangaroo rats and sympatric (living in the same geographical area) species of kangaroo rats for food and other resources is not presently known. While we do not have sufficient information to quantify the home range required by the San Bernardino kangaroo rat, through the delineation of critical habitat in wash and upland areas, it is likely that we have included sufficient areas to provide the space needed to maintain the home range for this subspecies in this proposed revised critical habitat designation.

Food

As stated in the previous sections, the alluvial sage scrub plant community occupied by the San Bernardino kangaroo rat provides food resources for the subspecies. However, little is known about the specific diet of San Bernardino kangaroo rats. They emerge from their burrow systems at sunset and feed at night, when they are most active. San Bernardino kangaroo rats are generally granivorous (feed on seeds and grains) and like most Merriam's kangaroo rats, often store large quantities of seeds in surface pits for later consumption (Reichman and Price 1993, p. 540; Reynolds 1958, p. 126). This species feeds primarily on the seeds of alluvial sage scrub species, but green vegetation and insects can also be important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993, p. 540).

Wilson *et al.* (1985, p. 731) reported that in comparison to other rodents, Merriam's kangaroo rat, and heteromyids in general, have relatively low reproductive output that can be linked to food resources. Rainfall and

the availability of food have been cited as factors affecting kangaroo rat populations. Droughts lasting more than a year can cause rapid declines in population numbers after seed caches are depleted (Goldingay *et al.* 1997, p. 56).

Cover or Shelter

San Bernardino kangaroo rats depend on proper soils for burrowing and vegetative cover for shelter from predation. Potential predators include the common barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), long-eared owl (*Asio otus*), gray fox (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), long-tailed weasel (*Mustela frenata*), bobcat (*Felis rufus*), badger (*Taxidea taxus*), San Diego gopher snake (*Pituophis melanoleucus annectens*), California king snake (*Lampropeltis getulus californiae*), red diamond rattlesnake (*Crotalus ruber*), southern Pacific rattlesnake (*Crotalus viridus*), and domestic cats (*Felis cattus*) (Bolger *et al.* 1997, p. 560; 67 FR 19812, April 23, 2002).

Primary Constituent Elements for the San Bernardino Kangaroo Rat

Under the Act and its implementing regulations, we are required to identify the known physical and biological features (PCEs) within the geographical area occupied by the San Bernardino kangaroo rat at the time of listing, which may require special management considerations or protection.

Based on our current knowledge of the life history, biology, and ecology of the San Bernardino kangaroo rat and the requirements of the habitat to sustain the essential life history functions of the subspecies, we have determined that the PCEs specific to the San Bernardino kangaroo are:

(1) Alluvial fans, washes, and associated floodplain areas containing soils consisting predominately of sand, loamy sand, sandy loam, and loam, which provide burrowing habitat necessary for sheltering and rearing offspring, storing food in surface caches, and movement between occupied patches;

(2) Upland areas adjacent to alluvial fans, washes, and associated floodplain areas containing alluvial sage scrub habitat and associated vegetation, such as coastal sage scrub and chamise chaparral, with up to approximately 50 percent canopy cover providing protection from predators, while leaving bare ground and open areas necessary for foraging and movement of this subspecies; and

(3) Upland areas adjacent to alluvial fans, washes, and associated floodplain areas, which may include marginal habitat such as alluvial sage scrub with greater than 50 percent canopy cover with patches of suitable soils (PCE 1) that support individuals for re-population of wash areas following flood events. These areas may include agricultural lands, areas of inactive aggregate mining activities, and urban/wildland interfaces.

This proposed revision to the critical habitat designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the proposal and the areas containing the PCEs. Because not all life history functions require all the PCEs, not all proposed revised critical habitat units will contain all the PCEs.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain features essential to the conservation of the subspecies that may require special management considerations or protection. We have also considered how revising the current designation of critical habitat highlights habitat in need of special management considerations or protection.

The majority of all remaining suitable habitat, and the long-term persistence of the San Bernardino kangaroo rat, is threatened by the direct and indirect effects of: sand and gravel mining; construction, operation, and maintenance of flood control structures; water conservation activities; urban and industrial development; agricultural activities; and off-road vehicle activity. With an expanding human population in the region, it is likely that these activities will continue to threaten the habitat and PCEs upon which the San Bernardino kangaroo rat depends.

Sand and gravel mining operations have degraded San Bernardino kangaroo rat habitat in all of the proposed revised critical habitat units, with major operations occurring in the Santa Ana River and Lytle Creek washes. Mining activities directly affect the PCEs for the subspecies by altering soil composition and structure, and by stripping away vegetative cover (PCEs 1 and 2). Furthermore, flood control structures are often built to protect mining operations from flood damage. This alters the hydrology essential for maintaining proper soil and alluvial sage scrub habitat for the San Bernardino kangaroo rat (PCEs 1 and 2). Special management considerations or protection may be required to minimize effects of mining activities on alluvial sage scrub habitat and the natural hydrological processes that maintain proper alluvial sage scrub conditions for the San Bernardino kangaroo rat. Such management may include restoring habitat in areas degraded from past mining activities to conditions suitable for this subspecies.

Flood control and water conservation activities related to increasing human population and development have had major impacts on San Bernardino kangaroo rat habitat and the alluvial processes that maintain habitat in each of the proposed revised critical habitat units. Flood control berms, levees, and concrete-lined channels increase severity (velocity and scour) of flood events in lower elevations within the flood plain, and cut off upland portions of alluvial sage scrub habitat from hydrological processes that maintain suitable San Bernardino kangaroo rat conditions (PCEs 1, 2, and 3). In the absence of periodic flooding and scouring, upland alluvial sage scrub habitat increases in cover and in density of nonnative vegetation to the point where the open canopy and ground conditions (PCE 2) preferred by the subspecies no longer exist (Service 2004, p. 293). Some flood control structures, such as concrete channels, can prevent movement and dispersal between occupied areas of the alluvial wash and floodplain. Decades of groundwater pumping have severely depleted groundwater reserves within San Bernardino kangaroo rat habitat and have resulted in an ever-increasing need to recharge groundwater supplies by percolation of local or imported water sources into the local groundwater basin (Service 2004, p. 293). Further habitat degradation occurs where groundwater recharge ponds (percolation basins) have been constructed. Recharge structures are unsuitable for the San Bernardino kangaroo rat due to periodic standing water. These structures are especially evident in the Santa Ana River and San Jacinto River washes. Special management considerations or protection may be required to minimize effects of flood control and water conservation activities on alluvial sage scrub habitat and the natural hydrological processes that maintain proper alluvial sage scrub conditions for the San Bernardino kangaroo rat.

Development projects pose a serious threat to San Bernardino kangaroo rat habitat in all three proposed revised critical habitat units. As the human population of the surrounding area continues to increase, the threat of development encroaching upon alluvial washes and associated upland areas will persist (PCEs 1, 2, and 3). Large-scale

development projects, like the Lytle Creek North Master Planned Community (described below), permanently eliminate and fragment habitat containing the PCEs for the subspecies. Furthermore, continued fragmentation of habitat is likely to promote higher levels of predation by native animals (Bolger *et al.* 1997, p. 560) and urban-associated animals (*e.g.*, domestic cats, opossums (*Didelphis virginianus*), and striped skunks (*Mephitis mephitis*)) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987, p. 452). Roadways and bridges built to accommodate the growing population in the area constrict channel width and contribute to the removal of alluvial fan habitat from normal hydrological processes (PCE 1). The downstream alluvial benches become isolated behind the fill used to construct the bridge within the channel area and do not experience natural flood-borne scour and deposition. Pier and footing placement within channels is a typical necessary bridge design feature. Instream piers create scour areas in front of the piers, increase water velocity through the embankments and piers (which can result in downstream erosion), and create a permanent shadow over habitat under the bridge. These factors typically result in permanently degraded habitat for San Bernardino kangaroo rat even though high flows are seasonal in this area. Special management considerations or protection may be required to minimize the impacts of development within the alluvial wash and adjacent upland areas. Areas of the alluvial washes and floodplains adjacent to development may require exclusionary fencing and signage to minimize human and domestic animal disturbance of San Bernardino kangaroo rat habitat. Because this subspecies is active at night, lights from adjacent developed areas should be minimized and directed away from San Bernardino kangaroo rat habitat.

Agricultural activities adjacent to all three proposed revised critical habitat units occasionally result in the discing of patches of suitable or occupied habitat that may be distributed throughout upland agricultural areas. Discing destroys San Bernardino kangaroo rat burrows and degrades remaining vegetation associations (Service 2004, p. 293) (PCEs 1 and 2). This can contribute to the susceptibility of local populations to extinction during large-scale flood events by restricting San Bernardino kangaroo rats to areas most vulnerable to flooding (*i.e.*, lower elevations of the floodplain) (Service 2004, p. 293). Special management considerations or protection may be required to minimize effects of agricultural activities on alluvial sage scrub habitat.

Unauthorized off-road vehicle activity continues to be a threat to San Bernardino kangaroo rat habitat in the San Jacinto River wash area. Most of this activity occurs within the wash downstream of the East Main Street/ Lake Park Drive Bridge. Off-road activity that goes unchecked directly damages plant communities, the soil crust, and the burrow systems of kangaroo rats, thereby degrading habitat (Bury *et al.* 1977, p. 16; Service 2004, p. 293) (PCEs 1 and 2). Special management considerations or protection, such as exclusionary fencing, additional enforcement, and signage placed around areas of the wash, may be needed to minimize impacts from unauthorized off-road vehicle use.

Criteria Used To Identify Critical Habitat

We are proposing to revise critical habitat for the San Bernardino kangaroo rat in areas that we have determined were occupied at the time of listing, and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. Lands are proposed for revised 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.

We define occupied habitat as: (a) Those areas containing occurrence data from the time of listing (1980 to 1998); (b) those areas containing occurrence data since the time of listing (1998 to present); (c) areas adjacent to and between occurrence points that maintain connectivity of occurrences in one continuous patch of suitable habitat. As discussed in the Background section of this proposed rule, occurrences discovered since the listing of the subspecies in 1998 are within areas known to be occupied at the time of listing (Santa Ana River wash, Lytle and Cajon washes, and San Jacinto River area).

In this proposed revised designation we have focused primarily on core populations (i.e., areas where the subspecies has been repeatedly detected through live trapping) that are considered necessary for conservation and recovery of the San Bernardino kangaroo rat. We believe protecting these core populations is what is necessary for recovery of the species. Protecting peripheral populations, or areas of degraded habitat where sitings are sporadic is not necessary for recovery.

Utilizing 2005 aerial imagery and occurrence data used to determine areas of occupancy, we delineated proposed revised critical habitat on maps to include non-degraded alluvial fans, washes, floodplains, and adjacent upland areas containing the PCEs required by the San Bernardino kangaroo rat. We then made site visits accompanied by subspecies experts to confirm the presence of PCEs in the areas delineated on the maps. Areas determined not to contain any of the PCEs (i.e., degraded) during site visits are not included in the areas proposed as revised critical habitat. Because of the importance of upland habitat for source populations to re-populate wash areas following flood events, we include non-degraded (containing one or more PCEs) upland habitat adjacent to occupied wash habitat containing appropriate soils and vegetation community in this proposed revised designation.

When determining the proposed revisions to critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the San Bernardino kangaroo rat. Areas currently being used for sand/gravel mining operations (e.g., pits, staging areas) do not contain the PCEs required by the San Bernardino kangaroo rat. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed revision to critical habitat have been excluded by text in this rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the subspecies or PCEs in adjacent critical habitat.

Summary of Proposed Changes to Currently Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the critical habitat designation for the San Bernardino kangaroo rat, published on April 23, 2002 (67 FR 19812). For maps showing existing and proposed revised critical habitat visit our Web site at *http://carlsbad.fws.gov.*

Our proposed revised critical habitat designation is substantially smaller than the existing designation. Given the new information that has become available to us in the five years since the previous designation, we find that we erroneously designated some areas. We find that areas previously proposed but not proposed in this rule are not essential to the conservation of the species, because of new information (see Criteria Used To Identify Critical Habitat section). The changes in this rule are due to several factors. Better biological information has allowed us to more specifically define PCEs for this species, and site visits in December 2006 and January 2007 allowed us to more precisely define these areas on the ground. This allowed us to remove areas that do not meet our criteria for features that are essential to the conservation of the species. The 2002 critical habitat designation included areas that supported few occurrence records. Such areas of low density occupation, or sporadic occupancy, have been removed from the proposed revised designation, for such areas do not represent core populations and, therefore, are not necessary for the conservation and recovery of the species. Finally, we have employed refined mapping techniques in the current revision, which have allowed us to more precisely map areas that contain PCEs. This more refined approach has allowed us to remove areas that do not meet the definition of critical habitat.

The main differences in this proposed revised designation include the following:

(1) On the basis of our new analyses, we have determined that portions of existing Unit 1 (Santa Ana River), Unit 2 (Lytle and Cajon Creeks), and Unit 3 (San Jacinto River), and all of Unit 4 (Etiwanda Alluvial Fan and Wash) do not contain PCEs in the quality and quantity needed for conservation of the species or do not support core populations of the taxon. These areas total 24,211 ac (9,798 ha) of habitat originally designated as critical habitat in 2002. Therefore we are not proposing to include these areas in our proposed revision to critical habitat. The following paragraphs provide unit by unit explanations for why areas previously designated as critical habitat no longer fit our definition of critical habitat for the San Bernardino kangaroo rat.

We have removed approximately 5,311 ac (2,149 ha) within Unit 1 from our proposed revision to critical habitat, largely because portions of the Unit do not contain the PCEs, but also because occurrence data for some areas indicates that they do not support a core population of San Bernardino kangaroo rat. South of Mill Creek, a flood control levee has cut off habitat from fluvial processes, which has resulted in overgrown vegetation and water retention basins that are unsuitable habitat conditions for the subspecies. A large area extending from the existing critical habitat in and south of Plunge Creek west to the confluence of City Creek with the Santa Ana River has been degraded through mining operations, flood control structures (and the subsequent loss of fluvial influence), and water retention basins. The habitat downstream of the Tippecanoe Avenue Bridge is heavily channelized with steep banks inhibiting the use of upland habitat; we do not have data indicating that this area is occupied. Because these areas do not contain PCEs and/or do not support core populations, we are not including them in the proposed revision to critical habitat.

We have removed approximately 9,284 ac (3,757 ha) within Unit 2 from our proposed revision to critical habitat, largely because portions of the Unit do not contain the PCEs, but also because occurrence data for some areas indicates that they do not support a core population of San Bernardino kangaroo rat. Two areas northeast of the main Lytle-Cajon Creek unit contain habitat that has been degraded and these areas are largely unoccupied. The southernmost portion of Lytle Creek contains habitat that has been degraded through surface mining and flood control structures, making this area unsuitable for the subspecies. The upper reaches of both Lytle and Cajon Creeks contain large rocky substrates that do not provide habitat for this subspecies and we have no recent occurrence data for these upstream areas. Portions of habitat along the Lytle Creek arm have been degraded from sand and gravel mining operations and associated infrastructure. Approximately 670 ac (271 ha) of existing critical habitat north of Lytle Creek and east of I–15 is currently under development for the Lytle Creek North development project, and was addressed through formal section 7 consultation with the Service. A large expanse of a remnant flood plain south of Lytle Creek and I–15, and west of Riverside Avenue is partially developed and does not contain the PCEs for the subspecies. This area is void of fluvial influence and is cut off from the core population by roadways. Because these areas do not contain PCEs and/or do not support core populations, we are not including them in the proposed revision to critical habitat.

We have removed approximately 4,796 ac (1,941 ha) within Unit 3 from our proposed revision to critical habitat, largely because portions of the Unit do not contain the PCEs, but also because occurrence data for some areas indicates that they do not support a core population of San Bernardino kangaroo rat. Bautista Creek and the downstream reach of the San Jacinto River are largely channelized, and do not provide suitable habitat or contain the PCEs essential to the San Bernardino kangaroo rat. These channelized areas prevent connectivity with the core population in the San Jacinto wash. We have do not have occurrence data or habitat condition data for the two tributaries on Tribal land north of the San Jacinto wash and are not proposing critical habitat on Tribal lands (see *Government-to-Government Relationship with Tribes* section). Portions of the habitat downstream of the Bautista Creek confluence have been or are in the process of being developed or are being used for water conservation activities and therefore this habitat does not contain the PCEs. Because these areas do not contain PCEs and/or do not support core populations, we are not including them in the proposed revision to critical habitat.

We have removed approximately 4,820 ac (1,951 ha) within Unit 4 from our proposed revision to critical habitat because Unit 4 consists largely of unoccupied areas that are not essential to the conservation of the San Bernardino kangaroo rat. Occupied areas within this unit do not contain the PCEs necessary for the subspecies.

(2) We re-evaluated and revised the PCEs as needed in light of *Homebuilder's Ass'n of Northern Cal.* v. *U.S. Fish and Wildlife Service,* 268 F. Supp.2d 1197 (E.D. Cal. 2003), other applicable law, and current Service guidelines and policies. We propose to revise the PCEs to provide more specificity with regards to the location of and necessity for suitable soil types, vegetative habitat, and upland areas related to the biological needs of the subspecies. We also include a range of the preferred percentage of vegetative cover. Revisions to the PCEs alone did not result in the removal of existing critical habitat from this proposed revised critical habitat designation.

Proposed Revisions to the Critical Habitat Designation

We are proposing approximately 9,079 ac (3,674 ha) within three units as critical habitat for the San Bernardino kangaroo rat. These units, which generally correspond to the units in the 2002 designation, if finalized, would

entirely replace the current critical habitat designation for the San Bernardino kangaroo rat in 50 CFR 17.95(a). The critical habitat areas described below constitute our best assessment currently of areas occupied at the time of listing containing the PCEs that may require special management considerations or protection. The three units proposed as critical habitat are: (1) Unit 1—Santa Ana River Wash, (2) Unit 2—Lytle/Cajon Creek Wash, and (3) Unit 3—San Jacinto River Wash.

Of the 9,079 ac (3,674 ha) being proposed as revised critical habitat, we are proposing to exclude approximately 2,544 ac (1,029 ha) from the final critical habitat designation under section 4(b)(2) of the Act. See Exclusions Under Section 4(b)(2) of the Act section for a detailed discussion.

The approximate area (ac, ha) encompassed within each proposed revised critical habitat unit, land ownership, and areas proposed for exclusion from the final critical habitat designation are shown in Table 1.

TABLE 1.—AREA (ACRES (AC), HECTARES (HA)) BEING PROPOSED AS REVISED CRITICAL HABITAT, LAND OWNERSHIP, AND AREA BEING PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION FOR THE SAN BERNARDINO KANGAROO RAT IN SAN BERNARDINO AND RIVERSIDE COUNTIES, CALIFORNIA

[Area estimates reflect all land within proposed critical habitat unit boundaries]

Critical habitat unit	Land ownership	Area proposed as revised critical habitat	Area being considered for exclusion from final critical habitat
1. Santa Ana River Wash, San Bernardino County	Federal (BLM) [1]	559 ac (226 ha)	00 ac (00 ha).
	Local[2]	268 ac (109 ha)	268 ac (109 ha).
	Private	2,797 ac (1,132 ha)	742 ac (300 ha).
	Subtotal	3,624 ac (1,467 ha).	
2. Lytle/Cajon Creek Wash, San Bernardino County	Federal (USFS) [3]	89 ac (36 ha)	00 ac (00 ha).
	Private	4,597 ac (1,860 ha)	1,271 ac (514 ha).
	Subtotal	4,686 ac (1,896 ha)..	
3. San Jacinto River Wash, Riverside County	Water District [4]	506 ac (205 ha)	00 ac (00 ha).
	Local Flood[5]	94 ac (38 ha)	94 ac (38 ha).
	Private	169 ac (68 ha)	169 ac (68 ha).
	Subtotal	769 ac (311 ha)..	
Total		9,079 ac (3,674 ha)	2,544 ac (1,029 ha).

1—BLM = Bureau of Land Management.
2—Local = Local Reuse Authority.
3—USFS = U.S. Forest Service.
4—Water District = Eastern Municipal Water District and Lake Hemet Municipal Water District.
5—Local Flood = Riverside County Flood Control.

TABLE 2.—OCCUPANCY OF PROPOSED REVISED CRITICAL HABITAT UNITS FOR THE SAN BERNARDINO KANGAROO RAT.

Critical habitat unit	Occupied at the time of listing?	Occupied currently?	Acres (hectares)
1. Santa Ana River Wash, San Bernardino County	Yes	Yes	3,624 ac (1,467 ha).
2. Lytle/Cajon Creek Wash, San Bernardino County	Yes	Yes	4,686 ac (1,896 ha).
3. San Jacinto River Wash, Riverside County	Yes	Yes	769 ac (311 ha).
Total			9,079 ac (3,674 ha)

Below, we present brief descriptions of all units and reasons why they meet the definition of critical habitat for the San Bernardino kangaroo rat.

Unit 1: Santa Ana River Wash

Unit 1 consists of approximately 3,624 ac (1,467 ha) and is located in San Bernardino County. This unit includes the Santa Ana River and portions of City, Plunge, and Mill creeks. The area includes lands within the cities of San Bernardino, Redlands, Highland, and Colton. Although Seven Oaks Dam (northeast of Unit 1) impedes sediment transport and reduces the magnitude, frequency, and extent of flood events from the Santa Ana River, the system still retains partial fluvial dynamics because contributions from Mill Creek are not impeded by a dam or debris basin. This critical habitat unit was occupied at the time of listing, is currently occupied, and contains all of the PCEs (PCEs 1, 2, and 3) essential to the conservation of the San Bernardino kangaroo rat. Additionally, this unit contains the highest densities of San Bernardino kangaroo rat in the Santa Ana wash. The PCEs contained within this unit may require special management considerations or protection to minimize impacts associated with flood control operations, water conservation projects, sand and gravel mining, and urban development.

Approximately 742 ac (300 ha) of Unit 1 occurs within the Woolly-Star Preserve Area (WSPA), a section of the flood plain downstream of Seven Oaks Dam that was preserved by the flood control districts of Orange, Riverside, and San Bernardino counties. The WSPA was established in 1988 by the Army Corps of Engineers (ACOE) to minimize the effects of Seven Oaks Dam on the federally endangered plant,

Eriastrum densifolium ssp. *sanctorum* (Santa Ana River woolly-star). This area of alluvial fan scrub in the wash near the low-flow channel of the river was designated for preservation because these sections of the wash were thought to have the highest potential to maintain the hydrology necessary for the periodic regeneration of early phases of alluvial fan sage scrub. A 1993 Management Plan for the Santa Ana River WSPA has been completed, and a draft multi-species habitat management plan (MSHMP) for WSPA lands, which includes protection for the San Bernardino kangaroo rat, is to be completed as an additional conservation measure pursuant to our December 19, 2002, biological opinion on operations for Seven Oaks Dam (Service 2002b, p. 8). As a result, we are proposing to exclude WSPA lands (741 ac (300 ha)) that fall within the area proposed as revised critical habitat from the final revised critical habitat designation based on the benefits to the subspecies provided by these plans (see Exclusions Under Section 4(b)(2) of the Act for a detailed discussion).

In 1994, the Bureau of Land Management (BLM) designated three parcels in the Santa Ana River, a total of approximately 760 ac (305 ha), as an ACEC (Area of Critical Environmental Concern). One parcel is located south of the Seven Oaks barrow pit, another is farther west and south of Plunge Creek, and the third is located farther west between two large mining pits. The primary goal of this ACEC designation is to protect and enhance the habitat of federally listed plant species occurring in the area while providing for the administration of valid existing water conservation rights. Although the establishment of this ACEC is important in regard to conservation of sensitive species and communities in this area, the administration of valid existing water conservation rights conflicts with the BLM's ability to manage their lands for the San Bernardino kangaroo rat. Existing rights include a withdrawal of Federal lands for water conservation through an act of Congress on February 20, 1909 (Public Law 248, 60th Cong., 2nd sess.). The entire ACEC is included in this withdrawn land and may be used for water conservation measures such as the construction of percolation basins. Although the BLM is coordinating with the Service to conserve San Bernardino kangaroo rat habitat, at this time we do not consider these lands to be managed for the benefit of the San Bernardino kangaroo rat or its PCEs; therefore, we are not proposing to exclude these lands from the final revised critical habitat designation.

We are currently coordinating with the BLM, ACOE, San Bernardino Valley Conservation District, Cemex Construction Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a large block of alluvial fan scrub occupied by three federally endangered species (the San Bernardino kangaroo rat, *E. d.* ssp. *sanctorum*, and *Dodecahema leptoceras* (slender-horned spineflower)) and one federally threatened species (the coastal California gnatcatcher (*Polioptila californica* ssp. *californica*)). The area under consideration includes the majority of the Santa Ana wash from just downstream of the Seven Oaks Dam and the confluence of Mill Creek with the Santa Ana River, downstream to the City Creek confluence. The area is envisioned to include BLM's ACEC lands and the ACOE's preservation lands for *E. d.* ssp. *sanctorum*. This cooperative agreement, expected to be completed within the next 1 to 2 years, would reconfigure and consolidate sand and gravel mining operations in this unit to reduce adverse effects to these listed species and remaining alluvial sage scrub communities. While this effort is likely to benefit the San Bernardino kangaroo rat through the establishment of preserve lands that will be managed for the subspecies, the final configuration has not been completed. Therefore, we are not proposing to exclude any lands within the proposed Santa Ana River Wash Conservation Area from the final revised critical habitat designation.

Approximately 268 ac (109 ha) of occupied habitat in the Santa Ana River wash has been set aside for conservation in perpetuity by the U.S. Air Force as part of on-base site remediation efforts at the former Norton Air Force Base (AFB) in San Bernardino, California. These areas are managed specifically for the San Bernardino kangaroo rat and *E. d.* ssp. *sanctorum* pursuant to the Former Norton Air Force Base Conservation Management Plan (CMP) completed in March 2002. We are proposing to exclude these 268 ac (109 ha) from the final revised critical habitat designation based on benefits provided to San Bernardino kangaroo rat habitat under the CMP (see Exclusions Under Section 4(b)(2) of the Act for a detailed discussion).

Unit 2: Lytle/Cajon Creek Wash

Unit 2, which encompasses approximately 4,686 ac (1,896 ha) in San Bernardino County, includes the northern extent of this subspecies' remaining distribution. This unit contains habitat along and between Lytle and Cajon creeks from the Interstate 15 Bridge in Lytle Creek and the Kenwood Avenue Cajon Boulevard junction in Cajon Creek, downstream to Highland Avenue. Proposed Unit 2 was occupied at the time of listing, is currently occupied, and contains all of the PCEs (PCEs 1, 2, and 3) essential to the survival and conservation of the San Bernardino kangaroo rat. Additionally, this unit includes some of the last remaining alluvial fans, flood plain terraces, historic braided river channels, and associated alluvial sage scrub and upland vegetation that provides habitat for the San Bernardino kangaroo rat in the Lytle/Cajon Creek wash. Proposed Unit 2 also contains the highest densities of San Bernardino kangaroo rat in the Lytle/Cajon wash. The PCEs within this unit may require special management considerations or protection to minimize impacts associated with flood control operations, water conservation projects, sand and gravel mining, and urban development.

The hydro-geomorphological processes that apparently rejuvenate and maintain the dynamic mosaic of alluvial fan sage scrub are still largely intact in Lytle and Cajon creeks (i.e., stream flows are not impeded by dams or debris basins), and the remaining habitat allows dispersal between these two drainages, which is important for genetic exchange between populations (67 FR 19812, April 23, 2002). This unit is adjacent to large tracts of undeveloped land and contains upland areas occupied by the subspecies (PCEs 1, 2, and 3).

Several areas in Unit 2 will be or are protected and being managed to some extent for the San Bernardino kangaroo rat. The Cajon Creek Habitat Conservation Management Area (HCMA) includes 1,378 ac (558 ha) to offset approximately 2,270 ac (920 ha) of sand and gravel mining proposed within and adjacent to Cajon Creek. Of the 1,378-ac (558-ha) Cajon Creek HCMA, approximately 610 ac (245 ha) is the Cajon Creek Conservation Bank established to help conserve populations of 24 species associated with alluvial fan scrub including the San Bernardino kangaroo rat. Furthermore, the remaining 768 ac (311 ha) have been set aside as permanent conservation lands. These conservation lands will be managed in perpetuity for alluvial fan scrub habitat and associated listed species (including the San Bernardino kangaroo rat) pursuant to

the Habitat Enhancement and Management Plan (HEMP) (M. Blane and Associates 1996) and associated Memorandum of Understanding and Implementation Agreement for the Cajon Creek Habitat Management Area (MOU) (CalMat Co. 1996). According to the Service's GIS data based on information provided by Vulcan Materials, the footprint of the Cajon Creek HCMA is approximately 1,271 ac (514 ha). Thus, we are proposing to exclude these 1,271 ac (514 ha) from the final revised critical habitat designation based on benefits provided by the HEMP and MOU (see Exclusions Under Section 4(b)(2) of the Act for a detailed discussion). We may consider excluding the remaining 107 ac (43 ha) if we receive additional information during the public comment period that leads to a determination that the benefits of exclusion would outweigh the benefits of including these lands in our revised critical habitat designation.

In 2003, the Service issued a biological opinion for the Lytle Creek North Master Planned Community, which falls within the boundary of existing San Bernardino kangaroo rat habitat (Service 2003a, FW–SB–1640.11). The project includes an approximately 677 ac (274 ha) master planned community with over 2,400 residential units. Construction activities are proposed to be phased over an estimated 5 to 10 years.

As an off-site measure for this project, the Lytle Creek Development Company will dedicate approximately 213 ac (86 ha) of largely undeveloped habitat within Lytle Creek (within proposed Unit 2) as a conservation area for the San Bernardino kangaroo rat. Forty acres (16 ha) of this lies within the floodplain and will be managed for the San Bernardino kangaroo rat in perpetuity (Service 2003a, p. 42). However, to date, no conservation easements or endowments have been secured for the lands proposed as conservation areas, and a long-term management plan has not yet been completed. Therefore, we are not proposing to exclude from the final revised designation the 213 ac (86 ha) of conservation land that will be established as a result of this project. However, we may consider excluding these conservation lands from the final designation (under section 4(b)(2) of the Act) if we receive a finalized management plan that benefits this subspecies by the end of the public comment period.

On June 15, 1999, we issued our biological opinion on the construction and extension of the north levee at Sunwest Materials' (now CEMEX) Lytle Creek Quarry (Service 1999, 1–6–99–F–42). The armored, engineered levee (over 10,000 feet (3,048 meters) in length) protects mining operations from flooding and replaces a shorter, earthen embankment (Service 1999, p. 3). As a conservation measure for this project, Sunwest Materials delivered to the California Department of Fish and Game a conservation easement deed to approximately 26 ac (11 ha) delineated as Conservation Area 1 to protect biological resources in perpetuity (Service 1999, p. 7). In addition, Sunwest Materials is to record a biological resource deed restriction on approximately 12 ac (5 ha) of land to permanently preclude activities that would interfere with habitat value (Service 1999, p. 8). However, since a management plan benefiting the San Bernardino kangaroo rat has not yet been developed for these lands we are not proposing to exclude these 38 ac (16 ha) from the final revised critical habitat designation. We may consider excluding these conservation lands from the final designation (under section 4(b)(2) of the Act) if we receive a finalized management plan that benefits this subspecies by the end of the public comment period.

Unit 3: San Jacinto River Wash

Unit 3 encompasses approximately 769 ac (311 ha) in Riverside County and includes areas along the San Jacinto River in the vicinity of San Jacinto, Hemet, and Valle Vista. This unit, which represents the southern extent of the currently known distribution of the subspecies, encompasses the San Jacinto River wash from the Blackburn Road/Lake Hemet Main Canal area, downstream to the East Main Street Bridge. This unit includes all of the PCEs (PCEs 1, 2, and 3) essential to the conservation of the San Bernardino kangaroo rat, was occupied at the time of listing, and is currently occupied. Additionally, this unit contains one of only three extant populations of San Bernardino kangaroo rat and is the only population in Riverside County. Historically, the San Bernardino kangaroo rat has occurred along the San Jacinto River from the upper reach of habitat in the river downstream past State Route 79. In Bautista Creek, the subspecies has occurred upstream of the Bautista flood control basin until the topography of the canyon becomes too steep. The PCEs within this unit may require special management considerations or protection to minimize impacts associated with flood control operations, channelization, water conservation projects (groundwater recharge ponds), off-road activity, and urban development.

Lands within Unit 3 are adjacent to lands of the Soboba Band of Luiseño Indians Reservation. We are not proposing these lands as critical habitat for the San Bernardino kangaroo rat (see Government-to-Government Relationship with Tribes section for a detailed discussion).

At the confluence of the San Jacinto River and Bautista Creek, the Eastern Municipal Water District (EMWD) will implement an integrated water recharge and recovery program that includes the construction of recharge basins and well sites. The Service issued a biological opinion for this project on November 16, 2006 (Service 2006, FWS–WRIV–4051.5). The project will impact approximately 35 ac (14 ha) of land within the floodplain and 2 ac (0.8 ha) of upland habitat (Service 2006, p. 21) adjacent to proposed revised critical habitat Unit 3. These impact areas, totaling approximately 37 ac (15 ha), are within the currently designated critical habitat but are not proposed as revised critical habitat because they have been addressed by the section 7 consultation and biological opinion, which found that the action did not adversely modify the currently designated critical habitat. However, the habitat will be permanently lost through the action, and to offset that loss of occupied habitat for the San Bernardino kangaroo rat, EMWD will protect and manage approximately 117 ac (47 ha) of land in three separate conservation areas along the San Jacinto River (Service 2006, p. 22). EMWD will preserve these lands in the form of a conservation easement and develop a management plan to be implemented in perpetuity to provide for the long-term conservation of the San Bernardino kangaroo rat (Service 2006, pp. 6–7). These conservation areas will combine with an existing parcel of conservation land (16 ac (6 ha)) set aside under a previous biological opinion of a seasonal storage and recovery project proposed by EMWD (Service 2000b, FWS–WRIV–1045.1). We may consider excluding any or all portions of these 133 ac (54 ha) of conservation lands addressed through these two section 7 consultations and issued biological opinions from the final revised designation (under section 4(b)(2) of the Act) if we receive finalized management plans that benefit this subspecies by the end of the public comment period.

All private lands proposed as revised critical habitat in the San Jacinto River wash fall within the boundaries of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). Therefore, we are proposing

to exclude private lands under the jurisdiction of permittees to the MSHCP and all lands owned and managed by permittees to the MSHCP within this area (263 ac (106 ha)) based on the benefits provided to the San Bernardino kangaroo rat by the Western Riverside County MSHCP (see Exclusions Under Section 4(b)(2) of the Act for a detailed discussion).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) 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 (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. 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 PCEs 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 such 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 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 San Bernardino kangaroo rat or its 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 ACOE 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 San Bernardino Kangaroo Rat and Its Critical Habitat

Jeopardy Standard

The Service has applied an analytical framework for San Bernardino kangaroo rat jeopardy analyses, which relies heavily on the importance of core area populations to the survival and recovery of the subspecies. This 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 San Bernardino kangaroo rat in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is 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 PCEs to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of San Bernardino kangaroo rat 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 San Bernardino kangaroo rat is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the San Bernardino kangaroo rat include, but are not limited to:

(1) Actions that would result in loss or fragmentation of suitable habitat. Such activities could include, but are not limited to: Urban and industrial development; sand and gravel mining; off-road activity; and, groundwater recharge operations. These activities could eliminate or reduce habitat necessary for the growth and reproduction of the San Bernardino kangaroo rat. Resulting fragmentation could isolate populations, increasing risk of stochastic extinction and decreasing movement between remaining patches of suitable habitat.

(2) Actions that would alter natural hydrological and geomorphological processes necessary to maintain alluvial sage scrub habitat. Such activities could include, but are not limited to: Channel alteration; flood control operations; and construction of flood control structures such as dams, levees, and detention basins. These activities could eliminate or reduce preferred habitat conditions for the growth and reproduction of the San Bernardino kangaroo rat. Periodic high flows and flood events provide sediment scour, sediment deposition, and thinning of vegetation which maintains alluvial sage scrub habitat.

(3) Actions that would appreciably decrease habitat value or quality through indirect and edge effects. Such activities could include, but are not limited to: Urban, industrial, and agricultural development; and construction of roads and railways. These activities could have indirect effects that reduce preferred habitat conditions and could lead to increases in human activity, increased light levels during nighttime foraging, increased predation by domestic and feral animals associated with residential development, invasion of exotic plants, and otherwise eliminate or reduce preferred habitat conditions for the San Bernardino kangaroo rat. Measures to minimize the impacts of these activities to the species and its habitat could include the installation of fencing to decrease predation by domestic and feral animals, placement of lighting structures (e.g. street lights) such that the light is directed away from habitat, and the installation of best management practices to reduce the amount of water entering habitat due to sheet flow.

We consider all of the units proposed as revised critical habitat, as well as those that have been proposed for exclusion, to be within the geographical range of the subspecies occupied at the time of listing, and to contain features essential to the conservation of the San Bernardino kangaroo rat. Federal agencies already consult with us on activities in areas currently occupied by the San Bernardino kangaroo rat, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the San Bernardino kangaroo rat.

Application of 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 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 legislative history is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, 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, and 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 have considered. In addition, the Service is conducting an economic analysis of the impacts of the proposed revised critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed revised designation itself, and the information in the final economic analysis, additional areas beyond those identified in this assessment may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

Educational Benefits

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 San Bernardino kangaroo rat. 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, HCPs 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 we are proposing in this rule because these areas are included in this proposed rule as having habitat containing the features essential to the conservation of the subspecies. Consequently, we believe that the informational benefits are already provided, even though these areas may not be 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 habitat for the San Bernardino kangaroo rat, is already well established among State and local governments, and Federal agencies in those areas that we are proposing to exclude from revised 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.

Recovery Benefits

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species, such that the habitat that is identified, if managed, could provide for the survival and recovery of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

The identification of those lands which are necessary for the conservation of the species and can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine lands essential for conservation as well as identify the primary constituent elements or features essential for conservation on those lands. The designation process includes peer review and public comment on the identified features and lands. This process is valuable to land owners and managers in developing conservation management plans for identified lands, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not per se to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat and therefore implement recovery actions. We believe that the conservation of a species and/or its habitat that could be achieved through the designation of critical habitat, in some cases, is less than the conservation that could be achieved through the implementation of a management plan, which includes species specific provisions and considers enhancement or recovery of listed species as the management standard over the same lands. Consequently, implementation of any HCP or management plan that 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.

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, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those

available 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 regulatory methods (61 FR 63854; December 2, 1996).

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. 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). 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, and control of invasive species) are necessary for species conservation (Bean 2002). 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.

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. Thus the benefits of excluding areas that are covered by partnerships or voluntary conservation efforts can often be high.

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 under section 7(a)(2) of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7(a)(2) 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 PCEs, 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, as discussed above, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat.

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.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or

conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or Natural Community Conservation Planning (NCCP) HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7(a)(2) of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Exclusions Under Section 4(b)(2) of the Act

After consideration under section 4(b)(2) of the Act, we are proposing to exclude the following areas of habitat from final revised critical habitat for the San Bernardino kangaroo rat: lands covered under the Woolly-Star Preserve Area Management Plans; the Former Norton Air Force Base CMP; the Cajon Creek Habitat Conservation Management Area HEMP; and Western Riverside MSHCP. We believe that these lands' value for conservation has been addressed by existing protective actions and are appropriate for exclusion under the provisions of section 4(b)(2). We specifically solicit comment, however, on the proposed exclusion of these areas. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

Relationship of Critical Habitat to Habitat Conservation Plan Lands and Approved Management Plans — Exclusions Under Section 4(b)(2) of the Act

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7(a)(2) of the Act; (2) there is a reasonable expectation that the conservation management strategies and actions will be implemented based on past practices, written guidance, or regulations; and (3) the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology. We believe that the plans described below fulfill these criteria, and we are considering the exclusion of non-federal lands covered by these plans that provide for the conservation of the San Bernardino kangaroo rat. We are requesting comments on the benefit to the San Bernardino kangaroo rat from conservation measures established by the following plans: the Woolly-Star Preserve Area Management Plans; the Former Norton Air Force Base CMP; the Cajon Creek Habitat Conservation Management Area HEMP; and the Western Riverside MSHCP.

Woolly-Star Preserve Area Management Plans

Approximately 742 ac (300 ha) of the 765 ac (310 ha) Wooly-star Preserve Area (WSPA) is within critical habitat Unit 1. The WSPA is within the 100 to 500-year floodplain of the upper Santa Ana River immediately downstream from the Seven Oaks Dam. The WSPA was established in 1988 by the Army Corps of Engineers (ACOE) as part of the conservation measures developed during consultation to address impacts to the federally endangered *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly-star) as a result of construction of the Seven Oaks Dam (Service File: 1–6–88–F–6, June 22, 1989).

A management plan for *Eriastrum densifolium* ssp. *sanctorum* (which requires alluvial scrub habitat similar to that preferred by the San Bernardino kangaroo rat) was prepared in coordination with the Service and California Department of Fish and Game (CDFG) (Chambers Group, Inc. 1993). The 1993 Management Plan for the Santa Ana River Woolly-Star was created to be implemented on the 765-ac (310-ha) WSPA (Chambers Group, Inc. 1993). This plant inhabits early and intermediate successional stages of alluvial fan scrub habitat, which are the preferred habitat areas for the San Bernardino kangaroo rat. The overall strategy for the management plan on WSPA lands is to avoid physical disturbances to alluvial habitat and to allow for disturbances by natural processes (Chambers Group, Inc. 1993, p. 3–1). The 1993 Management Plan for *E. d.* ssp. *sanctorum* includes a description of management tasks that benefit habitat for E. d. ssp. sanctorum. Though not addressed directly by the plan, these management tasks benefit the San Bernardino kangaroo rat as well. These management tasks include: identification and implementation of habitat renewal methods; control of exotic species; reduction of off-highway vehicle activity, trash dumping, and other negative human impacts; and a public awareness program (Chambers Group, Inc. 1993, p. 3–2). Lands within the WSPA were placed under a conservation easement that is jointly held by the local sponsors (i.e., the flood control districts of San Bernardino, Riverside and Orange counties) (Lovell 2007). Since the inception of the 1993 Management Plan for the Santa Ana River Woolly-Star, on-going biological studies have been conducted on the WSPA to increase understanding of *E. d.* ssp. *Sanctorum.*

The ACOE has committed to the development and implementation of a Multi-species Habitat Management Plan (MSHMP) for the WSPA that will update the 1993 plan and include habitat management for the San Bernardino kangaroo rat and the federally endangered slender-horned spineflower (*Dodecahema leptoceras*) as part of the conservation measures they proposed during consultation regarding the effects of operation and maintenance of the dam on the *E. d.* ssp. *sanctorum, D. leptoceras.* The goals of the draft MSHMP specific to the San Bernardino kangaroo rat include: (1) The maintenance and/or expansion of the current species distribution within the

WSPA; (2) optimization of habitat conditions; and, (3) maintenance and/or enhancement of populations of San Bernardino kangaroo rat within the WSPA. General objectives in support of the San Bernardino kangaroo rat management goals are to: (1) Monitor the San Bernardino kangaroo rat and relevant habitat elements according to standardized protocols; (2) conduct studies to fill gaps in knowledge related to species biology and habitat; (3) measure San Bernardino kangaroo rat response to experimental treatments and potential management measures; (4) establish priority of areas for implementation of habitat management to maintain and/or enhance suitability for the species; and (5) refine management measures over time using an adaptive management framework. Information gathered through the implementation of the MSHMP will be used to support science-based management decisions and evaluation of management success. Various potential management alternatives may be implemented such as protective management, disturbance control, nonnative grass control, habitat enhancement/restoration, and habitat renewal. The management of this area is anticipated to help to maintain and protect alluvial wash and upland habitat (PCEs 1, 2, and 3) required by the San Bernardino kangaroo rat. This MSHMP is currently in draft form and will replace the 1993 management plan. The MSHMP will be reviewed by the resource agencies for their concurrence prior to implementation (Service 2002b, p. 8). The ACOE is responsible for the development and implementation of the MSHMP.

Protocol surveys (live-trapping) conducted during 2005 and 2006 confirm that portions of the WSPA are currently occupied by the San Bernardino kangaroo rat (Service unpublished GIS data), and habitat surveys suggest that much of this area is likely to support the San Bernardino kangaroo rat (MEC Analytical Systems, Inc. 2000, fig. 24). Ongoing surveys and habitat management to benefit the San Bernardino kangaroo rat are anticipated as part of the MSHCP currently in development. The Service is working with the ACOE and their biological consultants on baseline species surveys, trials of habitat manipulations and management practices followed by trapping surveys to show both density and distribution of the San Bernardino kangaroo rat within the WSPA. These actions are being undertaken as part of the development of a final MSHMP.

The 1998 final listing rule for the San Bernardino kangaroo rat identified habitat loss, destruction, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development as primary threats to the San Bernardino kangaroo rat. As described above, the WSPA Management Plans provide enhancement of the habitat by removing or reducing threats to this subspecies and the PCEs. The WSPA Management Plans preserve habitat that supports identified core populations of this subspecies and therefore provide for recovery.

Benefits of Inclusion

We believe there would be minimal benefit in retaining this area as critical habitat for the San Bernardino kangaroo rat in the Woolly-Star Preserve Area within Unit 1 because this habitat within the Santa Ana River wash is already conserved and is being managed for the benefit of the species as explained above.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, and do not result in the destruction or adverse modification of critical habitat. However, the inclusion of these 742 ac (300 ha) WSPA lands in the revised critical habitat designation for the San Bernardino kangaroo rat would be unlikely to provide any additional protection for the species since the protection provided would be a limitation on the adverse effects that occur, as opposed to a requirement to provide a conservation benefit. The conservation measures for the San Bernardino kangaroo rat included in the WSPA Management Plans are affirmative obligations that provide a conservation benefit to the subspecies. We anticipate that these conservation measures will exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit the San Bernardino kangaroo rat and its habitat. However, by publication of this proposed rule, we are educating the public of the location of core populations and areas most important for the recovery of this subspecies. Furthermore, as discussed above, the importance of protecting the biological resource values of these lands, including the San Bernardino kangaroo rat, has already been clearly and effectively communicated to Federal, State, and local agencies and other interested organizations and members of the public through the current critical habitat designation, this proposed rule, and the WSPA Management Plans' approval and implementation process.

In short, we expect the Woolly-Star Preserve Area Management Plans to provide protection to and management of the San Bernardino kangaroo rat and its PCEs within areas considered essential for conservation of the subspecies on WSPA lands in the Santa Ana River wash area. We expect the WSPA Management Plans to provide a greater level of conservation for the San Bernardino kangaroo rat on lands in this area than retaining the lands as critical habitat.

Benefits of Exclusion

In contrast to section 7(a)(2) of the Act, the WSPA Management Plans commit the local sponsors of the WSPA to manage these lands for the benefit of the San Bernardino kangaroo rat and other covered species. These commitments go well beyond a simple requirement to avoid adverse modification of critical habitat; they involve conservation and management of land within Unit 1 located in the WSPA (Service 2004, p. 296). Excluding these 742 ac (300 ha) of lands from critical habitat designation would help strengthen partnerships and recognize the ACOE and local sponsors' commitment under the 1993 Management Plan for *Eriastrum densifolium* ssp. *sanctorum* and the MSHMP to manage WSPA lands for the San Bernardino kangaroo rat consistent with the conservation goals and objectives of these plans.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the proposed exclusion of approximately 742 ac (300 ha) of lands within the WSPA covered under the 1993 Management Plan for E*riastrum densifolium* ssp. *sanctorum* and to be covered under the MSHMP. We have determined that the benefits of excluding these lands in Unit 1 outweigh the benefits of retaining these lands as critical habitat. The PCEs required by the San Bernardino kangaroo rat will benefit from the implementation of conservation measures outlined in these plans. In summary, these conservation measures include avoidance and minimization of

physical disturbances to alluvial habitat and allowance for disturbances by natural processes within the WSPA lands, which are under existing conservation easements that benefit the San Bernardino kangaroo rat. This will benefit the San Bernardino kangaroo rat by preserving soil, vegetation, and upland habitat (PCEs 1, 2, and 3) within the WSPA. Such specific conservation actions and management for the San Bernardino kangaroo rat and its PCEs exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

The exclusion of these lands from critical habitat would also help preserve the partnerships that we have developed with the local jurisdictions and project proponents during dedication of the WSPA and development of the management plans. The benefits of excluding these lands from revised critical habitat outweigh the minimal benefits of retaining these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of the San Bernardino kangaroo rat. Such educational benefits can still be accomplished through materials provided on our Web site. Further, many educational benefits will be achieved through this proposal's notice and public comment period, which will occur whether or not this particular area is designated.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that the exclusion of 742 ac (300 ha) from the final revised designation of critical habitat for the San Bernardino kangaroo rat would result in the extinction of the subspecies because the WSPA Management Plans provide for the conservation of the subspecies and its PCEs on occupied areas in Unit 1 (Santa Ana River). The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the San Bernardino kangaroo rat under the jeopardy standard will remain in place for the areas proposed for exclusion from revised critical habitat.

Former Norton Air Force Base Conservation Management Plan (CMP)

The Norton Air Force Base was formally transferred to private ownership in 2003. Prior to closure, the U.S. Air Force completed installation remediation which included the closure of an area known as ''Landfill 2.'' In accordance with mitigation measures outlined in our November 26, 1996, biological opinion (1–6–96–F–10) on the closure of Landfill 2, the U.S. Air Force developed a management plan (the Former Norton Air Force Base Conservation Management Plan (CMP), completed in 2002) for approximately 268 ac (109 ha) of habitat occupied by the San Bernardino kangaroo rat in the Santa Ana River wash area (Unit 1). Approximately 54 ac (22 ha) in two parcels were designated Core Management Areas (CMA–1 and CMA–2), and 214 ac (87 ha) make up an Open Space Management Area (OSMA). Under the CMP completed in March 2002, these areas are managed specifically for the San Bernardino kangaroo rat and *E. d.* ssp. *sanctorum* (U.S. Air Force 2002, pp. 1–4).

CMA–1 (approximately 29 ac (12 ha)) and CMA–2 (approximately 25 ac (10 ha)) are located along the southern edge of the OSMA. CMA–1 includes both flood plain habitat on the 'wet' side of an existing flood control levee and fenced upland habitat behind the levee along the northern edge of the Santa Ana River. CMA–2 is located entirely within the Santa Ana River floodplain. Approximately 13 ac (5 ha) of CMA–2 are owned by the Inland Valley Development Agency (IVDA) and the remainder of the CMA lands and the OSMA are owned by the San Bernardino International Airport (SBIA) Authority. These areas provide important upland habitat that supports individual San Bernardino kangaroo rats necessary to re-populate the active floodplain following large-scale floods that scour out lower-elevation terrace habitat adjacent to the active river channel (Service 2003b, p. 18) (PCE 3). Lands within these CMAs are to be permanently protected by conservation easements (U.S. Air Force 2002). The CMAs are adjacent to the approximately 214–ac (87 ha) OSMA that surrounds the existing runway of the SBIA.

The OSMA is an aircraft over-run area and is managed in accordance to Federal Aviation Administration (FAA) guidelines for such lands. However, the SBIA Authority manages the OSMA in such a way as to minimize adverse impacts to the San Bernardino kangaroo rat as described in the CMP and the biological opinion for formal consultation on base closure (FWS–SB–1723.10, August 5, 2003). The 214 ac (87 ha) OSMA is in the immediate vicinity of the eastern runway, and safety regulations require that most of this land remain undeveloped (U.S. Air Force 2002, p. 5–5). The OSMA is protected from flooding by levees, but routine mowing required by the Federal Aviation Administration (FAA) keeps vegetation from becoming dense and senescent, which creates open habitat that may be suitable for San Bernardino kangaroo rats (Service 2003b, p. 17). No discing or other ground disturbance is allowed within the OSMA area and implementation of the prescribed mowing regime with the equipment currently used is unlikely to result in crushing of San Bernardino kangaroo rat burrows (Service 2003b, p. 18).

Upon closure of the Former Norton Air Force Base in 2003, the SBIA Authority and the Inland Valley Development Agency assumed responsibility for the management of the CMAs pursuant to the CMP (Service 2003b, p. 6). Management practices currently conducted on SBIA and IVDA property are described in the CMP and include: (1) Subspecies monitoring every 2 to 3 years following the Service-approved protocol; (2) vegetation surveys and adaptive control of invasive weedy plants; (3) trash removal; and (4) installation of protective signage and maintenance of barriers to reduce and prevent trespassing (U.S. Air Force 2002, pp. 5–11). In accordance with the CMP, the SBIA Authority provides us with annual reports regarding the status of the CMP and OSMA (documents on file in the CFWO). The SBIA Authority has routinely removed exotic or weedy plant species within the CMAs, controlled coyote access to fenced portions of CMA–1 and the OSMA which reduces predation on the San Bernardino kangaroo rat in these areas, removed all dumped trash as soon as possible in accordance with the CMP and FAA guidelines, and promptly addressed any trespass issues as needed (*e.g.*, fences and signage repaired). Human activities incompatible with the purpose of the CMAs are restricted (U.S. Air Force 2002, pp. 5–12). These management actions and the eventual placement of a conservation easement on the CMA parcels are anticipated to ensure that habitat containing the PCEs for the San Bernardino kangaroo rat is conserved within the CMAs and the OSMA through the protection and management of alluvial washes and upland habitat (PCEs 1, 2, and 3) required by the subspecies.

The 1998 final listing rule for the San Bernardino kangaroo rat identified habitat loss, destruction, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development as primary threats to the San Bernardino kangaroo rat. As described above, the Former Norton Air Force Base CMP provides enhancement of the habitat by

removing or reducing threats to this subspecies and the PCEs. The CMP preserves habitat that supports identified core populations of this subspecies and therefore provides for recovery.

Benefits of Inclusion

We believe there would be minimal benefit in retaining this area as critical habitat for the San Bernardino kangaroo rat on the 268 ac (109 ha) of critical habitat lands on the San Bernardino International Airport. These lands within Unit 1 (Santa Ana River) are already conserved and managed for the benefit of the subspecies as explained above. The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, and do not result in the destruction or adverse modification of critical habitat. However, the inclusion of these 268 ac (109 ha) of CMA and OSMA lands in the revised critical habitat designation for the San Bernardino kangaroo rat would be unlikely to provide any additional protection for the species since the protection provided would be a limitation on the adverse effects that occur, as opposed to a requirement to provide a conservation benefit. The conservation measures for the San Bernardino kangaroo rat included in the Former Norton Air Force Base CMP are affirmative obligations that provide a conservation benefit to the species. We anticipate that these conservation measures will exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public, as a means to encourage conservation efforts to benefit the San Bernardino kangaroo rat and its habitat. However, by publication of this proposed rule, we are educating the public of the location of core populations and areas most important for the recovery of this subspecies. Furthermore, as discussed above, the importance of protecting the biological resource values of these lands, including the San Bernardino kangaroo rat, has already been clearly and effectively communicated to Federal, State, and local agencies, as well as other interested organizations and members of the public through the current designation, this proposed rule, and the CMP's approval and implementation process.

In short, we expect the Former Norton Air Force Base CMP to provide protection to and management of the San Bernardino kangaroo rat and its PCEs within areas considered essential for conservation of the subspecies on private lands in the Santa Ana River area. We expect the CMP to provide a greater level of conservation for the San Bernardino kangaroo rat on private lands in this area than retaining the lands as critical habitat.

Benefits of Exclusion

In contrast to section 7(a)(2) of the Act, the Former Norton Air Force Base CMP commits the owners of the land (currently the SBIA Authority) to manage 268 ac (109 ha) of land for the benefit of the San Bernardino kangaroo rat and other covered species. These commitments go well beyond a simple requirement to avoid adverse modification of critical habitat; they involve protection, management, and enhancement of the identified land within Unit 1. Excluding these 268 ac (109 ha) of lands from critical habitat designation would help strengthen partnerships and recognize the former Norton Air Force Base and SBIA Authority's commitment under the CMP to manage CMA and OSMA lands consistent with the conservation goals and objectives of the CMP as described above.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the proposed exclusion of approximately 268 ac (109 ha) of lands within the Former Norton Air Force Base CMP area from the revised designation of critical habitat. We have determined that the benefits of excluding these lands in Unit 1 outweigh the benefits of retaining these lands as critical habitat. The PCEs required by the San Bernardino kangaroo rat will benefit from the implementation of conservation measures outlined in the CMP. In summary, these conservation measures include: the establishment of approximately 54 ac (23 ha) of CMA lands into a permanent conservation easement; San Bernardino kangaroo rat monitoring; control of invasive plant species; trash removal; installation of protective signage; and exclusion of harmful human activities within the CMAs. Additionally, conservation measures within the 214 ac (87 ha) OMSA include implementation of a mowing regime to thin vegetation and prevention of soil disturbances. Such specific conservation actions and management for the San Bernardino kangaroo rat and its PCEs exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

The exclusion of these lands from critical habitat would also help preserve the partnerships that we have developed with the local jurisdictions and project proponents during the closure of Landfill 2 on Norton Air Force Base and development of the CMP. The benefits of excluding these lands from revised critical habitat outweigh the minimal benefits of retaining these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of the San Bernardino kangaroo rat. Such educational benefits can still be accomplished through materials provided on our Web site. Further, many educational benefits will be achieved through this proposal's notice and public comment period, which will occur whether or not this particular area is designated.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that the exclusion of 268 ac (109 ha) from the final revised designation of critical habitat for the San Bernardino kangaroo rat would result in the extinction of the subspecies because the Former Norton Air Force Base CMP provides for the conservation of this subspecies and its PCEs on occupied areas in Unit 1 (Santa Ana River). The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the San Bernardino kangaroo rat under the jeopardy standard will remain in place for the areas proposed for exclusion from revised critical habitat.

Cajon Creek Habitat Conservation Management Area, Habitat Enhancement and Management Plan (HEMP)

The Cajon Creek Habitat Conservation Management Area (HCMA), managed by Vulcan Materials Company (formerly CalMat Co.), Western Division, was created in 1996 to offset approximately 2,270 ac (920 ha) of sand and gravel mining proposed within and adjacent to Cajon Creek. The HCMA includes approximately 1,378 ac (558 ha) of lands, which are managed to protect or restore alluvial scrub habitat within the

100-year flood plain to help conserve populations of 24 species associated with alluvial fan scrub including the San Bernardino kangaroo rat. Pioneer, intermediate, and mature phase alluvial scrub habitats can be found in the Cajon Creek HCMA, along with all three of the PCEs required by the San Bernardino kangaroo rat (M. Blane and Associates 1996, p. 11).

Of these HCMA lands, 768 ac (311 ha) were set aside to offset impacts from the proposed mining to alluvial fan sage scrub habitat and associated listed species including the San Bernardino kangaroo rat (Service 1998c, p. 2) and the 610-acre Cajon Creek Conservation Bank was established. These lands will be conserved and managed in perpetuity for alluvial fan scrub habitat and associated listed species (including the San Bernardino kangaroo rat) pursuant to the Habitat Enhancement and Management Plan (HEMP) completed in July 1996, and the associated Memorandum of Understanding and Implementation Agreement for the Cajon Creek Habitat Management Area (MOU) signed on October 21, 1996 (Service 1998c, p. 2). The lands set aside to off-set mining impacts were placed under a permanent conservation easement. The approximately 610 ac (245 ha) Cajon Creek Conservation Bank was placed under a 10-year conservation easement on February 16, 1998. The original intent of the Service, Corps and Vulcan Materials Company was to place those lands within the bank under permanent conservation easement once all credits had been sold. The MOU addressing the permanent conservation of the Cajon Creek Conservation Bank and the conservation easement were recently extended by Vulcan Materials until 2025 (Vulcan Materials Co. 2006, p. 1). More than half of the total credits available within the Cajon Creek Conservation Bank have been sold (M. Blane and Associates 2006, p. 5). Those credits not purchased by the end of the term will be available for purchase by the resource agencies (i.e., USFWS and CDFG).

The HEMP and MOU state that the Cajon Creek HCMA is made up of a 610-ac (245-ha) conservation bank and 768 ac (311 ha) of additional conservation lands, totaling 1,378 ac (558 ha) (M. Blane and Associates 1996, p. 3–4; CalMat Co. 1996, p. 5). However, according to our GIS data based on information provided by Vulcan Materials, the footprint of the Cajon Creek HCMA is approximately 1,271 ac (514 ha). We are proposing to exclude these 1,271 ac (514 ha) from the final revised critical habitat designation based on benefits provided through conservation and management of these lands described in the HEMP and MOU. We may exclude the remaining 107 ac (43 ha) if we receive additional information during the public comment period on this proposal.

Habitat protection and enhancement measures are explained in the HEMP (M. Blane and Associates 1996, p. 21). Habitat protection measures are used to minimize unauthorized human intrusion and impacts associated with such intrusion (M. Blane and Associates 1996, p. 21). More specifically, protection measures involve restricted access to the Conservation Management Area to minimize off-road vehicle use, target shooting, trash dumping, and other activities that result in degradation of natural areas (M. Blane and Associates 1996, p. 25). Restrictive barriers and signage are placed along borders and near access points. Removal of unnecessary roads and subsequent revegetation of those roads will further discourage unauthorized access (M. Blane and Associates 1996, p. 28). Furthermore, trash existing on Conservation Management Area lands and adjacent lands within San Bernardino County Flood Control property will be removed as stated in the HEMP (M. Blane and Associates 1996, p. 28). Habitat enhancement measures are intended to restore the biological integrity of degraded alluvial scrub habitat and associated plant and animal species (including the San Bernardino kangaroo rat) within the Conservation Management Area and to protect it from further degradation (M. Blane and Associates 1996, p. 21). Specifically, habitat enhancement includes weed control involving removal of exotic plants on Conservation Management Area lands and adjacent lands and alluvial scrub revegetation activities as described in the HEMP (M. Blane and Associates 1996, p. 22). The above protection and enhancement measures ensure that alluvial fans, washes, and associated upland habitat (PCEs 1, 2, and 3) required by this subspecies are conserved.

The Cajon Creek HCMA has been and continues to be managed in accordance with the HEMP and MOU by Vulcan Materials Company, who provides us with an annual report of management activities within the HCMA. Plan implementation has resulted in revegetation of previously mined areas, trash removal and overall decrease in trash dumping, placement of signage and barriers in areas vulnerable to unauthorized access, and successful invasive weed eradication (M. Blane and Associates 2006, p. 12). The continued implementation of the Cajon Creek HCMA HEMP will ensure the conservation of habitat for the San Bernardino kangaroo rat.

The 1998 final listing rule for the San Bernardino kangaroo rat identified habitat loss, destruction, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development as primary threats to the San Bernardino kangaroo rat. As described above, the Cajon Creek Habitat Conservation Management Area HEMP provides enhancement of the habitat by removing or reducing threats to this subspecies and the PCEs. The HEMP preserves habitat that supports identified core populations of this subspecies and therefore provides for recovery.

Benefits of Inclusion

We believe there would be minimal benefit in retaining as critical habitat for the San Bernardino kangaroo rat lands within the 1,271 ac (514 ha) of the Cajon Creek HCMA, covered by the HEMP, in Unit 2 because this habitat within the Lytle/Cajon wash is already conserved and managed for the benefit of the subspecies as explained above.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, and do not result in the destruction or adverse modification of critical habitat. However, the inclusion of 1,271 ac (514 ha) of Cajon Creek HCMA lands in the revised critical habitat designation for the San Bernardino kangaroo rat would be unlikely to provide any additional protection for the subspecies since the protection provided would be a limitation on the adverse effects that occur, as opposed to a requirement to provide a conservation benefit. The conservation measures for the San Bernardino kangaroo rat included in HEMP are affirmative obligations that provide a conservation benefit to the subspecies. We anticipate that these conservation measures will exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public, as a means to encourage conservation efforts to benefit the San Bernardino

kangaroo rat and its habitat. However, by publication of this proposed rule, we are educating the public of the location of core populations and areas most important for the recovery of this subspecies. Furthermore, as discussed above, the importance of protecting the biological resource values of these lands, including the San Bernardino kangaroo rat, has already been clearly and effectively communicated to Federal, State, and local agencies, as well as other interested organizations and members of the public through the current designation, this proposed rule, and the HEMP's approval and implementation process.

In short, we expect the Cajon Creek HCMA HEMP to provide protection to and management of the San Bernardino kangaroo rat and its PCEs within areas considered essential for conservation of the subspecies on private lands in the Lytle/Cajon wash area. We expect the HEMP to provide a greater level of conservation for the San Bernardino kangaroo rat on private lands in this area than retaining these lands as critical habitat.

Benefits of Exclusion

In contrast to section 7(a)(2) of the Act, the Cajon Creek Habitat Conservation Management Area HEMP commits Vulcan Materials Co. to manage the Conservation Management Area lands for the benefit of alluvial scrub habitat, the San Bernardino kangaroo rat, and other covered species. These commitments go well beyond a simple requirement to avoid adverse modification of critical habitat; they include protection, management, and enhancement of land within Unit 2 located in the Conservation Management Area. Excluding these 1,271 ac (514 ha) of lands from critical habitat designation would help strengthen partnerships and recognize the Vulcan Materials Co. commitment under the HEMP to manage Conservation Management Area lands consistent with the conservation goals and objectives of the HEMP.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the proposed exclusion of approximately 1,271 ac (514 ha) of Cajon Creek HCMA lands, covered under the HEMP, from the revised designation of critical habitat. We have determined that the benefits of excluding these lands in Unit 2 outweigh the benefits of retaining these lands as critical habitat. The PCEs required by the San Bernardino kangaroo rat will benefit from the implementation of protection and enhancement measures outlined in the HEMP. In summary, these measures include restricted access, restrictive barriers and signage, trash removal, weed control, and revegetation of unnecessary roads and previously mined areas. These specific conservation actions and management for the San Bernardino kangaroo rat and its PCEs exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

The exclusion of these lands from critical habitat would also help preserve the partnerships that we have developed with the local jurisdictions and project proponents during creation of the Cajon Creek HCMA and development of the HEMP. The benefits of excluding these lands from revised critical habitat outweigh the minimal benefits of retaining these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of the San Bernardino kangaroo rat. Such educational benefits can still be accomplished through materials provided on our Web site. Further, many educational benefits will be achieved through this proposal's notice and public comment period, which will occur whether or not this particular area is designated.

Exclusion Will Not Result in Extinction of the Subspecies

We do not believe that the exclusion of 1,271 ac (514 ha) from the final revised designation of critical habitat for the San Bernardino kangaroo rat would result in the extinction of the subspecies because the Cajon Creek Habitat Conservation Management Area HEMP provides for the conservation of the subspecies and its PCEs on occupied areas in Unit 2 (Lytle/Cajon wash). The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the San Bernardino kangaroo rat under the jeopardy standard will remain in place for the areas proposed for exclusion from revised critical habitat.

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional habitat conservation plan (HCP) encompassing 1.26-million ac (510,000 ha) in western Riverside County. The MSHCP addresses 146 listed and unlisted ''covered species,'' including the San Bernardino kangaroo rat. Participants in the MSHCP include 14 cities in western Riverside County; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation (Caltrans). The MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of covered species. On June 22, 2004, the Service issued a single incidental take permit (TE–088609–0) under section 10(a)(1)(B) of the Act to 22 permittees under the MSHCP for a period of 75 years.

The MSHCP will establish approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximately 347,000 ac (140,426 ha) of existing natural and open space areas designated by the MSHCP as Public/Quasi-Public (PQP) lands. PQP lands include those under Federal ownership, primarily the U.S. Forest Service and Bureau of Land Management, and also permittee-owned open-space areas (e.g., State Parks, County Flood Control, and County Park lands). Collectively, the Additional Reserve Lands and PQP lands form the overall MSHCP Conservation Area.

The precise configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified in the MSHCP, but rather is based on textual descriptions within the bounds of a 310,000 ac (125,453 ha) Criteria Area that is interpreted as implementation of the MSHCP proceeds. The proposed critical habitat Unit 3 (San Jacinto River) for the San Bernardino kangaroo rat is located within the MSHCP Plan Area.

Specific conservation objectives in the MSHCP for the San Bernardino kangaroo rat include providing 4,400 ac (1,797 ha) of occupied or suitable habitat within the historic flood plains of the San Jacinto River and Bautista Creek and their tributaries in the MSHCP Conservation Area. This acreage goal can be provided through private lands within the Criteria Area that are targeted for inclusion within the MSHCP Conservation Area as potential Additional Reserve Lands and/or through coordinated management of PQP lands. Additionally, the MSHCP

requires surveys for the San Bernardino kangaroo rat as part of the project review process for public and private projects where suitable habitat is present within a defined mammal species survey area (see Mammal Species Survey Area Map, Figure 6–5 of the MSHCP, Volume I). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met (Additional Survey Needs and Procedures; MSHCP Volume 1, section 6.3.2).

The survey requirements, avoidance and minimization measures, and management for the San Bernardino kangaroo rat (and its PCEs) provided for in the Western Riverside County MSHCP exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation. We propose to exclude approximately 263 ac (106 ha) of private and permittee-owned PQP lands from revised critical habitat designation (in Unit 3 within the MSHCP Plan Area) under section 4(b)(2) of the Act. The areas proposed for exclusion are in separate parcels in the San Jacinto River wash distributed between the Blackburn Road/Lake Hemet Main Canal area, downstream to the East Main Street Bridge. Lands within these excluded areas are owned by or fall within the jurisdiction of MSHCP permittees. Projects in these areas conducted or approved by MSHCP permittees are subject to the conservation requirements of the MSHCP, including the Additional Survey Needs and Procedures policy.

Lands within the MSHCP plan area owned by Eastern Municipal Water District and Lake Hemet Municipal Water District are not subject to the conservation requirements of the MSHCP through any discretionary authority of the permittees. Therefore, lands within proposed Unit 3 owned by these two water districts (506 ac (205 ha)) are not being proposed for exclusion from the final revised designation under the Western Riverside County MSHCP.

The 1998 final listing rule for the San Bernardino kangaroo rat identified habitat loss, destruction, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development as primary threats to the San Bernardino kangaroo rat. As described above, the Western Riverside County MSHCP provides enhancement of the habitat by removing or reducing threats to this subspecies and the PCEs. The MSHCP preserves habitat that supports identified core populations of this subspecies and therefore provides for recovery.

Benefits of Inclusion

We believe there would be minimal benefit in retaining critical habitat for the San Bernardino kangaroo rat on private and permittee-owned PQP lands in Unit 3 because habitat essential for this subspecies in the San Jacinto River area in Western Riverside County is within the area subject to conservation measures under the Western Riverside County MSHCP.

The primary benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, and do not result in the destruction or adverse modification of critical habitat. The inclusion of these 263 ac (106 ha) of private and permittee-owned PQP lands in the revised critical habitat designation for the San Bernardino kangaroo rat would be unlikely to provide any additional protection for the species since the protection provided would be a limitation on the adverse effects that occur as opposed to a requirement to provide a conservation benefit. Under the Western Riverside County MSHCP, known locations of San Bernardino kangaroo rat in the San Jacinto River area will be conserved through the survey requirements, and avoidance and minimization measures. The conservation measures for the San Bernardino kangaroo rat included in the MSHCP are affirmative obligations that will provide a conservation benefit to the species when implemented. Additionally, new occurrences documented through survey efforts that are subsequently determined to be important to the overall conservation of the subspecies may be included in the Additional Reserve Lands. We anticipate that these conservation measures will exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

Another potential benefit of critical habitat would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public, as a means to encourage conservation efforts to benefit the San Bernardino kangaroo rat and its habitat. However, by publication of this proposed rule, we are educating the public of the location of core populations and areas most important for the recovery of this subspecies. Furthermore, as discussed above, the importance of protecting the biological resource values of these lands, including the San Bernardino kangaroo rat, has already been clearly and effectively communicated to Federal, State, and local agencies, as well as other interested organizations and members of the public through the current designation, this proposed rule, and the Western Riverside County MSHCP's approval and implementation process.

In short, we expect the Western Riverside County MSHCP to provide protection to and management of the San Bernardino kangaroo rat and its PCEs within areas considered essential for conservation of the subspecies on private and permittee-owned PQP lands in the San Jacinto River area. We expect the MSHCP to provide a greater level of conservation for the San Bernardino kangaroo rat on private and permittee-owned PQP lands in this area than retaining these lands as critical habitat.

Benefits of Exclusion

In contrast to section 7(a)(2) of the Act, the Western Riverside County MSHCP commits the permittees to manage their own lands and direct development and other projects on private lands for which they have discretionary authority in western Riverside County, California, for the benefit of the San Bernardino kangaroo rat and other covered species. These commitments go well beyond a simple requirement to avoid adverse modification of critical habitat; they involve directing the conservation and management of land within Unit 3 in accordance with the species-specific objectives of the MSHCP for the San Bernardino kangaroo rat. Excluding these 263 ac (106 ha) of private and permittee-owned PQP lands, which are subject to the MSHCP, from revised critical habitat designation also provides incentive to the permittees to maintain and strengthen the partnerships created by their official participation in the MSHCP planning process, especially considering the high level of cooperation by the participants in the MSHCP to conserve this subspecies.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the proposed exclusion of approximately 263 ac (106 ha) of private and permittee-owned PQP lands within the MSHCP Plan Area from the revised designation

of critical habitat. We have determined that the benefits of excluding these lands from Unit 3 outweigh the benefits of retaining these lands as critical habitat. The PCEs required by the San Bernardino kangaroo rat will benefit by the conservation measures outlined in the MSHCP. In summary, these conservation measures include providing 4,440 ac (1,797 ha) of occupied or suitable habitat (as defined in the Western Riverside MSHCP) for the San Bernardino kangaroo rat within the MSHCP Conservation Area; ensuring at least 75 percent of the area included in the MSHCP Conservation Area is occupied and that 20 percent of the occupied habitat supports a medium or higher population density (≥5 to 15 individuals per ha; McKernan 1997) of the subspecies measured across any 8-year period (the approximate length of the weather cycle); maintaining, or, if feasible, restoring ecological processes within the historic flood plain of the San Jacinto River and Bautista Creek, their tributaries, and other locations within the Criteria Area where the San Bernardino kangaroo rat is detected in the future; and conducting surveys and implementing other required procedures to ensure avoidance of impacts to at least 90 percent of suitable habitat areas determined important to the long-term conservation of the San Bernardino kangaroo rat within the Criteria Area (Service 2004, p. 297). These specific conservation actions, survey requirements, avoidance and minimization measures, and management for the San Bernardino kangaroo rat and its PCEs exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation.

The exclusion of these lands from critical habitat would also help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP. The benefits of excluding these lands from revised critical habitat outweigh the minimal benefits of retaining these lands as critical habitat, including the educational benefits of critical habitat designation through informing the public of areas important for the long-term conservation of the San Bernardino kangaroo rat. Such educational benefits can still be accomplished through materials provided on our Web site. Further, many educational benefits will be achieved through this proposal's notice and public comment period, which will occur whether or not these particular areas are designated.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 263 ac (106 ha) from the final revised designation of critical habitat for the San Bernardino kangaroo rat would result in the extinction of the subspecies because the Western Riverside County MSHCP provides for the conservation of this subspecies and its PCEs on occupied areas in Unit 3 (San Jacinto River), as well as areas discovered to be occupied by the San Bernardino kangaroo rat during surveys of suitable habitat within a defined-boundary, mammal-species survey area. Importantly, as we stated in our biological opinion, while some loss of modeled habitat for the San Bernardino kangaroo rat is anticipated due to implementation of the MSHCP, we concluded that implementation of the plan will not jeopardize the continued existence of this subspecies.

The jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the San Bernardino kangaroo rat under the jeopardy standard will remain in place for the areas proposed for exclusion from revised critical habitat.

Economics

An analysis of the economic impacts of proposing revised critical habitat for the San Bernardino kangaroo rat is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our revised critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed revised designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Persons needing reasonable accommodations to attend and participate in the public hearings should contact the Carlsbad Fish and Wildlife Office at 760–431–9440 as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date.

Clarity of the Rule

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

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and

policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, Executive Order 12630, Executive Order 13211, and Executive Order 12875.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the subspecies. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. At that time, the draft economic analysis will be available from the internet Web site at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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 that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of

critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the majority of the areas being proposed are under private and county ownership. None of these government entities fit the definition of ''small governmental jurisdiction.'' As such, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 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. While this proposed rule to designate critical habitat for the San Bernardino kangaroo rat is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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 revised critical habitat for the San Bernardino kangaroo rat in a takings implications assessment. The takings implications assessment concludes that this revised designation of critical habitat for the San Bernardino kangaroo rat does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed revised critical habitat designation with appropriate State resource agencies in California. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the PCEs of the habitat necessary to the conservation of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), 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. We have proposed designating revised critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the San Bernardino kangaroo rat.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,'' we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

The current designation of critical habitat for the San Bernardino kangaroo rat includes 710 ac (290 ha) of land within the Soboba Band of Luiseño Indians Reservation. At the time of designation, we included these lands as essential to the conservation of the San Bernardino kangaroo rat because we believed that the area supported several populations and provided continuity between two adjacent areas of essential habitat. These lands are adjacent to known occupied areas that we are proposing as critical habitat within the San Jacinto wash (Unit 3). However, given the lack of subspecies' location and habitat information on Soboba Band of Luiseño Indians Reservation lands available at the time of the drafting of this proposed rule, we were unable to thoroughly assess either the status of the subspecies on those lands or the management practices currently employed by the Tribe. Though we continue to believe these Tribal lands are likely occupied, at least in part, by the San Bernardino kangaroo rat, due to the continuity of these lands with known occupied habitat, we do not know whether these lands contain the features that are essential to the conservation of the subspecies. As a result, and in light of Secretarial Order 3206, we are not including these Tribal lands in the area proposed as revised critical habitat for the San Bernardino kangaroo rat. We are committed to maintaining a positive working relationship with the Tribes and will continue our attempts to work with them on conservation measures

benefiting the San Bernardino kangaroo rat.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(a), revise the entry for ''San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*)'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*)

(1) Critical habitat units are depicted for San Bernardino and Riverside counties, California, on the maps below.

(2) The PCEs of critical habitat for the San Bernardino kangaroo rat are the habitat components that provide:

(i) Alluvial fans, washes, and associated floodplain areas containing soils consisting predominately of sand, loamy sand, sandy loam, and loam, which provide burrowing habitat necessary for sheltering and rearing offspring, storing food in surface caches, and movement between occupied patches;

(ii) Upland areas adjacent to alluvial fans, washes, and associated floodplain areas containing alluvial sage scrub habitat and associated vegetation, such as coastal sage scrub and chamise chaparral, with up to approximately 50 percent canopy cover providing protection from predators, while leaving bare ground and open areas necessary for foraging and movement of this subspecies; and

(iii) Upland areas adjacent to alluvial fans, washes, and associated floodplain areas, which may include marginal habitat such as alluvial sage scrub with greater than 50 percent canopy cover with patches of suitable soils that support individuals for re-population of wash areas following flood events. These areas may include agricultural lands, areas of inactive aggregate mining activities, and urban/wildland interfaces.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, other paved areas, and the land on which such structures are located) existing on the effective date of this rule and not containing one or more of the PCEs.

(4) Data layers defining map units were created on a base of NAIP (USDA) 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map of critical habitat units for the San Bernardino kangaroo rat (Map 1) follows:

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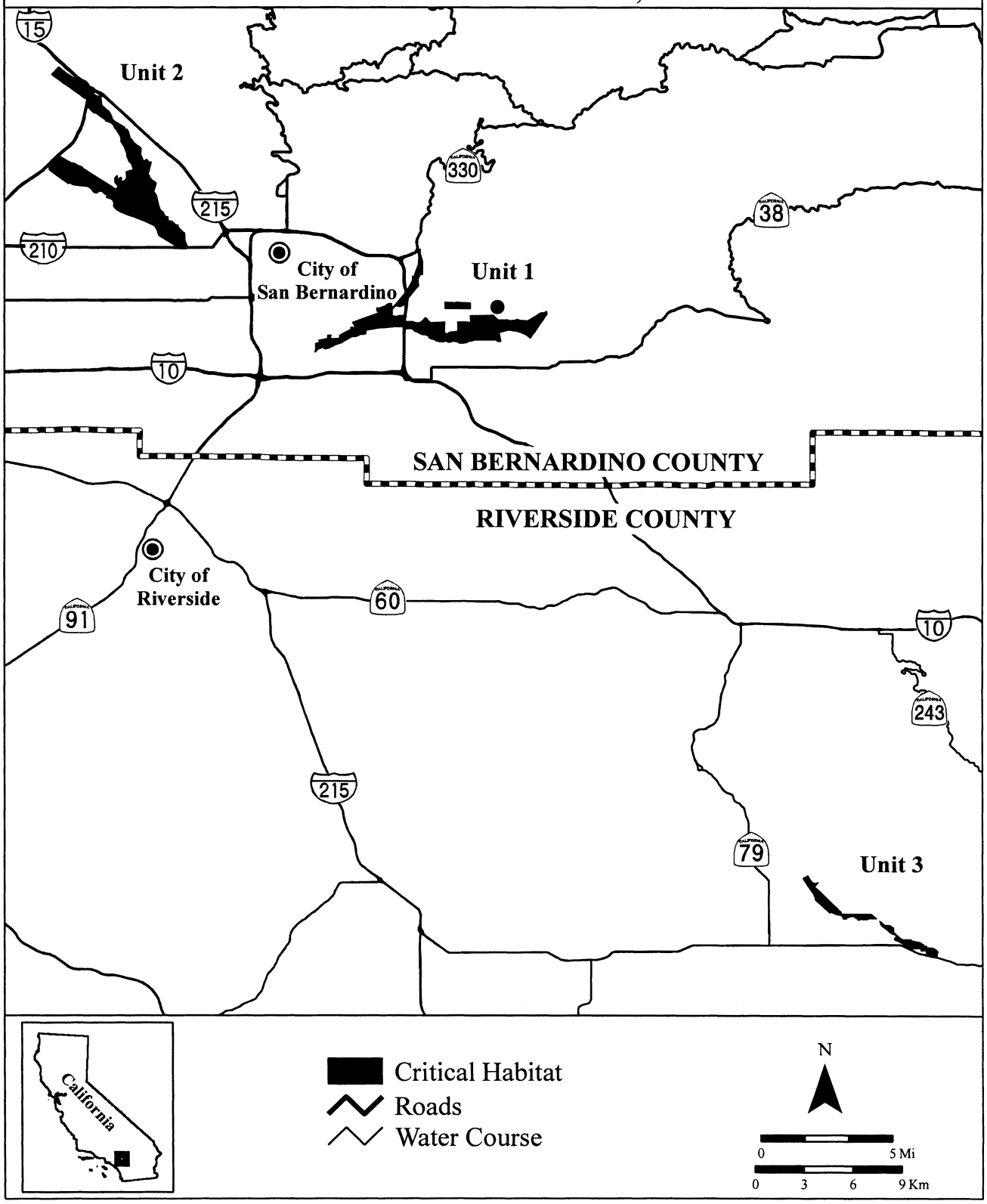
Map 1. Index Map
Critical Habitat for San Bernardino kangaroo rat (Dipodomys merriami parvus)
San Bernardino and Riverside Counties, California



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(6) Unit 1: Santa Ana River Wash, San Bernardino County, California. From USGS 1:24,000 quadrangles San Bernardino North and Devore.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 482590, 3777012; 482552, 3776943; 482558, 3776715; 482692, 3776286; 482707, 3776201; 482717, 3775426; 482568, 3775426; 482435, 3775170; 482428, 3774953; 482444, 3774750; 482466, 3774716; 482231, 3774477; 482161, 3774375; 481828, 3773959; 481701, 3773548; 481670, 3773552; 481632, 3773557; 481544, 3773563; 481307, 3773467; 481190, 3773483; 481147, 3773505; 481135, 3773507; 481097, 3773509; 481019, 3773481; 480850, 3773325; 480850, 3773289; 480835, 3773289; 480834, 3772979; 480834, 3772974; 480837, 3772974; 480837, 3772904; 481087, 3772866; 481311, 3772937; 481467, 3772911; 481609, 3772957; 481612, 3772958; 481659, 3772966; 481687, 3772961; 481648, 3772551; 481660, 3772547; 481827, 3772547; 482106, 3772547; 482223, 3772495; 482278, 3772489; 482335, 3772483; 482363, 3772483; 482446, 3772484; 482448, 3772484; 482448, 3772482; 482492, 3772485; 482495, 3772486; 482498, 3772486; 482511, 3772489; 482541, 3772494; 482546, 3772497; 482552, 3772499; 482567, 3772509; 482587, 3772519; 482608, 3772536; 482613, 3772539; 482644, 3772563; 482698, 3772609; 482754, 3772665; 482775, 3772683; 482788, 3772698; 482815, 3772725; 482846, 3772767; 482862, 3772784; 482876, 3772777; 482894, 3772767; 482925, 3772752; 482946, 3772739; 482958, 3772730; 482985, 3772705; 482993, 3772695; 483015, 3772663; 483035, 3772628; 483037, 3772625; 483040, 3772621; 483067, 3772578; 483083, 3772563; 483094, 3772552; 483097, 3772550; 483098, 3772549; 483125, 3772532; 483133, 3772527; 483156, 3772520; 483172, 3772514; 483184, 3772512; 483185, 3772511; 483202, 3772508; 483255, 3772513; 483265, 3772514; 483292, 3772514; 484048, 3772536; 484062, 3772536; 484058, 3772150; 484052, 3771841; 484100, 3771844; 484101, 3771827; 484278, 3771815; 484337, 3771896; 484862, 3771943; 484861, 3772142; 484857, 3772538; 485653, 3772529; 485653, 3772539; 485647, 3772793; 485647, 3772821; 485644, 3772926; 486049, 3772935; 486455, 3772944; 487040, 3772956; 487329, 3772655; 487916, 3772655; 488068, 3772614; 488207, 3772623; 488355, 3772642; 488515, 3772698; 488645, 3772622; 489184, 3772616; 489762, 3772965; 489816, 3773035; 490029, 3773124; 490134, 3773086; 490315, 3773184; 490317, 3773081; 490336, 3773063; 490335, 3773059; 490335, 3773051; 490334, 3773045; 490333, 3773039; 490330, 3773028; 490329, 3773021; 490328, 3773018; 490326, 3773012; 490325, 3773009; 490322, 3773002; 490318, 3772992; 490315, 3772985; 490312, 3772979; 490307, 3772971; 490304, 3772965; 490283, 3772933; 490252, 3772885; 490218, 3772832; 490214, 3772835; 490133, 3772709; 489991, 3772491; 489984, 3772480; 489722, 3772106; 489717, 3772099; 489708, 3772085; 489638, 3771986; 489625, 3771971; 489620, 3771960; 489615, 3771947; 489611, 3771936; 489607, 3771910; 489607, 3771896; 489594, 3771898; 489564, 3771905; 489527, 3771843; 489313, 3771534; 489275, 3771570; 489235, 3771603; 489180, 3771642; 489136, 3771675; 489120, 3771686; 489069, 3771718; 489021, 3771747; 489001, 3771760; 488976, 3771773; 488949, 3771791; 488892, 3771818; 488820, 3771850; 488771, 3771871; 488742, 3771884; 488715, 3771894; 488677, 3771911; 488602, 3771931; 488521, 3771952; 488433, 3771975; 488400, 3771976; 488274, 3771976; 488253, 3771979; 488223, 3771990; 488208, 3771995; 488189, 3772000; 488137, 3772005; 488063, 3772004; 488001, 3772002; 487934, 3771995; 487878, 3771990; 487818, 3771981; 487777, 3771971; 487768, 3771969; 487731, 3771959; 487683, 3771947; 487658, 3771939; 487623, 3771932; 487572, 3771917; 487529, 3771908; 487504, 3771901; 487472, 3771892; 487452, 3771889; 487438, 3771886; 487423, 3771885; 487399, 3771882; 487402, 3771867; 487403, 3771827; 487516, 3771318; 487268, 3771322; 487289, 3771375; 487260, 3771394; 487260, 3771428; 485895, 3771419; 485670, 3771343; 485670, 3771346; 485568, 3771349; 485492, 3771305; 485362, 3771216; 485327, 3771254; 485241, 3771209; 485212, 3771219; 484946, 3771219; 484822, 3771289; 484704, 3771317; 484492, 3771314; 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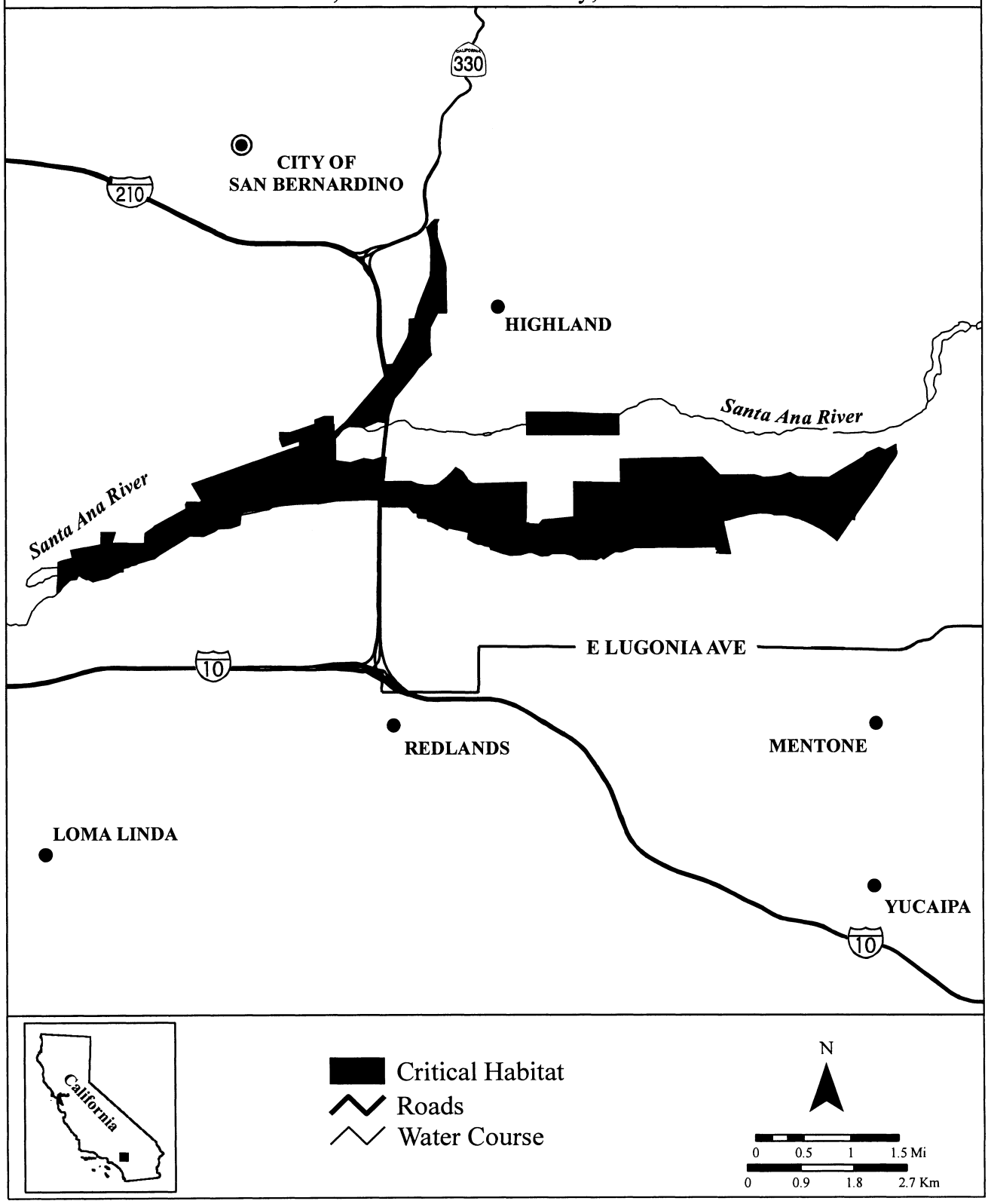
476869, 3770885; 476735, 3770847; 476583, 3770933; 476488, 3770955; 476459, 3770892; 476354, 3770876; 476192, 3770714; 476126, 3770634; 476128, 3770748; 476137, 3770822; 476142, 3770933; 476142, 3771059; 476147, 3771181; 476212, 3771208; 476295, 3771232; 476384, 3771254; 476356, 3771382; 476865, 3771484; 476869, 3771692; 477113, 3771692; 477062, 3771508; 477602, 3771504; 477609, 3771666; 477742, 3771758; 477777, 3771797; 478307, 3772085; 478291, 3772155; 478320, 3772203; 478329, 3772204; 478450, 3772209; 478453, 3772209; 478534, 3772198; 478569, 3772222; 478562, 3772235; 478404, 3772509; 480020, 3773080; 480219, 3773150; 480219, 3773238; 480020, 3773167; 479937, 3773138; 479890, 3773270; 479889, 3773324; 479889, 3773386; 480019, 3773382; 480081, 3773379; 480083, 3773384; 480085, 3773390; 480479, 3773529; 480480, 3773597; 480580, 3773637; 480642, 3773662; 480790, 3773660; 480790, 3773566; 480790, 3773521; 480809, 3773521; 480809, 3773437; 480809, 3773390; 480811, 3773392; 481009, 3773571; 481628, 3774302; 481626, 3774304; 481726, 3774429; 481707, 3774543; 481803, 3774556; 482047, 3774997; 482076, 3775099; 482079, 3775324; 482168, 3775331; 482228, 3775531; 482438, 3776058; 482447, 3776499; 482422, 3776705; 482376, 3776863; 482513, 3777012; thence returning to 482590, 3777012; and land bounded by 484746, 3773730; 484758, 3773732; 485161, 3773709; 485628, 3773706; 485635, 3773343; 484859, 3773338; 484063, 3773343; 484062, 3773734; thence returning to 484746, 3773730.

(ii) Note: Map of Unit 1—Santa Ana River Wash (Map 2) follows:

BILLING CODE 4310–55–P

Map 2.
Critical Habitat for San Bernardino kangaroo rat (Dipodomys merriami parvus)
Unit 1, San Bernardino County, California



BILLING CODE 4310–55–C

(7) Unit 2: Lytle/Cajon Creek Wash, San Bernardino County, California. From USGS 1:24,000 quadrangles San Bernardino South, Redlands, Yucaipa, and Harrison Mountain.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 463087, 3785948; 463459, 3785623; 463463, 3785620; 463466, 3785617; 463469, 3785614; 463472, 3785611; 463475, 3785609; 463478, 3785606; 463481, 3785603; 463484, 3785600; 463486, 3785597; 463489, 3785594; 463492, 3785591; 463495, 3785588; 463498, 3785585; 463501, 3785582; 463503, 3785579; 463506, 3785576; 463509, 3785573; 463512, 3785570; 463514, 3785567; 463517, 3785564; 463520, 3785561; 463522, 3785558; 463525, 3785554; 463527, 3785551; 463530, 3785548; 463533, 3785545; 463535, 3785541; 463538, 3785538; 463540, 3785535; 463542, 3785532; 463545, 3785528; 463547, 3785525; 463550, 3785521; 463552, 3785518; 463554, 3785515; 463556, 3785511; 463559, 3785508; 463561, 3785504; 463563, 3785501; 463565, 3785497; 463568, 3785494; 463570, 3785490; 463572, 3785487; 463574, 3785483; 463576, 3785480; 463578, 3785476; 463580, 3785473; 463582, 3785469; 463584, 3785465; 463586, 3785462; 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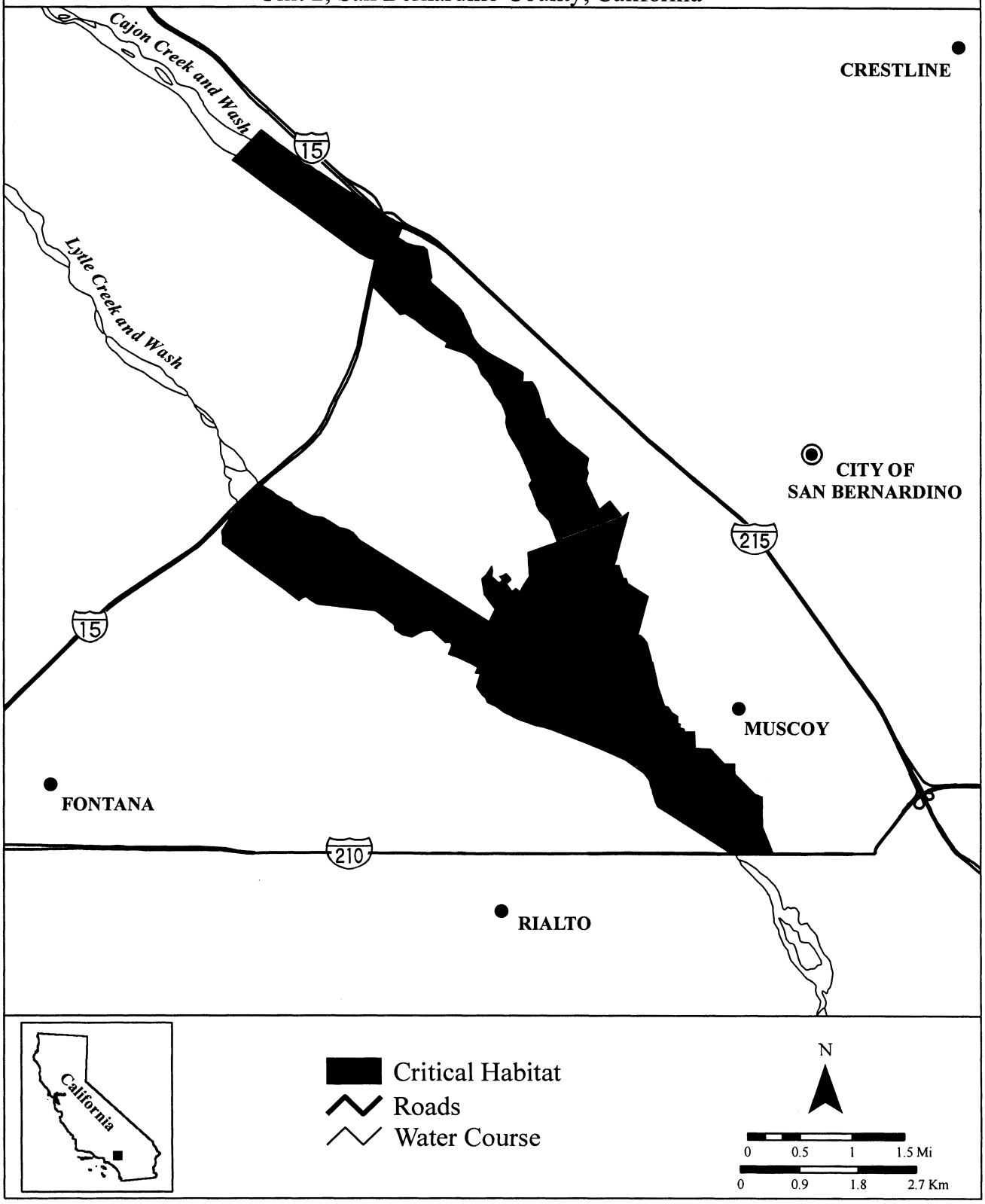
(ii) Note: Map of Unit 2—Lytle/Cajon Creek Wash (Map 3) follows:

BILLING CODE 4310–55–P

Map 3.
Critical Habitat for San Bernardino kangaroo rat (Dipodomys merriami parvus)
Unit 2, San Bernardino County, California



BILLING CODE 4310–55–C

(8) Unit 3: San Jacinto River Wash, Riverside County, California. From USGS 1:24,000 quadrangles San Jacinto, Lake Fulmor, and Blackburn Canyon.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 506117, 3738196; 506135, 3738210; 506228, 3738277; 506282, 3738312; 506282, 3738310; 506287, 3738302; 506514, 3737927; 506580, 3737885; 506695, 3737835; 506822, 3737844; 506911, 3737879; 506814, 3737733; 506706, 3737612; 506706, 3737612; 506998, 3737324; 507521, 3736810; 507732, 3736601; 507738, 3736595; 507957, 3736381; 507957, 3736381; 507995, 3736344; 508001, 3736338; 508047, 3736292; 508048, 3736291; 508218, 3736124; 508304, 3736040; 508329, 3736015; 508329, 3736015; 508329, 3736013; 508329, 3735915; 508354, 3735915; 508441, 3735915; 508519, 3735915; 508840, 3735916; 508960, 3735917; 509020, 3735917; 509160, 3735917; 509160, 3735917; 509655, 3735918; 509951, 3735919; 509951, 3735919; 510024, 3735919; 510142, 3735920; 510353, 3735749; 510396, 3735714; 510412, 3735701; 510501, 3735629; 510368, 3735629; 510301, 3735629; 510293, 3735629; 510291, 3735629; 510165, 3735633; 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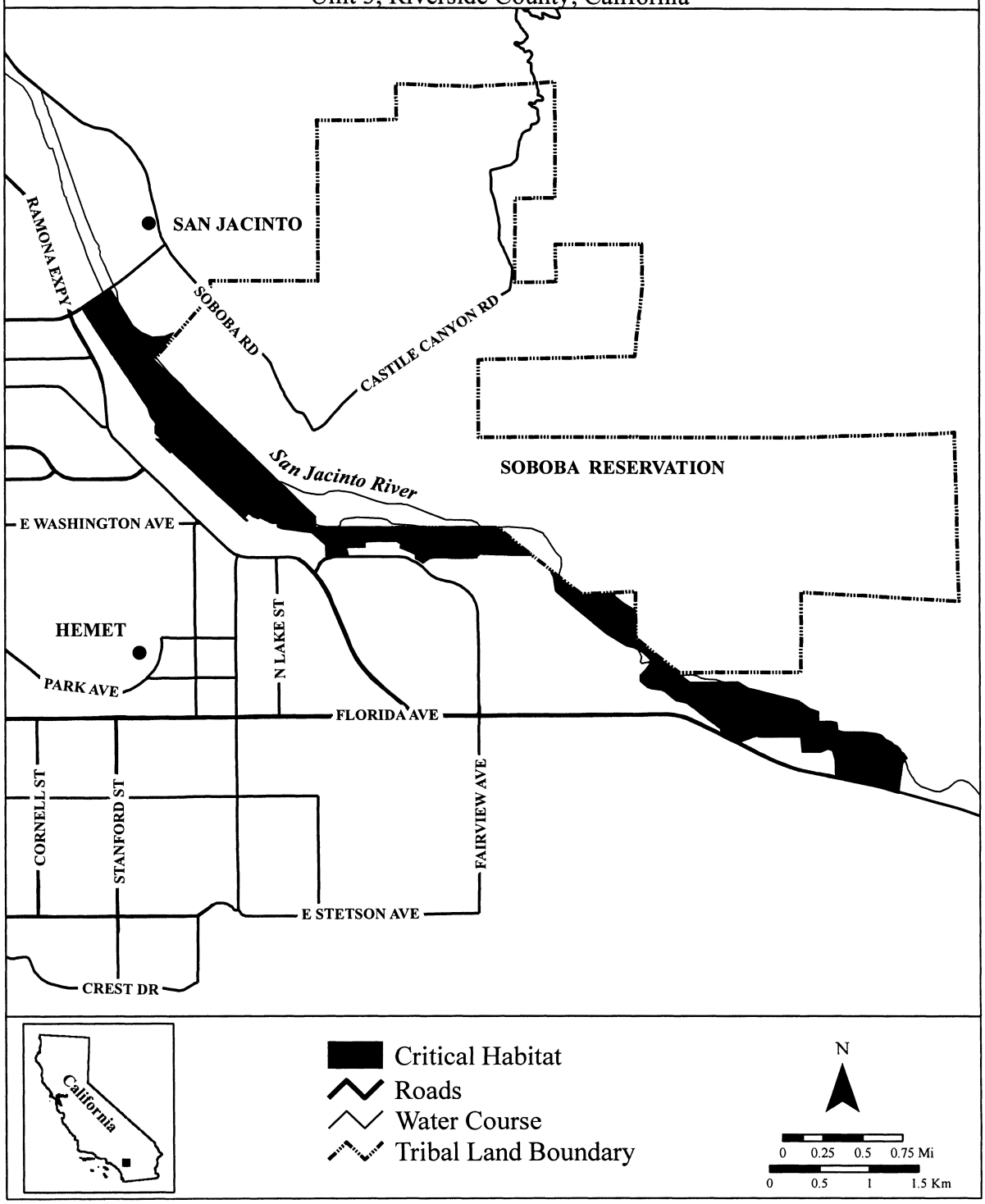
(ii) Note: Map of Unit 3—San Jacinto River Wash (Map 4) follows:

BILLING CODE 4310–55–P

Map 4.
Critical Habitat for San Bernardino kangaroo rat (Dipodomys merriami parvus)
Unit 3, Riverside County, California



* * * * *

Dated: June 1, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–2823 Filed 6–18–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
June 19, 2007

Part III

Department of Housing and Urban Development

24 CFR Parts 5, 92 and 908

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, and 908

[Docket No. FR–4998–P–01]

RIN 2501–AD16

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's public and assisted housing program regulations to implement the process of upfront income verification (UIV) of applicants and participants in assistance programs by public housing agencies (PHAs), including through use of the Enterprise Income Verification (EIV) system. HUD believes that this process would help cure deficiencies in public and assisted housing rental subsidy determinations identified through quality control studies and internal audits. The rule is consistent with HUD's comprehensive strategy under the Rental Housing Integrity Improvement Project (RHIIP) initiative to reduce by half the number and dollar amount of errors in HUD's rental assistance programs. The new verification process would be applicable to all assistance applicants and participants in the public housing, tenant-based housing choice voucher (HCV), and multifamily housing programs. This proposed rule would also make one conforming change to the HOME program regarding income determinations.

DATES: *Comment Due Date:* August 20, 2007.

ADDRESSES: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nicole Faison, Office of Public and Indian Housing, or Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0744 and (202) 708–3000, respectively (these are not toll-free numbers). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes the Secretary to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. The regulations implementing this authority are located in part 5 of Title 24 of the Code of Federal Regulations. As part of the procedures for determining proper rent subsidies, HUD and PHAs must conduct income verifications for applicants and participants in covered HUD programs. As a condition of obtaining assistance, HUD requires the disclosure and verification of Social Security Numbers (SSNs), Employer Identification Numbers, and citizen or eligible immigration status. With few exceptions, HUD cannot make financial assistance available to applicants and participants who do not have eligible status with respect to citizenship or noncitizen immigration status. However, temporary deferrals of assistance termination may be allowable in limited circumstances.

In addition to these eligibility requirements, HUD requires the determination of annual and adjusted income of applicants and participants who apply for or receive assistance in the Section 8 and public housing programs. ''Annual income'' means, in part, all income amounts that a family anticipates to receive in the 12-month period following either admission to the covered HUD program or the participant's annual income examination effective date. Furthermore, PHAs that operate public housing or housing choice voucher (HCV) programs are required to electronically submit family characteristics data to HUD through certain forms.

II. This Proposed Rule

This proposed rule would address HUD's priority of reducing errors, including overpayment of subsidy to PHAs, caused by incorrect income determinations and rent calculations in HUD's public and assisted housing programs. This proposed rule would make several significant revisions to the regulations that govern the public housing, tenant-based, and project-based rental assistance programs, as described below.

Proposed Changes to Part 5

The proposed revisions to § 5.216 would eliminate the threshold that sets 6 years of age as the minimum age that triggers the requirement for documentation of SSNs. The revisions would require any individual applying for or participating in the public housing, HCV, or multifamily housing project-based programs to disclose his or her SSN. Further, the rule would remove the provision allowing certification that a child who is at least 6 years of age has not been assigned an SSN, or that a particular SSN submitted has been assigned to an individual, but that acceptable documentation to verify the SSN cannot be provided.

Each applicant and participant family would be required to submit a complete and accurate SSN assigned to each family member in the household. Additionally, the applicant would be required to submit valid documentation, such as a Social Security card or other documentation, necessary to verify the SSN of an individual. The requirement is consistent with the Housing and Community Development Act of 1987 (42 U.S.C. 3543), the Internal Revenue Code (IRC), and with SSN disclosure

requirements for other federally assisted programs such as Temporary Assistance for Needy Families (TANF), the Food Stamp Program, Social Security (SS), and Supplemental Security Income (SSI). This requirement would significantly enhance HUD's ability to prevent and detect fraud, waste, and abuse in HUD's programs, without appreciably increasing the administrative burden on PHAs and private owners of multifamily housing projects, or causing a hardship to applicants or participants.

The proposed changes to § 5.218 would clarify that the penalty for failure to provide required documentation is denial or termination of individual assistance.

The proposed new § 5.233 would mandate the use of UIV techniques for PHAs. Multifamily owners and management agents would be required to use UIV, subject to the availability of EIV or computer matching agreements with federal, state, and local government agencies or private agencies. UIV is the verification of income, before and during a family's reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. UIV allows entities to validate the accuracy of a family's self-reported household income and reduces the incidence of fraud, waste, and abuse in public and assisted housing programs.

Under this proposed rule, UIV will be required and replaces the more time-consuming and less accurate third-party verification process. That process involves contacting individual employers identified by the family and reviewing handwritten documents reporting income. Under proposed § 5.233, processing entities (as defined in § 5.214) will be required to use one of the prescribed UIV methods, which may include computer matching agreements with a federal, state, or local government agency or private agencies; use of HUD's systems such as EIV; or direct requests to federal, state, or local government agencies or private agencies. Proposed § 5.233(b) also provides penalties for failure to implement a UIV process.

Independent third-party verification will be used to complement upfront verification of income using the EIV system, such as when a tenant disputes the EIV data. Income data older than 12 months contained in the EIV system must not be used in verifying annual income. The mandate to use upfront verification of income will reduce errors and incidences of unreported and underreported family household income. UIV also will help to streamline the verification process, making it easier for responsible entities to verify family-reported income.

As proposed, the rule would provide PHAs the option of upfront verification of income for assistance applicants and participants using either the EIV system or obtaining such data through direct computer matching agreements with a federal, state, or local government agency or a private agency. Since multifamily owners and management agents may not be able to easily enter into such computer matching agreements and can only use the current EIV system for residents already receiving subsidy, the Department is considering limiting their use of the EIV system to verify income for recertification of existing families in multifamily project-based rental assistance programs. If the Department adopts this position, multifamily owners and management agents would continue to use third-party verification for applicants at move-in certification. The Department is interested in receiving public comment regarding this proposed position.

Under the proposed revisions to § 5.508(b), with respect to individuals applying for assistance, responsible entities would be required to obtain adequate proof of U.S. citizenship or legal status, which includes, but is not limited to, a U.S. birth certificate, U.S. passport, Social Security card, Alien Registration card, Employment Authorization card, Temporary Resident card, or other appropriate documentation. The revision would help to ensure that only eligible families will be able to receive assistance in HUD's rental assistance programs.

Under the proposed revisions to § 5.516, temporary deferral of termination of assistance may be available to families receiving assistance under a program covered by section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) and who either include a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or an individual seeking asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158).

In § 5.518, the rule proposes to eliminate temporary deferrals of termination of assistance for families with noncitizen members. Those families who include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of that Act, may continue to be eligible for temporary deferral of termination of assistance. The deferral period for all other families with noncitizen members has expired.

The revisions proposed to § 5.609 would change the definition of annual income from anticipated future income to actual income received. The existing regulations at 24 CFR 5.609 require responsible entities to calculate a family's rent payment and subsidy amount using anticipated annual income. Under this proposed rule, actual annual income will be used in determining a family's eligibility and assistance level in assisted programs, and will be based on amounts received from a source outside the family during the 12-month period prior to admission or prior to the effective date of the annual reexamination. If, however, the processing entity believes more current verified income data exists, the entity must use and annualize this income data to determine annual income. HUD notes that a substantial number of administrators of assisted housing programs are basing annual income on the prior year's income. The rationale in support of this approach is that past income is a known amount, whereas anticipated future income is a projected amount, based on predictions and future circumstances, which are susceptive to error and fraud.

The proposed change in the definition of annual income will both simplify the family income verification process and significantly eliminate associated costs of income verifications. This is because the EIV system containing quarterly wage, employer information, weekly/bi-weekly unemployment benefit payments, monthly SS and SSI benefits, and Medicare deductions and/or buy-ins can be used at no cost to the processing entities.

Proposed Changes to 24 CFR Part 92

A conforming revision to § 92.203 of HUD's regulations implementing the HOME program (24 CFR part 92) would change the method for determining the income eligibility of participants in the HOME program from projected annual income to actual income received in the 12-month period prior to the income eligibility determination. Participating jurisdictions must use the most recent verified income data for the family.

Proposed Changes to 24 CFR Part 908

Under § 908.101 of HUD's regulations implementing electronic transmissions of required family data (24 CFR part 908), PHAs that operate public housing and/or HCV programs are required to electronically submit family characteristics data to HUD through HUD forms 50058 and 50058–FSS. This

proposed rule would require in § 908.101 that PHAs retain Form HUD–50058 file documentation, during the term of each assisted lease, and for at least 3 years thereafter, for use as the official source document to support all billings by the PHA to HUD. This requirement is expected to facilitate a speedy and effective confirmatory review or audit by HUD and/or independent auditors and strengthen HUD controls.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''). This rule was determined to be economically significant under E.O. 12866. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

The Economic Analysis prepared for this rule is also available for public inspection and on HUD's Web site at *http://www.hud.gov.* A summary of the findings contained in the Economic Analysis follows.

A. Rulemaking Goals and Focus of Economic Analysis. This proposed rule clarifies ambiguous language in program regulations, strengthens internal controls in programs, and facilitates the full implementation of the process of UIV of the income of assisted families, including requiring the use of the Enterprise Income Verification (EIV) system.

B. Basis for Economically Significant Determination Under E.O. 12866. HUD determined that the proposed rule would be an economically significant rule under E.O. 12866 because the rule would result in transfers of funding levels to and among stakeholders of $100 million more a year.

C. Findings. This economic analysis finds that, while the implementation of the proposed rule would improve on the integrity of the programs, it is unclear if it would lead to a reduction or increase in subsidy. It is not entirely clear how those currently benefiting from over subsidy will react to the correct level of subsidy; *i.e.*, formerly over-subsidized households may withdraw from the programs and be replaced by households with lower incomes. Furthermore, there is likely to be neither a reduction in outlay for rent subsidies nor an increase in the number of program participants as a result of this rule.

Although recent studies suggest that the EIV and other third-party verification help to identify overpaid subsidy and rent determination errors due to underreported or unreported income, and that actions taken against the households with income discrepancies would result in savings in subsidy and result in the recovery of a portion of the overpaid subsidy, HUD's experience indicates that its program integrity improvement efforts are likely to result in some higher-income tenants leaving assisted housing and being replaced with lower-income tenants.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is concerned with those entities that are responsible for making eligibility determinations and income reexaminations under sections 3 and 5 of the United States Housing Act of 1937 and tenant-based and project-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would strengthen HUD's internal controls, refine regulations where unclear, and facilitate the full implementation of UIV techniques. Under the definition of ''small governmental jurisdiction'' in section 601(5) of RFA, the provisions of RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of fewer than 50,000 persons. Therefore, the number of entities potentially affected by this rule is not substantial.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6), this proposed rule involves statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost estimates, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. Interested persons are invited to submit comments regarding the information collection requirements contained in this rule. Comments must be received within 60 days from the date of this rule.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated annual burden (in hours)
908.101, 960, 982, 984, Part 5; Form HUD–50058 (New Admission)	4127	69	60	284,763
908.101, 960, 982, 984, Part 5; Form HUD–50058 (Recertification)	4127	934	31	1,991,553
908.101, 960, 982, 984, Part 5; Form HUD–50058 MTW (New Admission)	18	814	60	14,652
908.101, 960, 982, 984, Part 5; Form HUD–50058 MTW (Recertification)	18	10,985	31	102,161

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this 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.

Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4998) and be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, *Fax:* (202) 395–6974,
and
Aneita Waites, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance.

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.855.

List of Subjects

24 CFR part 5

Administrative practice and procedure, Aged, Claims, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR part 92

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR part 908

Computer technology, Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 92, and 908 to read as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d)

2. Revise § 5.216 to read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

(a) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information to the processing entity when the assistance applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(b) *Disclosure required of individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSNs assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify the SSNs.

(c) *Disclosure required of certain officials of entity applicants.* Each officer, director, principal stockholder,

or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure required of participants.* (1) Initial disclosure. Each participant whose initial determination of eligibility under the program involved was begun before *[INSERT EFFECTIVE DATE OF FINAL RULE]* must submit the following information to the processing entity at the next interim or regularly scheduled income reexamination for the program involved:

(i) The complete and accurate SSN assigned to the participant and to each member of the participant's family; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure.* Once a participant has disclosed and the processing entity has verified every SSN, the following rules apply:

(i) If the participant's household adds a new member, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new members:

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN for each new member.

(ii) If the participant or any member of the participant's household obtains a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next interim or regularly scheduled income reexamination:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such individual.

(iii) Additional SSN disclosure and verification requirements, including the nature of the disclosure, the verification required, and the time and manner for making the disclosure and verification, may be specified in administrative instructions by:

(A) HUD; and

(B) In the case of the public housing program or the programs under 24 CFR parts 882 and 982, the PHA.

(e) *Disclosure required of entity applicants.* Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN.

(f) *Required documentation.* (1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration (SSA), or such other evidence of the SSN as HUD and, where applicable, the PHA may prescribe in administrative instructions.

(2) *Employer Identification Numbers.* The documentation necessary to verify any EIN of an entity applicant that is required to disclose its EIN under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(g) *Effect on assistance applicants.* (1) If the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may become a participant in the program, provided it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(3) of this section. During such period, the assistance applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including its place on any waiting list maintained for the program, if applicable.

(2) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation may continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(3) of this section.

(3) *Time for submitting documentation.* The time period referred to in paragraphs (g)(1) and (2) of this section is 60 calendar days from the date of application submission or the effective date of the reexamination, except that the processing entity may, at its discretion, extend this period for up to an additional 60 days if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60–day period.

(h) *Rejection of documentation.* The processing entity may reject documentation referred to in paragraph (f) of this section only for such reasons as HUD and the PHA may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local SSA Office or consulting SSA regulations.

(2) Information regarding EINs may be obtained by contacting the local office of the IRS or consulting the appropriate regulations for the IRS.

3. Amend § 5.218 by revising paragraph (a), the introductory text of paragraph (b), and paragraph (c) to read as follows:

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

* * * * *

(c) *Termination of assistance or tenancy of participants.* The processing entity must terminate the assistance or tenancy, or both, of a participant, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216. For assistance or tenancy under the Section 8 Housing Choice Voucher (HCV) and Public Housing programs, the PHA must prorate the family's assistance, as described in 24 CFR 5.520(c)(2) and 24 CFR 5.520(d), respectively. Processing entities shall prorate the family's assistance, in accordance with 24 CFR 5.520(b) for the Rent Supplement program authorized under section 101 of the Housing and Urban Development Act of 1965, the Section 236 program authorized under section 236 of the National Housing Act, and 24 CFR 5.520(c) for the assistance

programs under section 8 of the 1937 Act.

* * * * *

4. Add a new § 5.233 to read as follows:

§ 5.233 Mandated use of upfront income verification (UIV) techniques.

(a) *Programs subject to this section and requirements.* Entities administering Public Housing, Housing Choice Voucher (HCV), moderate rehabilitation, project-based voucher, project-based certificate, project-based rental assistance, and programs administered by the Office of Housing must verify tenant income data, before or during a family's initial examination and reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals. This technique is known as the UIV technique. Income data older than 12 months contained in the EIV system must not be used in verifying annual income. Processing entities must obtain data for upfront verification of income through the following methods:

(1) Via use of HUD systems (such as the EIV system), or

(2) By submitting direct computer matching agreements with a federal, state, or local government agency or a private agency.

(b) *Penalties for noncompliance.* Failure to implement a UIV process may result in the assessment of disallowed costs and/or sanctions against the processing entity.

5. Amend § 5.508 by revising paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) Evidence of citizenship or eligible immigration status. * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity must request verification of the declaration by requiring presentation of a U.S. passport, U.S. birth certificate, Social Security card, Alien Registration card, Employment Authorization card, Temporary Resident card, or other appropriate documentation, as provided by Section 214.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214-covered program on September 30, 1996, or applying for assistance on or after that date, adequate evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, adequate evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) One of the Section 214 documents listed in § 5.508(b)(1) and referred to in § 5.510.

6. Amend § 5.516 by revising paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* In accordance with § 5.518, temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214-covered program on June 19, 1995, and who either include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

7. Amend § 5.518 by revising paragraph (b), removing paragraph (c), and redesignating existing paragraph (d) as paragraph (c) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

* * * * *

(b) *Temporary deferral of termination of assistance.* (1) *Eligibility for this type of assistance.* If a family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard; that is of appropriate size for the family; and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing-covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing-covered program and the family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

8. Amend § 5.609 by revising paragraph (a), removing existing paragraph (d), redesignating existing paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are amounts received from a source outside the family during the 12-month period prior to admission or the annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (d) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) If the processing entity believes that the most recent income data documents a change in the family's annual income, the entity must use and annualize this income data to determine the family's annual income for the 12-month period.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIP PROGRAM

9. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

10. Amend § 92.203 by revising paragraph (d)(1) to read as follows:

§ 92.203 Income determination.

* * * * *

(d)(1) The participating jurisdiction must calculate the annual income of the family based upon the income received by the family during the 12-month period preceding the time the participating jurisdiction determines the family is income-eligible. However, the participating jurisdiction must obtain the most recent verified income data

available. If the participating jurisdiction determines that this data would change the family's annual income (e.g., due to an increase or decrease in hourly wages), the participating jurisdiction must use this data to determine the family's income for the 12-month period. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

11. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

12. Revise § 908.101 to read as follows:

§ 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms HUD–50058, Family Report; and HUD–50058–FSS, Family Self-Sufficiency Addendum. Applicable program entities must retain Form HUD–50058 during the term of each assisted lease, and for at least 3 years thereafter, to support billings to HUD and permit an effective audit.

Dated: May 18, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–11531 Filed 6–18–07; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 214/P.L. 110–34
Preserving United States Attorney Independence Act of 2007 (June 14, 2007; 121 Stat. 224)

H.R. 1675/P.L. 110–35
Preservation Approval Process Improvement Act of 2007 (June 15, 2007; 121 Stat. 225)

S. 1104/P.L. 110–36
To increase the number of Iraqi and Afghani translators and interpreters who may be admitted to the United States as special immigrants, and for other purposes. (June 15, 2007; 121 Stat. 227)

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