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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 11, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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and notice of recently enacted public laws.

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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.

OFFICE OF SPECIAL COUNSEL

5 CFR Part 1820

Freedom of Information Act; Implementation

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: The U.S. Office of Special Counsel (OSC) is publishing notice of the final rule revising its regulations dealing primarily with the agency's implementation of the Freedom of Information Act (FOIA). The regulation, as revised, will implement provisions of the FOIA, at 5 U.S.C. 552, as amended, update information in the current regulation, and contain new and expanded information about the agency's processing of FOIA requests and appeals.

DATES: This rule is effective on August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Christopher Kurt, FOIA Officer, in writing at: U.S. Office of Special Counsel, Legal Counsel and Policy Division, 1730 M Street, NW., (Suite 218), Washington, DC 20036-4505; by telephone, at (202) 254-3690; or by facsimile, at (202) 653-5151.

SUPPLEMENTARY INFORMATION: OSC published notice of proposed revisions to its regulations dealing primarily with the agency's implementation of the Freedom of Information Act (FOIA), with a request for comments and a description of the proposed revisions, in the Federal Register on April 12, 2007 (72 FR 18406). The regulation, as revised, will implement provisions of the FOIA as amended, update information in the current regulation, and contain new and expanded information about the agency's processing of FOIA requests and appeals. Included in the revised regulation are provisions containing updated, revised, or new information

about: publicly available records and information; requirements for making FOIA requests, including updated contact information; consultations with and referrals to other agencies; responses to requests, including information about multitrack and expedited processing; requirements for appealing initial decisions on requests, including updated contact information; fees, including new and revised cost information; and business information. Finally, the regulation will address responses to demands by courts or other authorities to an OSC employee for production of official records or testimony in legal proceedings.

Comments

OSC received comments in response to the notice from one respondent, a non-governmental organization. After considering those comments, OSC is publishing this final rule, modified as described below, pursuant to 5 U.S.C. 1212(e).

The respondent's comments addressed two aspects of OSC's proposed FOIA regulation. First, the respondent stated that the section 1820.4 ("Timing of responses to requests") does not set a time limit within which OSC will respond to a FOIA request, and recommended that OSC revise its proposed regulation to include the statutory timeframe for deciding standard FOIA requests. OSC conceived of the proposed regulation primarily as a means by which to implement provisions of the FOIA rather than repeat them. For that reason, section 1820.1 ("General Provisions") states that the regulation should be read together with the FOIA, and provides the address for the FOIA page on OSC's web site, for additional information about access to agency records, including the statutory timeframe for deciding requests. Nevertheless, OSC is adding the statutory timeframe to the regulation for additional clarity, although in a different section. Section 1820.4 of the regulation describes the order in which OSC processes requests. Section 1820.5 ("Responses to requests") appears to be the more appropriate section in which to add a description of the statutory timeframe for deciding standard FOIA requests not involving unusual circumstances, and OSC has done so.

Second, the respondent noted that the proposed regulation specified that FOIA requests would be accepted by mail or by fax, but recommended that OSC consider establishing a mechanism to receive FOIA requests electronically. The respondent acknowledged that the FOIA does not require that agencies receive requests by any particular means, but stated that other agencies accept FOIA requests electronically, and cited considerations favoring receipt of FOIA requests by such means. This is not a comment on the proposed regulation, but a recommended change in OSC procedures. In any case, OSC has accepted FOIA requests by fax, a form of electronic receipt, for several years, a practice formally recognized by the proposed regulation. Other mechanisms for electronic receipt may be implemented at some point in the future. If so, notice will be provided to the public on OSC's web site and by further revision of the agency's FOIA regulation.

OSC is submitting a report on this final rule to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

Procedural Determinations

Procedural determinations were published in the notice of proposed rulemaking for the Congressional Review Act, Regulatory Flexibility Act, Unfunded Mandates Reform Act, Paperwork Reduction Act, Executive Order 12866 (Regulatory Planning and Review), Executive Order 13132 (Federalism), and Executive Order 12988 (Civil Justice Reform). There have been no changes in these procedural determinations.

List of Subjects in 5 CFR Part 1820

Administrative practice and procedure, Freedom of Information, Government employees.

■ For the reasons stated in the preamble, OSC is revising 5 CFR part 1820 as follows:

PART 1820—FREEDOM OF INFORMATION ACT REQUESTS; PRODUCTION OF RECORDS OR TESTIMONY

Sec.

1820.1 General provisions.

1820.2 Requirements for making FOIA requests.

- 1820.3 Consultations and referrals.
- 1820.4 Timing of responses to requests.
- 1820.5 Responses to requests.
- 1820.6 Appeals.
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- 1820.8 Business information.
- 1820.9 Other rights and services.
- 1820.10 Production of official records or testimony in legal proceedings.

Authority: 5 U.S.C. 552 and 1212(e); Executive Order No. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 1820.1 General provisions.

This part contains rules and procedures followed by the Office of Special Counsel (OSC) in processing requests for records under the Freedom of Information Act (FOIA), as amended, at 5 U.S.C. 552. These rules and procedures should be read together with the FOIA, which provides additional information about access to agency records. Further information about the FOIA and access to OSC records is available on the FOIA page of OSC's Web site (<http://www.osc.gov/foia.htm>). Information routinely provided to the public as part of a regular OSC activity—for example, forms, press releases issued by the public affairs officer, records published on the agency's Web site (<http://www.osc.gov>), or public lists maintained at OSC headquarters offices pursuant to 5 U.S.C. 1219—may be requested and provided to the public without following this part. This part also addresses responses to demands by a court or other authority to an employee for production of official records or testimony in legal proceedings.

§ 1820.2 Requirements for making FOIA requests.

(a) *How made and addressed.* A request for OSC records under the FOIA should be made by writing to the agency. The request should be sent by regular mail addressed to: FOIA Officer, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036-4505. Such requests may also be faxed to the FOIA Officer at the number provided on the FOIA page of OSC's web site (see § 1820.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked "FOIA Request." Whether sent by mail or by fax, a FOIA request will not be considered to have been received by OSC until it reaches the FOIA Officer.

(b) *Description of records sought.* Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an

OSC case file, the case file number, name, and type (for example, prohibited personnel practice, Hatch Act, USERRA or other complaint; Hatch Act advisory opinion; or whistleblower disclosure) should be provided, if known.

Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

(c) *Agreement to pay fees.* Making a FOIA request shall be considered an agreement by the requester to pay all applicable fees chargeable under § 1820.7, up to and including the amount of \$25.00, unless the requester asks for a waiver of fees. When making a request, a requester may specify a willingness to pay a greater or lesser amount.

§ 1820.3 Consultations and referrals.

When OSC receives a FOIA request for a record in the agency's possession, it may determine that another Federal agency is better able to decide whether or not the record is exempt from disclosure under the FOIA. If so, OSC will either:

(a) Respond to the request for the record after consulting with the other agency and with any other agency that has a substantial interest in the record; or

(b) Refer the responsibility for responding to the request to the other agency deemed better able to determine whether to disclose it. Consultations and referrals will be handled according to the date that the FOIA request was initially received by the first agency.

§ 1820.4 Timing of responses to requests.

(a) *In general.* OSC ordinarily will respond to FOIA requests according to their order of receipt. In determining which records are responsive to a request, OSC ordinarily will include only records in its possession as of the date on which it begins its search for them. If any other date is used, OSC will inform the requester of that date.

(b) *Multitrack processing.* (1) OSC may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request.

(2) When using multitrack processing, OSC may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the faster track(s).

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever OSC has established to its satisfaction that:

(i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) With respect to a request made by a person primarily engaged in disseminating information, an urgency exists to inform the public about an actual or alleged federal government activity; or

(iii) Records requested relate to an appeal that is pending before, or that the requester faces an imminent deadline for filing with, the Merit Systems Protection Board or other administrative tribunal or a court of law, seeking personal relief pursuant to a complaint filed by the requester with OSC, or referred to OSC pursuant to title 38 of the U.S. Code.

(2) A request for expedited processing must be made in writing and sent to OSC's FOIA Officer. Such a request will not be considered to have been received until it reaches the FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. The formality of certification may be waived as a matter of OSC's administrative discretion.

(4) OSC shall decide whether to grant a request for expedited processing and notify the requester of its decision within 10 calendar days of the FOIA Officer's receipt of the request. If the request for expedited processing is granted, the request for records shall be processed as soon as practicable. If a request for expedited processing is denied, any administrative appeal of that decision shall be acted on expeditiously.

(d) *Aggregated requests.* OSC may aggregate multiple requests by the same requester, or by a group of requesters acting in concert, if it reasonably believes that such requests actually constitute a single request involving unusual circumstances, as defined by the FOIA, supporting an extension of time to respond, and the requests involve clearly related matters.

§ 1820.5 Responses to requests.

(a) *General.* Ordinarily, OSC shall have 20 business days from when a request is received to determine

whether to grant or deny the request. Once OSC makes a determination to grant a FOIA request for records, or makes an adverse determination denying a request in any respect, it will notify the requester in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment.

(b) *Adverse determinations.* A notification to a requester of an adverse determination on a request shall include:

(1) A brief statement of the reason(s) for the denial of the request, including any FOIA exemption applied by OSC in denying the request; and

(2) A statement that the denial may be appealed under section 1820.6(a), with a description of the requirements of that subsection.

§ 1820.6 Appeals.

(a) *Appeals of adverse determinations.* A requester may appeal an adverse determination denying a FOIA request in any respect to the Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, NW., (Suite 218), Washington, DC 20036–4505. The appeal must be in writing, and sent by regular mail or by fax. The appeal must be received by the Legal Counsel and Policy Division within 45 days of the date of the letter denying the request. For the quickest possible handling, the appeal letter and envelope or any fax cover sheet should be clearly marked “FOIA Appeal.” The appeal letter may include as much or as little related information as the requester wishes, as long as it clearly identifies the OSC determination (including the assigned FOIA request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The agency decision on an appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall inform the requester of the provisions for judicial review of that decision. If the adverse determination is reversed or modified on appeal, in whole or in part, the requester will be notified in a written decision and the request will be

reprocessed in accordance with that appeal decision.

§ 1820.7 Fees.

(a) *In general.* OSC shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. OSC may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) “Commercial use request” means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. OSC shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because OSC has reasonable cause to doubt a requester’s stated use, OSC shall provide the requester with a reasonable opportunity to submit further clarification.

(2) “Direct costs” means those expenses that OSC incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as the costs of space, and heating or lighting the facility in which the records are kept.

(3) “Duplication” means the process of making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, on digital data storage discs), among others.

(4) “Educational institution” means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in

this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) “Non-commercial scientific institution” means an institution that is not operated on a “commercial” basis, as that term is referenced in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) “Representative of the news media” or “news media requester” means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. For “freelance” journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but OSC may also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) “Review” means the process of examining a record located in response to a request in order to determine whether any portion of the record is exempt from disclosure. It includes processing any record for disclosure—for example, doing all that is necessary to redact it and otherwise prepare it for disclosure. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a business submitter under § 1820.8(f). It does not include time spent resolving general legal or policy issues about the application of

exemptions. Review costs are properly charged in connection with commercial use requests even if a record ultimately is not disclosed.

(8) "Search" means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records when undertaken, and reasonable efforts to locate and retrieve information from records maintained in electronic form or format, to the extent that such efforts would not significantly interfere with the operation of an automatic information system.

(c) *Fees.* In responding to FOIA requests, OSC shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) Search. (i) Search fees will be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. OSC may charge for time spent searching even if it fails to locate responsive records, or records located after a search are determined to be exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$5.50. Where a search and retrieval cannot be performed entirely by clerical personnel - for example, where the identification of records within the scope of a request requires the use of professional personnel - the fee will be \$9.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be \$17.50 for each quarter hour of time spent by those personnel.

(iii) For electronic searches of records, requesters will be charged the direct costs of conducting the search, including the costs of operator/programmer staff time apportionable to the search.

(iv) For requests requiring the retrieval of records from any Federal Records Center, additional costs may be charged in accordance with the applicable billing schedule established by the National Archives and Records Administration.

(2) Duplication. Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a standard paper photocopy of a record (no more than one copy of which need be supplied), the fee will be 25 cents per page. For copies produced by computer, such as discs or printouts,

OSC will charge the direct costs, including staff time, of producing the copy. For other forms of duplication, OSC will charge the direct costs of that duplication.

(3) Review. Review fees will be charged to requesters who make a commercial use request. Review fees will be charged for only initial record review - in other words, the review done when OSC analyzes whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, OSC will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is \$20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (d)(4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$20.00.

(e) *Notice of anticipated fees in excess of \$25.00.* When OSC determines or estimates that the fees to be charged under this section will amount to more than \$25.00, OSC shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, OSC will advise the requester that the estimated fee may be only a

portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than \$25.00, the request shall not be considered received and further work will not be done on it until the requester agrees to pay the anticipated total fee. A notice under this paragraph will offer the requester an opportunity to discuss the matter with OSC in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when OSC chooses as a matter of administrative discretion to provide a special service—such as sending records by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* OSC may charge interest on any unpaid fee starting on the 31st day after the date of on which the billing was sent to the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of billing until payment is received by OSC. OSC will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended by the Debt Collection Act of 1996 (Public Law 104–134, 110 Stat. 1321–358), and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where OSC reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests that otherwise could have been submitted as a single request, for the purpose of avoiding fees, OSC may aggregate those requests and charge accordingly. OSC may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, OSC will aggregate them only where a reasonable basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (i)(3) of this section, OSC will not require the requester to make an advance payment before work is begun or continued on a request. Payment owed for work already completed (that is, pre-payment after processing a request but before copies are sent to the requester) is not an advance payment.

(2) Where OSC determines or estimates that a total fee to be charged under this section will be more than

\$250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 days of the date of billing, OSC may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before OSC begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which OSC requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request shall not be considered received and further work will not be done on the request until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, OSC will provide contact information for use by requesters in obtaining records from those sources.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where OSC determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, OSC will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. OSC shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, OSC will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. OSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information about this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. OSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. OSC will exercise its discretion to consider the cost-effectiveness of its investment of administrative resources in this decision making process, however, in deciding to grant waivers or reductions of fees.

§ 1820.8 Business information.

(a) *In general.* Business information obtained by OSC from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) "Business information" means commercial or financial information obtained by OSC from a submitter that may be protected from disclosure under exemption 4 of the FOIA.

(2) "Submitter" means any person or entity from whom the OSC obtains business information, directly or indirectly. The term includes corporations, and state, local, tribal and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under exemption 4. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* OSC shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *When notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under exemption 4; or

(2) OSC has reason to believe that the information may be protected from disclosure under exemption 4.

(f) *Opportunity to object to disclosure.* OSC will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by OSC until after its disclosure decision has been made shall not be considered by OSC. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* OSC shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever OSC decides to disclose business information over the objection of a submitter, OSC shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) OSC determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous - except that, in such a case, OSC shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, OSC shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever OSC provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, OSC shall also notify the requester(s). Whenever OSC notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, OSC shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, OSC shall notify the requester(s).

§ 1820.9 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§ 1820.10 Production of official records or testimony in legal proceedings.

No employee or former employee of the Office of Special Counsel shall, in response to a demand of a court or other authority, produce or disclose any information or records acquired as part of the performance of his official duties or because of his official status without the prior approval of the Special Counsel or the Special Counsel's duly authorized designee.

Dated: July 17, 2007.

Scott J. Bloch,

Special Counsel.

[FR Doc. E7-14234 Filed 7-24-07; 8:45 am]

BILLING CODE 7405-01-S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-27270; Airspace Docket No. 07-ANM-1]

RIN 2120-AA66

Establishment of Area Navigation Routes (RNAV), Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a high altitude RNAV route in the Seattle, WA area to facilitate air traffic operations by providing a direct route to the Phoenix, AZ, area. The FAA is implementing this route to enhance safety and to provide a more efficient use of navigable airspace.

DATES: *Effective Date:* 0901 UTC, October 25, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On May 7, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish a direct route from the Seattle Area to the Phoenix, AZ, area (72 FR 25712). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received.

High altitude area navigation routes are published in paragraph 2006 of FAA Order 7400.9P dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The area navigation routes listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to establish an RNAV route within the airspace assigned to the Seattle, Los Angeles, Albuquerque, Salt Lake City and Denver Air Route Traffic Control Center (ARTCC). This route provides a direct route from the Seattle, WA area to Phoenix, AZ, and facilitates a more flexible and efficient use of navigable airspace for en route instrument flight rules operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§71.1 [Amended]

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

Paragraph 2006 Area Navigation Routes.
* * * * *

Q-35 IMB to DRK [new]

IMB
NEERO
WINEN
CORKR
DRK
* * * * *

VORTAC (Lat. 44°38'54" N., long. 119°42'42" W.)
WP (Lat. 41°49'03" N., long. 118°01'29" W.)
WP (Lat. 37°56'00" N., long. 113°30'00" W.)
Fix (Lat. 36°05'02" N., long. 112°24'01" W.)
VORTAC (Lat. 34°42'09" N., long. 112°28'49" W.)

Issued in Washington, DC, on July 18, 2007.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E7-14326 Filed 7-24-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM06-16-001; Order No. 693-A]

Mandatory Reliability Standards for the Bulk-Power System

Issued July 19, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Commission denies rehearing and otherwise reaffirms its determinations in Order No. 693. 72 FR 16,416 (April 4, 2007). We further clarify certain portions of the Preamble to that order. Order No. 693 approved

83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards developed by the North American Electric Reliability Corporation, which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. Order No. 693 also required the ERO to submit significant improvements to 56 of the 83 Reliability Standards that are being approved as mandatory and enforceable. Finally, Order No. 693 provided that the remaining 24 Reliability Standards will remain pending at the Commission until further information is provided. Order No. 693 adds a new part to the Commission's regulations, which states that this part applies to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii) and requires that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies. The new regulations also require that each Reliability Standard that is approved by the Commission will

be maintained on the ERO's Internet website for public inspection.

DATES: *Effective Date:* The final rule became effective on June 18, 2007.

FOR FURTHER INFORMATION CONTACT:

Jonathan First (Legal Information),
Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8529.

Christy Walsh (Legal Information),
Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6523.

Robert Snow (Technical Information),
Office of Energy Markets and Reliability, Division of Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6716.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeene G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order on Rehearing

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I. Introduction

1. On March 16, 2007, the Commission issued a Final Rule (Order No. 693)¹ approving, pursuant to section 215 of the Federal Power Act (FPA),² 83 of 107 proposed Reliability Standards, six of the eight proposed regional differences, and the Glossary of Terms Used in Reliability Standards (glossary) developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. However, the Commission stated that, although it believed it is in the public interest to make these Reliability Standards mandatory and enforceable, it also found that much work remains to be done. Specifically, it stated that many of these Reliability Standards require significant improvement to address, among other things, the recommendations of the Blackout Report.³ Therefore, pursuant to section 215(d)(5), we required the ERO to submit significant improvements to 56 of the 83 Reliability Standards that are being approved as mandatory and enforceable. The Commission stated that

the remaining 24 Reliability Standards will remain pending at the Commission until further information is provided.

2. Order No. 693 added a new part to the Commission's regulations, which states that this part applies to all users, owners and operators of the Bulk-Power System within the United States (other than Alaska or Hawaii) and requires that each Reliability Standard identify the subset of users, owners and operators to which that particular Reliability Standard applies. The new regulations also require that each Reliability Standard that is approved by the Commission will be maintained on the ERO's Internet Web site for public inspection.

A. Summary of Order No. 693

3. In Order No. 693, the Commission stated that there were four possible courses of action that it would take with regard to each proposed Reliability Standard: (1) Approve; (2) approve as mandatory and enforceable; and direct modification pursuant to section 215(d)(5); (3) request additional information; or (4) remand. As mentioned above, the Commission approved 83 Reliability Standards and directed NERC to develop modifications to 56 of the approved Reliability Standards. In approving the Reliability Standards, Order No. 693 stated that, for an initial period, the Commission would rely on the NERC definition of bulk electric system, rather than the statutory Bulk-Power System, and NERC's registration process to provide as much certainty as possible regarding the

applicability to and the responsibility of specific entities to comply with the Reliability Standards in the start-up phase of a mandatory Reliability Standard regime.⁴ Further, while the Commission did not institute a formal "trial period," it directed the ERO and Regional Entities to "focus their resources" on the "most serious violations" during an initial period through December 31, 2007.⁵

B. Procedural Matters

4. The following entities have filed timely requests for rehearing or for clarification of Order No. 693: American Public Power Association (APPA); Avista Corporation, Portland General Electric Company, and Puget Sound Energy, Inc. (collectively, Avista); City of Santa Clara, California (Santa Clara); Cogeneration Association of California and the Energy Producers and Users Coalition (California Cogeneration); ISO-New England, Inc. (ISO-New England); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); National Association of Regulatory Utility Commissioners (NARUC); National Rural Electric Cooperative Association (NRECA); Pacific Northwest Security Coordinator (PNSC); Transmission Agency of Northern California (TANC); and Xcel Energy Services, Inc. (Xcel).

5. PNSC's rehearing request is deficient because it fails to include a Statement of Issues section separate from its arguments, as required by Rule

¹ Mandatory Reliability Standards for the Bulk-Power System, Order No. 693, 72 FR 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007).

² 16 U.S.C. 824o (2000).

³ U.S.-Canada Power System Outage Task Force, Final Report on the August 14 Blackout in the United States and Canada: Causes and Recommendations (April 2004) (Blackout Report). The Blackout Report is available on the Internet at <http://www.ferc.gov/cust-protect/moi/blackout.asp>.

⁴ Order No. 693 at P 75.

⁵ *Id.* at P 221-22.

713 of the Commission's Rules of Practice and Procedure.⁶ Rule 713(c)(2) requires that a rehearing request must include a separate section entitled "Statement of Issues" listing each issue presented to the Commission in a separately enumerated paragraph that includes representative Commission and court precedent on which the participant is relying.⁷ Under Rule 713, any issue not so listed will be deemed waived. Accordingly, we will dismiss PNSC's rehearing request.⁸

6. In any event, PNSC's arguments on rehearing are beyond the scope of this proceeding. PNSC asks the Commission to clarify that PNSC is in compliance with IRO-001 because it has written agreements delineating the responsibilities and authority of the operating personnel who staff its reliability center. Whether any one entity is in compliance with a Reliability Standard is not an issue in the rulemaking.

II. Discussion

A. Applicability Issues

1. Bulk-Power System v. Bulk Electric System

7. Section 215 of the FPA defines the term "Bulk-Power System" as follows:

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and (B) electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

8. The NERC glossary, in contrast, states that Reliability Standards apply to the "bulk electric system," which is

defined by its regions in terms of a voltage threshold and configuration, as follows:

As defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition.

9. In Order No. 693, the Commission stated that, for an initial period, it would rely on the NERC definition of bulk electric system and NERC's registration process to provide as much certainty as possible regarding the applicability to and the responsibility of specific entities to comply with the Reliability Standards in the start-up phase of a mandatory Reliability Standard regime.⁹ However, the Commission stated that it was concerned about the need to address the potential for gaps in coverage of facilities. The Commission intends to address this matter in future proceedings. As a first step in enabling the Commission to understand the reach of the Reliability Standards, we directed the ERO to provide the Commission with an informational filing that includes a complete set of regional definitions of bulk electric system and any regional documents that identify critical facilities to which the Reliability Standards apply (*i.e.*, facilities below a 100 kV threshold that have been identified by the regions as critical to system reliability).

10. However, the Commission disagreed with commenters who suggested that there is no intentional distinction between Bulk-Power System and bulk electric system. This distinction was evidenced by the fact that "Congress did not borrow the term of art—bulk electric system—but instead chose to create a new term, Bulk-Power System, with a definition that is distinct from the term of art used by industry."¹⁰ Thus, the Commission "confirmed" that the Bulk-Power System reaches farther than those facilities that are included in NERC's definition of the bulk electric system, although choosing to rely on the NERC definition for determining the immediate applicability of the approved Reliability Standards. The Commission indicated that it remained concerned about potential gaps in coverage of facilities and that any change in

applicability would be addressed in future Commission proceedings.

a. Requests for Rehearing

11. NRECA asks that the Commission clarify that it has not definitively decided that the term Bulk-Power System as defined in section 215 of the FPA encompasses more than NERC's definition of bulk electric system. Rather, NRECA understands that the Commission deferred on determining whether its jurisdiction expands beyond the bounds of the bulk electric system. NRECA is concerned that Order No. 693 may suggest that the Bulk-Power System is broader than the bulk electric system out of a misapprehension that NERC's definition imposes a rigorous 100 kV "cutoff" when, according to NRECA, it actually provides for more flexibility. Alternatively, if the Commission has definitively interpreted the term Bulk-Power System to encompass more than the bulk electric system, NRECA seeks rehearing.

12. In support of its request for rehearing, NRECA raises three arguments that the Commission erred in determining that the statutory definition of Bulk-Power System is broader than NERC's definition of bulk electric system. First, it contends that such a determination violates a rule of law that the parts of a statute should be construed in accordance with the statute's overall legislative purpose.¹¹ NRECA explains that section 215 was intended to replace the prior voluntary reliability standards with a mandatory scheme but, to the best of NRECA's knowledge, no participant in the drafting of the legislation expressed the view that Congress intended to expand NERC's scope.¹² NRECA states that, if the issue had been presented, it would have prompted a legislative record. The absence of such record confirms that an intent to expand NERC's scope was never expressed.

13. Second, NRECA contends that an expansive definition of Bulk-Power System is contrary to the text of section 215, which narrows the Commission's reach. Specifically, NRECA contends that the statutory definition of Bulk-Power System makes clear that the term does not encompass all transmission facilities but, rather, only those facilities and control systems "necessary for operating an interconnected electric energy transmission network." It also points to the statutory definitions of Reliability Standard and Reliable

⁶ 18 CFR 385.713(c)(2) (2006). See *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 FR 55,723 (September 23, 2005), *FERC Stats. and Regs.* ¶ 31,193 (2005). See also, Order 663-A, effective March 23, 2006, which amends Order No. 663 to limit its applicability to rehearing requests. *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663-A, 71 FR 14,640 (March 23, 2006), *FERC Stats. and Regs.* ¶ 31,211 (2006) (codified at 18 CFR 385.713(c)(2) (2006)).

⁷ As explained in Order No. 663, *supra*, the purpose of this requirement is to benefit all participants in a proceeding by ensuring that the filer, the Commission, and all other participants understand the issues raised by the filer, and to enable the Commission to respond to these issues. Having a clearly articulated Statement of Issues ensures that issues are properly raised before the Commission and avoids the waste of time and resources involved in litigating appeals regarding whether the courts of appeals lack jurisdiction because the issues on appeal were not clearly identified before the Commission. See Order No. 663 at P 3-4.

⁸ See, e.g., *Duke Power Co., LLC*, 116 FERC ¶ 61,171 (2006); and *South Carolina Electric & Gas Co.*, 116 FERC ¶ 61,218 (2006).

⁹ Order No. 693 at P 75.

¹⁰ *Id.* at P 76.

¹¹ NRECA at 7-11, citing *United States v. Public Utilities Commission of California*, 345 U.S. 295, 315 (1953).

¹² NRECA at 7-8.

Operation that refer to protecting the system from instability, uncontrolled separation or cascading failures. NRECA infers from this that there is no reason to conclude that Congress included in the definition of Bulk-Power System any facilities other than those that could materially contribute to instability, uncontrolled separation or cascading outages.

14. Third, NRECA posits that, if Congress borrows a term of art that has an established meaning, the established meaning is to apply.¹³ NRECA claims that the terms Bulk-Power System and bulk electric system have been used interchangeably for decades and cites examples from both industry documents and Commission orders. According to NRECA, Congress did not adopt NERC's exact definition of bulk electric system because it was insufficiently specific for legislation. NRECA asserts that "Congress used more and different words than NERC in order to provide clarity, but the definition of Bulk-Power System incorporated the exact same facilities as NERC and the regions had always included in their working definition of bulk electric system * * *"¹⁴

15. NARUC seeks clarification that the Commission will "continue relying on NERC's definition of Bulk-Power System" and NERC's registration process beyond the initial period during which mandatory Reliability Standards are in effect.¹⁵ It states that section 215 of the FPA was enacted based on an industry consensus that it would apply to facilities and entities covered by the historical definition of Bulk-Power System. According to NARUC, the term applies to higher-voltage, network facilities that integrate regional transmission networks to ensure the reliability of interconnected system operations. NARUC states that NERC's definition of Bulk-Power System is consistent with section 215 and that a broader interpretation is inconsistent with Congressional intent because such a definition could sweep in facilities such as load centers and local transmission facilities that do not have a material impact on system reliability.

16. NARUC also seeks clarification that, if the Commission determines that NERC's current definition requires

revision, NERC should revise the definition using its American National Standards Institute (ANSI)-accredited process. Further, NARUC expresses concern that the Commission has directed the ERO to submit a complete set of regional definitions of bulk electric system and, thus, asks the Commission to clarify that it will continue to defer to the ERO's and Regional Entities' determinations concerning which facilities and entities materially affect the reliability of the interconnected transmission network and should be included in the compliance registry.

b. Commission Determination

17. The Commission will grant NRECA's request for clarification, and thus dismisses its request for rehearing. We agree with NRECA that NERC's definition of bulk electric system does not impose a 100 kV cutoff and provides some flexibility in its application.¹⁶ Although Order No. 693 stated that the Commission believes that the Bulk-Power System reaches farther than those facilities that are included in NERC's definition of the bulk electric system, the Commission has not definitively defined the extent of the facilities covered by the Bulk-Power System. As we stated in Order No. 693, the Commission intends to address concerns regarding the scope of the term Bulk-Power System in future proceedings. NRECA and others will not be legally precluded from presenting arguments in such a proceeding that the terms Bulk-Power System and bulk electric system encompass the same facilities.

18. The Commission notes NRECA's assertion that the Commission's determination that the Bulk-Power System reaches farther than the bulk electric system is contrary to the text of section 215 of the FPA. Because the Commission has not definitively defined the extent of the facilities covered by the Bulk-Power System, the Commission believes that this determination is best made in the context of a Commission proceeding determining the extent of the Bulk-Power System. We make no finding on the matter at this time. The Commission defers judgment on this matter to a later proceeding so that the Commission can develop a record on which to base its final determination.

19. In response to NARUC, the Commission will continue to rely on

NERC's definition of bulk electric system, with the appropriate regional differences, and NERC's registration process until the Commission determines in future proceedings the extent of the Bulk-Power System. The requirement that the ERO file a complete set of regional differences was to enable the Commission to understand the current reach of the Reliability Standards. However, we do not agree with NARUC that NERC should be allowed to define Bulk-Power System using its American National Standards Institute (ANSI)-accredited process. The statutory term Bulk-Power System defines the jurisdiction of the Commission. Although the Commission has chosen to defer, for the time being, to the ERO as to which entities must comply with Reliability Standards, the fundamental matter of determining the extent of Commission's jurisdiction cannot and will not be delegated to the ERO.

2. NERC Registry

20. Order No. 693 accepted the ERO's compliance registry process as an appropriate approach to identify the set of entities that are responsible for compliance with a particular Reliability Standard.¹⁷ Further, Order No. 693 explained that NERC has developed a Statement of Compliance Registry Criteria that describes how NERC will identify organizations that may be candidates for registration and assign them to the compliance registry. NERC's compliance registry process identifies and registers entities based on categories of functions within the Bulk-Power System and related Commission-approved Reliability Standards. For example, NERC plans to register individual generator units of 20 MVA or greater that are directly connected to the bulk electric system, generating plants with an aggregate rating of 75 MVA or greater, any blackstart unit material to a restoration plan, or any generator "regardless of size, that is material to the reliability of the Bulk-Power System." The Commission accepted the Statement of Compliance Registry Criteria, stating that "[w]e believe that NERC has set reasonable criteria for registration * * *"¹⁸

21. Further, Order No. 693 noted that the Commission's regulations then exempted most qualifying facilities (QFs) from specific provisions of the FPA including section 215.¹⁹ The Commission, however, expressed concern whether it is appropriate to

¹³ *Id.* at 11–16, citing *Morissette v. United States*, 342 U.S. 246, 263 (1952).

¹⁴ NRECA at 16.

¹⁵ NARUC at 3. NARUC refers repeatedly to "NERC's definition of Bulk-Power System." It is not clear from NARUC's pleading whether this is simply a typographical error or it seeks to make a point that NERC's definition of bulk electric system is equivalent to the statutory term Bulk-Power System.

¹⁶ See *Mandatory Reliability Standards for the Bulk Power System*, Notice of Proposed Rulemaking, 71 FR 64,770 (Nov. 3, 2006), FERC Stats. & Regs., ¶ 32,608 at P 63 (2006).

¹⁷ Order No. 693 at P 92–101.

¹⁸ *Id.* at P 95.

¹⁹ 18 CFR 292.601(c) (2006).

grant QFs a complete exemption from compliance with Reliability Standards that apply to other generator owners and operators, and noted that the Commission was concurrently issuing a notice of proposed rulemaking proposing to amend the Commission's regulation that exempts most QFs from section 215 of the FPA. The Commission has since issued a final rule eliminating the exemption of QFs from the requirements of section 215 of the FPA.²⁰

c. Requests for Rehearing

22. California Cogeneration argues that the Commission improperly relied on the ERO's compliance registry process. It contends that the Commission, rather than determining who the "users" of the Bulk-Power System are, has improperly delegated this task to the ERO and Regional Entities. California Cogeneration notes that the NERC registry criteria were submitted for information purposes only. Further, it contends that these criteria are being applied inconsistently among the Regional Entities, noting in particular that Western Electricity Coordinating Council (WECC) has developed supplemental criteria that may result in the registration of entities not captured by the ERO criteria.²¹ It also points to discrepancies in ERCOT's registration process.

23. California Cogeneration also argues that Reliability Standards that are not clear in how they are applied or are applied inconsistently are not just and reasonable. It contends that the examples of regional variation in the registration process demonstrate a lack of required clarity and consistency.

24. NRECA asks the Commission to clarify that, in expanding the applicability of certain Reliability Standards,²² it has not departed from the compliance registry concept or sought to dictate actions by the ERO. Alternatively, the Commission should grant rehearing. According to NRECA, it

appears possible, even likely, that the Commission was not specifying that additional entities register, but was merely specifying that the ERO should consider whether entities otherwise required to register (because they meet or exceed specified thresholds, or because they had been to shown to have a material impact on grid reliability) should also be subject to these particular Reliability Standards.²³ If that is the Commission's intended meaning, NRECA requests that the Commission specify the requested clarification and resolve the matter (subject to subsequent consideration by the ERO). However, if the Commission intends to impose a broader obligation, *i.e.*, to encompass additional entities in the Reliability Standards, then NRECA seeks rehearing.

25. Further, NRECA argues that the Commission should not, as it recognized in Order No. 672-A, prescribe either the text or the substance of a Reliability Standard, including which entities are subject to the Reliability Standards, because that responsibility is reserved to the ERO, subject to the Commission's review. NRECA maintains that the Commission lacks the authority to dictate what a Reliability Standard requires or who it encompasses, as the Commission has recognized previously in Order No. 672-A. NRECA notes that Order No. 693 states that the Commission "agrees that a direction for modification should not be so overly prescriptive as to preclude the consideration of viable alternatives in the ERO's Reliability Standards development process * * *. Thus, in some instances, while we provide specific details regarding the Commission's expectations, we intend by doing so to provide useful guidance to assist in the Reliability Standards development process, not to impede it."²⁴

26. Beyond that, NRECA asserts that the Reliability Standards should not apply at all to entities whose scope of activities is too limited to have a material impact on grid reliability. In other words, the specific Reliability Standards should not apply to a distribution provider or a load-serving entity just because it is a distribution provider or a load-serving entity; instead, the Reliability Standards at issue, as well as the Reliability Standards generally, should not apply

unless an entity has a material impact on grid reliability. According to NRECA, this concept is central to NERC's compliance registry, and the Commission has not articulated a sound basis for departing from it, notwithstanding the Commission's lack of authority to do so.

27. With respect to COM-001-1 or some replacement standard addressing black start capability, and COM-002-2, for example, NRECA asserts that some entities are functionally irrelevant for black start activities. It argues that having to coordinate black start operations with a large number of small entities, most, if not all, of which are served through interconnections with larger and bigger entities in the hierarchy of the Functional Model, would hinder, rather than facilitate, black start operations. NRECA maintains that the Commission should defer to the ERO's technical expertise.

28. NRECA raises similar concerns with respect to TOP-003-1. According to NRECA, read literally, the Commission appears to recommend delegating the determination of whether entities that fall below the threshold of NERC's definition of bulk electric system should be subject to the standard to "the opinion of the transmission operator, balancing authority, or reliability coordinator." If so, NRECA asserts that this approach would appear to override both the compliance registry and the ERO, and the Commission would effectively delegate authority that it does not have to entities that could well face incentives to favor their own interests over those of load-serving entities that could be made subject to the Reliability Standards. The Commission cannot delegate authority it does not have in the first place, and the determination should be that of the ERO and the Regional Entity. While NRECA agrees that the ERO and the Regional Entities may and should take the views of the transmission operators, balancing authorities, and reliability coordinators into account, it argues that this is considerably different than simply abdicating the matter to them.

29. NRECA has similar concerns with the treatment of VAR-001-1 with respect to the Commission's "direct[ing] the ERO to address the reactive power requirements of load-serving entities on a comparable basis with purchasing-selling entities." While NRECA agrees that this may be an appropriate matter for the ERO to consider, it argues that the Commission should not be dictating a particular action, nor should the Commission be overriding the compliance registry approach that it elsewhere endorses in its Final Rule.

²⁰ *Applicability of Federal Power Act Section 215 to Qualifying Small Power Production and Cogeneration Facilities*, Order No. 696, FERC Statutes and Regulations ¶ 31,248 (2007).

²¹ California Cogeneration at 5, Referencing WECC Supplemental Registration Criteria and Dispute Resolution Process, available at <http://www.wecc.biz>.

²² NRECA at 20-23. Specifically, NRECA cites the Commission's requirement that (1) COM-001-1, or some replacement Reliability Standard addressing black start capability, and COM-002-2 apply to all distribution providers, (2) TOP-003-0 apply to all load-serving entities, even those below specified thresholds, based on the opinion of the transmission operator, balancing authority, or reliability coordinator, and (3) VAR-001-1 apply to all load-serving entities. See Order No. 693 at P 487, 492, 512, 540, 1624, 1626, 1848, 1858 and 1990.

²³ NRECA at 20, *citing see, e.g.*, Order No. 693 at P 512 ("APPA's concern that 2,000 public power systems would have to be added to the compliance registry is misplaced, since, as we explain in our Applicability discussed above, we are approving NERC's registry process, including the registry criteria").

²⁴ Order No. 693 at P 185-86.

30. Accordingly, NRECA requests the Commission to clarify that it has not overridden the compliance registry with respect to COM-001-1, COM-002-2, and TOP-003-0, nor dictated specific changes to those Reliability Standards. Alternatively, NRECA seeks rehearing. Absent the requested clarification, NRECA asserts that the Commission has sought to prescribe the substance of a Reliability Standard in excess of its statutory authority under section 215, contrary to its own recognition of the limitations on its authority in Order No. 672-A, and contrary to Order No. 693 itself. NRECA maintains that the proposed changes could undermine rather than enhance reliability for the reasons stated, and thus involve matters where the Commission should and is required to defer to the ERO's technical expertise.

31. Xcel notes that, pursuant to NERC's registry criteria, NERC will generally register individual generator units of 20 MVA or greater that are directly connected to the bulk electric system. According to Xcel, under NERC's criteria, generators that are connected to distribution facilities are generally exempt from registration as they are not connected to the Bulk-Power System. Xcel seeks rehearing of the Commission's decision to accept this aspect of the ERO's registration process, contending that generating facilities that are connected at a distribution voltage but deliver energy to the transmission system can affect transmission system reliability and, thus, should be subject to mandatory Reliability Standards. Further, Xcel contends that the exclusion of facilities connected at a distribution level creates inappropriate incentives for entities to interconnect generating facilities at the distribution level rather than the transmission level.

32. TANC requests clarification of the Commission's statement that:

we believe our concerns can be addressed by having the ERO, through its compliance registry process, ensure that each user, owner and operator of the Bulk-Power System is registered for each Requirement in the Reliability Standards that relate to transmission owners to assure there are no gaps in coverage of the type discussed here.^[25]

33. According to TANC, this statement seems to require all entities subject to the Reliability Standards to register for each requirement applicable to transmission owners, which it states is inconsistent with the Commission's goal of preventing overlap and negates the transmission owner classification in

the NERC Functional Model. Therefore, TANC asks the Commission to clarify that only those entities that meet the description of transmission owner provided in NERC's compliance registry and the NERC Functional Model descriptions are required to register as responsible entities for the Requirements applicable to transmission owners.

34. TANC asks that the Commission specify that, where an existing contract between two parties provides that one is the transmission owner, but the other has agreed to perform the TOP functions, the latter entity be listed in the compliance registry as the responsible entity for the TOP Reliability Standards. Further, TANC maintains that the transmission owner should not be the default entity ultimately responsible for compliance with the TOP Reliability Standards. According to TANC, only the entity accepting responsibility to perform the tasks delegated to it in the agreement should be accountable for the responsibilities assigned to it in the agreement. TANC asserts that, where entities have assigned responsibilities by contract, there is no reason to register those responsibilities to another entity.

35. California Cogeneration claims that Order No. 693 failed to adequately address the unique characteristics of QFs. It states that reliance on the registry process, which is based on the 14 functions identified in the NERC functional model, does not adequately distinguish among different types of generators, including size and location, and their impact on reliability. California Cogeneration states that the Commission, as a remedy to these infirmities, should direct NERC to immediately initiate a stakeholder process to revise the Reliability Standards to identify in greater detail the entities that are responsible for compliance and revise requirements to recognize the operational constraints of different generators. It states that this process should be completed before Reliability Standards become enforceable. Further, California Cogeneration states that the stakeholder process should also develop criteria for determining whether an entity has a "material impact" on reliability.

36. Finally, California Cogeneration states that the Commission was not responsive to issues raised by California Cogeneration in its rulemaking comments regarding individual Reliability Standards that apply to generator owners and operators and needed revisions if they are to be applied to cogenerators. It states that some of these Reliability Standards

seem to require information regarding gross generation or load behind the customer's point of interconnection, contrary to an earlier Commission order.²⁶ While the Commission directed the ERO to consider these concerns during its three-year Work Plan to review each Reliability Standard, California Cogeneration contends this approach does not suffice because cogenerators must comply with the Reliability Standards in the interim.

d. Commission Determination

37. The Commission denies California Cogeneration's request for rehearing concerning the definition of users of the Bulk-Power System. The Commission has not improperly delegated this definition to the ERO and Regional Entities. While NERC proposed the registry criteria, the Commission reviewed the criteria and approved them as appropriate under section 215 of the FPA. Further, the Commission has provided a method by which any entity that disagrees with NERC's determination to place it in the compliance registry may submit a challenge in writing to NERC and, if still not satisfied, may lodge an appeal with the Commission.²⁷ Therefore, the Commission has the ultimate ability to determine whether an entity should be on the NERC registry.

38. With regard to the fact that certain Regional Entities have created supplemental criteria to determine which entities should be on the registry, we agree with California Cogeneration that this is not appropriate.²⁸ Order No. 693 accepted NERC's compliance

²⁶ California Cogeneration at 12, citing *California Independent System Operator, Corp.*, 96 FERC ¶ 63,015 (2001) (Initial Decision); Opinion No. 464, 104 FERC ¶ 61,196 (2003) (affirming Initial Decision).

²⁷ See Order No. 693 at P 101; *ERO Certification Order* at P 679.

²⁸ We note that the example cited by California Cogeneration appears to assert that the NERC registry criteria incorporates a bright line test as to which entities should be registered:

The application of the different sets of criteria to a 30 MW generator interconnected at 69 kv illustrates the inconsistency in treatment. Under NERC's criteria, the generator is interconnected at less than 100 kv, and it is not therefore a user of the bulk electric system. The generator would be eliminated from registration by the first step of NERC's process. WECC's Supplemental Criteria, however, state that a generator greater than 20 MW must be registered regardless of the voltage at which it is interconnected.

California Cogeneration at 5. We disagree with this interpretation. NERC's compliance registry would also allow the ERO and Regional Entities to register "[a]ny generator, regardless of size, that is a blackstart unit material to and designated as part of a transmission operator entity's restoration plan, or; * * * [a]ny generator, regardless of size, that is material to the reliability of the bulk power system." NERC Statement of Compliance Registry at 7.

²⁵ *Id.* at P 145.

registration process “to provide as much certainty as possible regarding the applicability and responsibility of specific entities under the approved standards.”²⁹ NERC’s Statement of Compliance Registry does not reference supplemental compliance registries created by Regional Entities. While both the Commission and the ERO have made it clear that an entity that falls below the minimum registry criteria may be included on the compliance registry on a facility-by-facility basis, nonetheless NERC’s compliance registry places the burden on the Regional Entity to reasonably demonstrate that the organization is a user, owner or operator of the Bulk-Power System.³⁰ This language contemplates a case-by-case registration of entities outside the NERC criteria, provided that a reasonable demonstration of the need to register the entity³¹ is made by the Regional Entity.³²

39. In response to NRECA, in directing the ERO to expand the applicability of certain Reliability Standards, the Commission did not intend to expand the applicability beyond those entities that are on the compliance registry. Rather, we indicated where the Commission believed there was a reliability concern in not applying certain Reliability Standards to a category of registered entities. For example, in COM–001–0, where the Commission directed the ERO to add distribution providers that are essential to the implementation of a black start plan to the Applicability section, this would include only those distribution providers that are on the compliance registry.

40. The Commission agrees with NRECA to the extent that we do not wish that a direction for modification be so overly prescriptive as to preclude the consideration of viable alternatives in the ERO’s Reliability Standards development process. However, as stated in Order No. 693, in identifying a specific matter to be addressed in a modification to a Reliability Standard, it is important that the Commission provide sufficient guidance so that the

ERO has an understanding of the Commission’s concerns and an appropriate, but not necessarily exclusive, outcome to address those concerns. Without such direction and guidance, the ERO might not know how to respond adequately to a Commission proposal to modify a Reliability Standard.³³ Thus, in some instances, while we provided specific details regarding the Commission’s expectations, we intended by doing so to provide useful guidance to assist in the Reliability Standards development process, not to impede it.

41. With respect to the specific Reliability Standards cited by NRECA, the Commission first notes that NRECA does not appear to request rehearing on the substance of the directed modifications, but argues that the Commission was too prescriptive procedurally. In many instances, the Commission provided guidance to the ERO and stated that it could develop an alternative to our direction, so long as the alternative is as effective and efficient as the Commission’s proposal. However, with respect to the Reliability Standards cited by NRECA, the Commission has identified specific concerns about the gap in applicability in the Reliability Standard. For example, as to COM–001–1 and COM–002–2, the Commission was concerned about having a reliability gap during normal and emergency operations. Section 215(d)(5) of the FPA states:

The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that *addresses a specific matter* if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

In the instances cited by NRECA, the Commission has identified a deficiency in the applicability of the Reliability Standard. To correct this deficiency, the ERO must add the specific entity to the Applicability section of the Reliability Standard.

42. TOP–003–0 contains Requirements that can have a significant impact on both the reliability of the Bulk-Power System and on competition with regard to available transfer capability (ATC). The Commission’s approval of TOP–003–0 does not override either the compliance registry or the ERO. The planning authority or transmission planner should inform its Regional Entity if it is not receiving cooperation in getting the information it requires. We note that section 39.2(d) of

our regulations requires each user, owner or operator of the Bulk-Power System to provide the Commission, the ERO and the applicable Regional Entity such information as is necessary to implement section 215 of the FPA. If a problem arises in obtaining information necessary to calculate ATC, the Commission may revisit this matter in the future. For example, if entities are unable to obtain the required information under TOP–003–0, the Commission might require the ERO, through the Reliability Standards development process, to develop a provision to ensure that all jurisdictional entities that must provide information pursuant to TOP–003–0 because of a particular reliability need are added to the registry, even if only to meet the requirements of TOP–003–0.

43. The Commission denies Xcel’s request for rehearing. As noted by Xcel, NERC’s registry criteria state that the ERO and Regional Entities will “generally” register generators greater than 20 MVA and will “generally” exempt generators that are connected to distribution facilities. The use of the term “generally” allows the ERO and Regional Entities flexibility to register a generator meeting those descriptions if the ERO or a Regional Entity determines that the facility is needed for Bulk-Power System reliability. Further, Order No. 693 specifically provided for such an outcome.³⁴ Therefore, those generating facilities that Xcel is concerned about, which are connected at a distribution voltage but deliver energy to the transmission system, may be required to comply with Reliability Standards depending on a possible case-by-case determination by the ERO or a Regional Entity. Xcel does not provide any support for its claim that this general exclusion of facilities connected at a distribution level creates inappropriate incentives for entities to interconnect generating facilities at the distribution level rather than the transmission level.

44. In response to TANC’s concern that Order No. 693 appears to require all entities subject to the Reliability Standards to register for each requirement applicable to transmission owners, we disagree. This statement was made only to ensure that there are no gaps or unnecessary redundancies with regard to the entity or entities responsible for compliance. The

²⁹ Order No. 693 at P 33.

³⁰ NERC Statement of Compliance Registry at 10, n.1.

³¹ The entity registered would also have to be a user, owner or operator of NERC’s definition of bulk electric system.

³² The Commission notes that no Regional Entity has filed a supplemental registry with the Commission. The Commission makes its determination to reject regional registry criteria without prejudice to a Regional Entity creating supplemental registry criteria, provided that the Regional Entity affords due process to those entities that would be subject to them, and requests ERO and Commission approval of such criteria.

³³ Order No. 693 at P 185.

³⁴ *Id.* at P 101. “Finally, the Commission agrees that, despite the existence of a voltage or demand threshold for a particular Reliability Standard, the ERO or Regional Entity should be permitted to include an otherwise exempt facility on a facility-by-facility basis if it determines that the facility is needed for Bulk-Power System reliability.”

Commission did not intend to imply that each user, owner and operator of the Bulk-Power System must comply with those Reliability Standards which apply to transmission owners. Rather, the Commission intended for the ERO to ensure that there is clarity in the registering of entities and that the registration process results in no gaps or unnecessary redundancies.

45. Further, the Commission clarifies that it did not intend to change existing contracts, agreements or other understandings as to who is responsible for a particular function under a Reliability Standard.³⁵ The Commission believes that allowing an organization to accept compliance responsibility on behalf of its members should cover TAPS' concerns regarding a situation in which two entities have a contract regarding which will perform functions under the Reliability Standards.³⁶ NERC has filed procedures for allowing such agreements in Docket No. RM06-16-003. The Commission will rule on the particulars of those procedures in that proceeding.

46. The Commission denies California Cogeneration's request for rehearing with respect to exemption of QFs from compliance with mandatory Reliability Standards. As stated in Order No. 696, for reliability purposes, there is no meaningful distinction between QF and non-QF generators that would warrant generic exemption of QFs from mandatory Reliability Standards.³⁷ Therefore, we disagree with California Cogeneration that Order No. 693 failed to adequately address the unique characteristics of QFs.

47. Whether a generation facility should be subject to Reliability Standards should depend on whether electric energy from the generation facility is needed to maintain the reliability of the Bulk-Power System. The registration criteria adopted by NERC and approved by the Commission, as well as the compliance registry process adopted by NERC and approved by the Commission, are designed to ensure that only those facilities needed to maintain the reliability of the Bulk-Power System are subject to the Reliability Standards. The ultimate decision with respect to individual generation units or plants is, and must be, made on a case-by-case basis. Thus, whether a particular QF or type of QF should be exempt from Reliability Standards is an issue that is more appropriately raised in the context of NERC's establishment of registry

criteria for owners and operators of generators, and in the context of NERC's compliance registry process. The reliability of the Bulk-Power System will be better protected by addressing this issue in the NERC compliance registry process, which will ensure that no generator that is needed to maintain the reliability of the Bulk-Power System will be exempt from Reliability Standards, while excusing those generators that are not needed to maintain reliability. Therefore, the Commission rejects California Cogeneration's request that it direct NERC to immediately initiate a stakeholder process to revise the Reliability Standards to identify in greater detail the entities that are responsible for compliance and revise requirements to recognize the operational constraints of QF generators.

3. Use of the NERC Functional Model

48. Order No. 693 explained that NERC has developed a "Functional Model" that defines the set of functions that must be performed to ensure the reliability of the Bulk-Power System. The Functional Model identifies 14 functions and the name of a corresponding entity responsible for fulfilling each function. While the Commission had proposed to require that NERC file future revisions to the Functional Model, Order No. 693 determined that such filing was not necessary.³⁸ The Commission made this determination based on the characterization offered by numerous commenters that the Functional Model is an evolving guidance document that is not intended to convey firm rights and responsibilities. Further, the Commission agreed with commenters that the applicability section of a particular Reliability Standard should be the ultimate determinant of applicability of each Reliability Standard. While some commenters asked that all revisions to the Functional Model be developed through NERC's ANSI-accredited process, the Commission left to the discretion of the ERO the appropriate means of allowing stakeholder input when revising the Functional Model.

e. Requests for Rehearing

49. TANC requests rehearing of the Commission's determination that future modifications of the Functional Model do not need to be submitted to the Commission for approval. TANC contends that the Functional Model is more than just a guidance document and, rather, is fundamental to

determining the applicability of each Reliability Standard. It asserts that the ERO's compliance registry process that is used to identify users, owners and operators of the Bulk-Power System that must comply with Reliability Standards relies on the Functional Model. Thus, according to TANC, a change in the Functional Model affects the applicability and enforcement of each Reliability Standard.

50. Further, TANC contends that the Reliability Standards are not "complete," a quality objective identified by NERC in the development of Reliability Standards, because the Reliability Standards are dependent on an external document. TANC is concerned that revising the Functional Model could result in additional entities having to comply with Reliability Standards without affording these entities adequate notice of what is expected of them. It notes that terms used in the Functional Model are also defined in the NERC glossary, which was approved by the Commission. Thus, TANC requests that the Commission require the ERO to submit revisions to the Functional Model for Commission approval, either as revisions to the Functional Model or revised terms in the NERC glossary, after development through the ERO's full Reliability Standards development process.

51. Midwest ISO contends that the Commission erred in failing to require NERC to define the distinct roles of the "planning coordinator" and "planning authority." According to Midwest ISO, while NERC used the term planning authority when it developed the "Version 0" Reliability Standards, it was recognized that there was "[no] common understanding of who or what the Planning Authority was."³⁹ Further, Midwest ISO explains that many Reliability Standards describe roles for both the planning authority and transmission planner. Midwest ISO states that, while the latest revision to the Functional Model substitutes the term "planning coordinator" for "planning authority," this has not resolved the problem because the responsibilities of the planning coordinator "are both more limited and wide-area in nature" and may not be simply substituted for those of planning authority. Midwest ISO notes that certain Regional Entities are registering entities based on the planning authority function as previously defined, and Midwest ISO asks rhetorically whether the ERO can hold a company accountable to a set of Reliability

³⁵ See *id.* at P 107.

³⁶ See *id.* at P 107-09.

³⁷ Order No. 696 at P 28.

³⁸ Order No. 693 at P 127-29.

³⁹ Midwest ISO at 4.

Standards applicable to an entity that it no longer recognizes as valid.

52. Midwest ISO maintains that the Commission did not adequately address Midwest ISO's concerns when it stated in Order No. 693 that the ERO can address such concerns as it updates and revises the Functional Model. According to Midwest ISO, the Reliability Standards state that regions should work closely with the planning coordinators on a common understanding of roles and responsibilities, but such a process will be lengthy and perhaps futile without Commission guidance. Further, Midwest ISO states that, while NERC will address this issue in the long term, the Commission's failure to provide interim clarification or direct NERC to specify the role of the planning coordinator is an error.

f. Commission Determination

53. The Commission denies TANC's request for rehearing. The Commission disagrees with TANC that the Commission-approved Reliability Standards are incomplete. As stated in Order No. 693, the applicability section of a particular Reliability Standard should be the ultimate determinant of applicability of each Reliability Standard.⁴⁰ Further, the Commission notes that we required the ERO to update the Glossary of Terms Used in Reliability Standards through the Reliability Standards development process whenever a new or revised Reliability Standard includes a new defined term.⁴¹

54. The Commission disagrees with TANC that the Functional Model is used to identify users, owners and operators of the Bulk-Power System that must comply with Reliability Standards. The compliance registry criteria are used to determine which entities must be listed on the compliance registry, and therefore must comply with Reliability Standards. Changes in the Functional Model cannot require additional entities to comply with Reliability Standards. Consistent with our explanation in Order No. 693, if an entity is registered as a result of a change that emanated from a revision of the Functional Model, the entity would have an opportunity to seek review by the ERO and the Commission. Accordingly, we deny the request for rehearing and will not require NERC to file revisions to the Functional Model.

55. Further, we reject Midwest ISO's contention that the Commission erred in failing to provide guidance in directing

NERC to define the distinct roles of the planning authority and planning coordinator. First, as recognized by Midwest ISO, NERC will address this issue as part of its long range plan. This is consistent with the Commission's statement in Order No. 693 that "given that the Functional Model is an evolving guidance document, the ERO can address such concerns as it updates and revises the Functional Model."⁴² Midwest ISO has provided insufficient support for its contention that addressing this matter may be lengthy and futile without Commission intervention. Moreover, consistent with Order No. 693, any ambiguity regarding roles and the responsibility of a particular entity for compliance with a particular Reliability Standard is a matter that should be addressed in the registration of a particular entity.

56. Finally, we disagree with Midwest ISO's suggestion that it is inappropriate to register entities as planning authorities given that the applicability provisions of the Commission-approved Reliability Standards refer to the planning authority and not the planning coordinator. Consistent with our discussion above, revisions to the Functional Model do not convey rights and responsibilities but, rather, the modification to the applicability provision of a Reliability Standard or NERC glossary ultimately determines an entity's obligations.

B. Mandatory Reliability Standards

1. Prioritizing Modifications to Reliability Standards

57. In Order No. 693, the Commission directed the ERO to submit a revised Work Plan to: (1) Reflect modification directives contained in Order No. 693; (2) include the timeline for completion of ATC-related Reliability Standards as ordered in Order No. 890; and (3) account for the views of its stakeholders, including those raised in this proceeding. The Commission required that the ERO set specific delivery dates, explaining that "[a] Work Plan with specific target dates will provide a valuable tool and incentive to timely address the modifications directed in this Final Rule."⁴³ Further, Order No. 693 stated that:

the ERO should make every effort to meet such delivery dates. However, we understand that there may be certain cases in which the ERO is not able to meet [the] Commission's deadline. In those instances, the ERO must inform the Commission of its inability to meet the specified delivery date and explain

why it will not meet the deadline and when it expects to complete its work.^[44]

g. Requests for Rehearing

58. NRECA asks for clarification, or alternatively rehearing, that Order No. 693 does not allow the imposition and enforcement of deadlines that preclude the ERO from satisfying the due process requirements set forth in section 215 of the FPA or applying its own expertise. NRECA states that a deadline "may be reasonable or unreasonable, and its reasonableness needs to be determined within context" taking into account the complexity of the matter and other considerations.⁴⁵ NRECA contends that the imposition and enforcement of an unreasonable deadline conflicts with section 215 as well as Order No. 672. Thus, NRECA seeks clarification that the Commission's assertion of authority to establish deadlines for ERO action represents no more than the authority to "exhort" the ERO to move expeditiously, consistent with its statutory due process obligations. "However, if the Commission is purporting in the Final Rule to reserve the power to specify an unreasonable deadline, that undermines due process and ignores the ERO's technical expertise in contravention of the requirements of section 215, then NRECA seeks rehearing of the Commission's determination."⁴⁶

h. Commission Determination

59. The Commission agrees that it should not impose deadlines that preclude the ERO from satisfying the due process requirements set forth in section 215 of the FPA, and has provided in several previous orders that, in complying with a deadline, NERC must also meet the requirements of the FPA and the Commission's regulations. In our *January 2007 Compliance Order*, we made it clear that a revision to NERC's expedited Reliability Standards development process must "make it clear that the Commission can order expedited standard development in a specific time frame and that NERC must adhere to that time frame *and still allow for due process*."⁴⁷ On rehearing, we further clarified that "any ERO process that provides 'reasonable notice and opportunity for comment, due process, openness, and balance of interests' as required by section 215(c)(2)(D) of the FPA, and that also can meet a Commission-imposed deadline pursuant

⁴⁴ *Id.*

⁴⁵ NRECA at 17.

⁴⁶ *Id.* at 18.

⁴⁷ *North American Electric Reliability Corp.*, 118 FERC ¶ 61,030 at P 27 (2007) (*January 2007 Compliance Order*) (emphasis added).

⁴⁰ Order No. 693 at P 127.

⁴¹ *Id.* at P 1893.

⁴² *Id.* at P 129.

⁴³ *Id.* at P 207.

to section 39.5(g) of the Commission's regulations, will comply with this directive." ⁴⁸

60. Finally, in Order No. 693, the Commission stated that the ERO should make every effort to meet Commission-ordered delivery dates. However, we acknowledged that "there may be certain cases in which the ERO is not able to meet [the] Commission's deadline. In those instances, the ERO must inform the Commission of its inability to meet the specified delivery date and explain why it will not meet the deadline and when it expects to complete its work." ⁴⁹

2. Trial Period

61. In Order No. 693, while the Commission did not institute a formal "trial period," it directed the ERO and Regional Entities to "focus their resources" on the "most serious violations" during an initial period through December 31, 2007.⁵⁰ Order No. 693 stated that this use of enforcement discretion should apply to all users, owners and operators of the Bulk-Power System. The Commission explained that the goal should be to ensure that, at the outset, the ERO and Regional Entities can assess a monetary penalty in a situation where, for example, an entity's non-compliance places Bulk-Power System reliability at risk. This approach would allow the ERO, Regional Entities and other entities time to ensure that the compliance monitoring and enforcement processes work as intended and that all entities have time to implement new processes.

i. Requests for Rehearing

62. Xcel states that, while it supports the Commission's decision that the ERO and Regional Entities should have the enforcement discretion to calculate but not collect penalties during an initial period, it asks that the Commission provide greater clarity and guidance regarding the circumstances when penalties should be collected and when they should not. It asks that the Commission be as specific as possible in defining the circumstances under which the ERO and Regional Entities should exercise their enforcement discretion. It suggests that the Commission clarify that to assess a penalty a violation must be, at a minimum, (i) an intentional violation of a well-understood Reliability Standard and (ii) a violation that causes substantial harm.

j. Commission Determination

63. The Commission denies Xcel's request for clarification. First, the Commission believes that Xcel's requested clarification would not always capture the most serious violations. Moreover, the Commission in Order No. 693 intentionally declined to develop a threshold that would place limits on the ERO's and Regional Entities' exercise of enforcement discretion; and we decline to do so here as well. Although we clearly allowed for "the ERO or a Regional Entity to take an enforcement action against an entity whose violation causes a significant disturbance," we also provided that the ERO and Regional Entities can assess a monetary penalty in a situation where, for example, an entity's non-compliance places Bulk-Power System reliability at risk.⁵¹ We did not require that there be actual harm to the Bulk-Power System for the ERO to assess a penalty during the transition period.

64. The Commission believes that it is better to allow the ERO and Regional Entities to use their expertise in determining which violations constitute the most serious. Likewise, the ERO and Regional Entities are in the best position to know how to best use their finite enforcement resources. This will require case-by-case analysis of the circumstances surrounding a situation. Therefore, we will not stipulate a single set of circumstances under which the ERO and Regional Entities should use their enforcement discretion for the initial transition period.

C. Common Issues Pertaining to Reliability Standards

1. Blackout Report Recommendation on Liability Limitations

65. In Order No. 693, consistent with Order No. 890, the Commission did not adopt new liability protections.⁵² The Commission stated that it did not believe any further action is needed to implement Blackout Report Recommendation No. 8 because the Task Force found that no further action is needed.⁵³ Further, the Blackout Report indicated that some states already have appropriate protection

against liability suits.⁵⁴ Finally, the Commission stated that, in Order No. 888, as affirmed by Order No. 890, the Commission declined to adopt a uniform federal liability standard and decided that, while it was appropriate to protect the transmission provider through force majeure and indemnification provisions from damages or liability when service is provided by the transmission provider without negligence, it would leave the determination of liability in other instances to other proceedings.⁵⁵

k. Requests for Rehearing

66. Avista seeks rehearing on the Commission's determination not to provide further liability limitations and questions whether it is fair, just and reasonable to deny transmission operators that are not regional transmission organizations (RTOs) or independent system operators (ISOs) the protections afforded to RTOs and ISOs and at the same time impose mandatory Reliability Standards with significant fines and penalties as an enforcement mechanism.⁵⁶ Avista argues that the Commission has limited the scope of liability in the *pro forma* open access transmission tariff (OATT) to instances of gross negligence or intentional misconduct and also limited damages by excluding consequential, indirect or punitive damages for RTOs and ISOs. According to Avista, not providing these same limitations to other transmission operators is, on its face, arbitrary, and may have unintended adverse consequences to the ratepayers of any transmission operator whose operating employee's decisions initiate a large cascading outage, if available insurance is not adequate to cover the risk. Avista argues that enforcement of mandatory Reliability Standards should not depend both on risk of massive liability exposure and upon multi-million dollar civil fines and penalties.

l. Commission Determination

67. The Commission denies rehearing. The Commission has already ruled that the liability standard the Commission has approved for RTOs and ISOs is not

⁵⁴ *Id.* ("In the United States, some state regulators have informally expressed the view that there is appropriate protection against liability suits for parties who shed load according to approved guidelines").

⁵⁵ Order No. 888-B, 81 FERC ¶ 61,248 at 62,081 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁵⁶ Avista and PSE also requested rehearing of this issue in Docket Nos. RM05-25-001 and RM05-17-001.

⁴⁸ *North American Electric Reliability Corp.*, 119 FERC ¶ 61,046 at P 13 (2007).

⁴⁹ Order No. 693 at P 207.

⁵⁰ *Id.* at P 221-22.

⁵¹ *Id.*

⁵² *Id.* at P 237; *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) at P 1671-77.

⁵³ U.S.-Canada Power System Outage Task Force, Final Report on Implementation of Task Force Recommendations at 22 (Oct. 3, 2006), available at <http://www.oe.energy.gov/news/blackout.htm> ("Action Required to Fully Implement Recommendation 8: No further action under this recommendation is needed.").

appropriate for other transmission providers.⁵⁷ Further, we also found without merit assertions that increased liability protections in the *pro forma* OATT should be viewed as a necessary element of the implementation of the Commission's reliability authority.⁵⁸ In the *Reliability Policy Statement*,⁵⁹ the Commission stated that it would consider, on a case-by-case basis, proposals by public utilities to amend their OATTs to include limitations on liability. The Commission further noted that, while this issue has not been resolved on a standardized basis, the Commission has entertained RTO transmission providers' specific proposals to amend their OATTs to include provisions addressing limitations on liability.⁶⁰

68. In subsequent orders, the Commission found that the gross negligence and intentional wrongdoing indemnification and liability standard is appropriate for RTOs and ISOs. However, the Commission has declined to extend this protection to all transmission providers. In *Southwest Power Pool, Inc.*, the Commission explicitly stated "that our acceptance here of the gross negligence and intentional wrongdoing indemnity standard is limited to SPP, in its role as an RTO, and its TOs; we do not intend to extend such protection to all transmission providers."⁶¹ In *Southern Company Services, Inc.*, the Commission stated that:

Having considered Southern Companies' proposed limitation on liability and indemnification provisions pursuant to our Reliability Policy Statement cited above, we find that Southern Companies have not shown that they are similarly situated to the RTOs/ISOs they cite in support. While Southern Companies claim that they 'may not be protected by any State-regulated limitations on liability,' Southern Companies offer no evidence to support this concern. The Commission has provided such liability protection to RTOs/ISOs because they were created by and solely regulated by the Commission, and otherwise would be without limitations on liability. Southern Companies have proffered no evidence of any change in circumstances vis-à-vis their liability exposure post-Order No. 888.⁶²

69. Further, we disagree with Avista that there is a risk of massive liability

exposure. It offers no new arguments that demonstrate that non-RTO and non-ISO transmission providers are unable to rely on state laws, *i.e.*, the state laws provide inadequate protection. Avista has not persuaded us to change our policy regarding liability protections applicable to non-RTO and non-ISO transmission providers. Therefore, we deny rehearing.

2. Fill-in-the-Blank Standards

70. In Order No. 693, the Commission required supplemental information for any Reliability Standard that currently requires a regional reliability organization to fill in missing criteria or procedures.⁶³ The Commission explained that, where important information has not yet been provided, it would not approve or remand such Reliability Standards until the ERO submits further information. Until such information is provided, compliance with the so-called fill-in-the-blank standards should continue on a voluntary basis, and the Commission considers compliance with such Reliability Standards to be a matter of good utility practice. Further, the Commission stated:

In our *Reliability Policy Statement*, we explained that compliance with NERC Reliability Standards (or more stringent regional standards) is expected as a matter of good utility practice as that term is used in the *pro forma* OATT. The Commission continues to expect compliance with such Reliability Standards as a matter of good utility practice. That being said, the Commission agrees that retaining a dual mechanism to enforce Reliability Standards both as good utility practice and under section 215 of the FPA is inappropriate; the OATT only applies to entities subject to our jurisdiction as public utilities under the FPA, while section 215 defines more broadly our jurisdiction with respect to mandatory Reliability Standards. We therefore do not intend to enforce, as an OATT violation, compliance with any Reliability Standard that has not been approved by the Commission under section 215.⁶⁴

m. Requests for Rehearing

71. While APPA believes that Order No. 693 correctly deferred consideration of the "fill-in-the-blank" standards, it requests rehearing of the Commission's approval of other Reliability Standards that incorporate the "fill-in-the-blank" standards. APPA argues that the Commission cannot, lawfully, approve Reliability Standards for immediate enforcement that incorporate those same unreviewed and unapproved regional Reliability Standards.

72. According to APPA, approving a Reliability Standard that references an unapproved fill-in-the-blank standard requires compliance with regional Reliability Standards that the Commission has not reviewed or approved. APPA asserts that the Commission cannot determine if a Reliability Standard that references a pending Reliability Standard is "just, reasonable, not unduly discriminatory or preferential, and in the public interest" for the same reasons that the Commission articulated in determining that it lacked important information needed to evaluate "fill-in-the-blank" standards.

73. APPA also argues that the approved Reliability Standards that reference a fill-in-the-blank standard do not promote uniformity and consistency as required by Order No. 672. APPA asserts that the Commission cannot determine if such Reliability Standards are justified, because the regional standard is more stringent than continent-wide Reliability Standards or is necessitated by a physical difference in the Bulk-Power System, without reviewing the regional standard in question to determine whether one of those two findings is appropriate. APPA also maintains that the Commission cannot conclude that the processes by which the regional practices involved in the referenced fill-in-the-blank standards were developed meet statutory requirements. APPA raises concerns about due process and fundamental fairness, asserting that small entities have often not been included in past regional processes, and may not have received prior notice of the standards with which they must now comply.

74. APPA also argues the Commission is incorrect that "many of these Reliability Standards either refer to the process of collecting data or reference Requirements that entities are generally aware of because they have already been following these Reliability Standards on a voluntary basis." According to APPA, Reliability Standards may sweep in many small entities that have not been members of regional reliability organizations and have not necessarily complied with standards on a voluntary basis.

75. APPA argues that the Commission's approval of Reliability Standards that make enforceable unreviewed "fill-in-the-blank" standards could trigger registration of a large number of small entities. According to APPA, unless it can be assumed that no change in the scope or content of the fill-in-the-blank standards will result from the ongoing process

⁵⁷ Order No. 890 at P 1675. We note that this discussion concerns civil liability only, not liability for penalties imposed by the ERO, Regional Entities or the Commission.

⁵⁸ *Id.* at P 1677.

⁵⁹ *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052 (2004) (*Reliability Policy Statement*).

⁶⁰ *Reliability Policy Statement* at P 40 (citations omitted).

⁶¹ 112 FERC ¶ 61,100 at P 39 (2005).

⁶² 113 FERC ¶ 61,239 at P 7 (2005).

⁶³ Order No. 693 at P 297–302.

⁶⁴ *Id.* at P 302 (footnote omitted).

NERC and the Regional Entities are undertaking to fill in the blanks, mandatory enforcement of the “before” version is likely to sweep in different entities and subject them to different standards than will the “after” version. Further, APPA asserts that, by posing the potential to sweep a large number of small entities onto the compliance registry before the applicable regional standard is approved, the Commission’s decision calls into question its adherence in Order No. 693 to the Regulatory Flexibility Act requirements because, absent review of the undisclosed incorporated “fill-in-the-blank” standards, the Commission cannot estimate the number of small systems these Reliability Standards will affect. Further, APPA maintains that the Commission cannot make the requisite determination that a small entity’s compliance with an unapproved “fill-in-the-blank” standard has a material impact on reliability, and the Commission cannot find such compliance necessary for Bulk-Power System reliability.

76. Finally, APPA maintains that, even though the Commission stated that the fact that a Reliability Standard references a fill-in-the-blank standard “may be considered in an enforcement action,”⁶⁵ the Commission should not have approved such Reliability Standards. According to APPA, the ability of an entity to raise this issue in an enforcement action occurs too late to avoid the harm to many small entities in being required to register and comply with what it calls unapproved regional underfrequency load shedding (UFLS) programs that have not been developed through Commission-approved processes meeting the statutory standard, and which may well differ from the final standard that the Commission approves to fill in the blanks. Nor, according to APPA, does the ability to raise issues relating to fill-in-the-blank standards in an enforcement action avoid the potential for significant distraction of NERC and Regional Entities from more crucial reliability-related duties to instead deal with compliance by numerous small entities that have no material impact on the grid with regional standards that are in a state of flux. APPA also asserts that this statement cannot overcome the fundamental legal deficiency with approving a Reliability Standard that references a fill-in-the-blank standard—that the Commission lacks authority to approve regional reliability standards that require compliance with regional

UFLS standards it has neither reviewed nor approved.

77. Xcel contends that the statement that the Commission does not intend to enforce, as an OATT violation, compliance with any Reliability Standard that has not been approved by the Commission under section 215 is confusing. By stating that the Commission does not intend to enforce as an OATT violation compliance with a Reliability Standard that has not been approved by the Commission under section 215, Xcel is concerned that the Commission may intend to enforce as an OATT violation non-compliance with a Reliability Standard that has been approved by the Commission under section 215. Xcel seeks clarification or rehearing on this issue.

n. Commission Determination

78. The Commission denies APPA’s request for rehearing and provides further clarification. The Commission continues to believe that the fact that a Reliability Standard simply references a Reliability Standard that was not approved or remanded in Order No. 693 does not alone justify not approving the former Reliability Standard. Rather, such a reference may be considered in an enforcement action, if relevant, but is not a reason to delay approval of the Reliability Standard. Further, we clarify that, in an enforcement proceeding, such a reference can be considered regarding whether a particular Requirement or part of a Requirement in an otherwise approved Reliability Standard is enforceable.⁶⁶ The Commission did not err in approving Reliability Standards that reference a pending Reliability Standard because they contain the appropriate level of specificity necessary to provide notice to users, owners and operators of the Bulk-Power System as to what is required. We will discuss the issue raised by APPA in regard to the Protection and Control Systems (PRC) group of Reliability Standards in our discussion of individual Reliability Standards below.

79. In approving a Reliability Standard that references a fill-in-the-blank standard, the Commission is not requiring compliance with the unapproved Reliability Standard. Therefore, it is immaterial how the regional differences discussed in the unapproved Reliability Standard were created. Rather, as addressed more fully in our discussion on the PRC group of Reliability Standards below, the Commission, ERO and Regional Entities

will only enforce the data requirements and any requirement that can be independently enforced in those Reliability Standards, and will not enforce compliance with regional criteria created by a regional reliability organization pursuant to an unapproved fill-in-the-blank standard.⁶⁷

80. APPA’s contention that approving a Reliability Standard that references a fill-in-the-blank standard could trigger additional small entity registration is speculative. At this time, registration is governed by NERC’s definition of bulk electric system and its compliance registry criteria. Nothing in a Reliability Standard can cause an entity to be registered if it would otherwise not be required to do so.

81. In response to Xcel, the Commission clarifies that it does not intend to enforce as a violation of good utility practice non-compliance with a Reliability Standard that has been approved by the Commission under section 215. However, where the OATT contains a specific requirement that may be related to a Reliability Standard, for example, an independent obligation under the OATT to calculate transmission capacity, the Commission does not limit its ability to take enforcement action separately against a violation of a Reliability Standard and a violation of a specific OATT provision. Such determinations will be based on the facts of a specific circumstance.

D. Discussion of Individual Reliability Standards

1. EOP-001-0

82. Reliability Standard EOP-001-0 requires each transmission operator and balancing authority to develop, maintain and implement a set of plans to mitigate operating emergencies. These plans must be coordinated with other transmission operators and balancing authorities and the reliability coordinator.

83. Order No. 693 approved Reliability Standard EOP-001-0. In addition, the Commission directed the ERO to develop a modification to EOP-001-0 that, among other things, includes the reliability coordinator as an applicable entity. In pertinent part, the Commission found the reliability coordinator to be a necessary entity under EOP-001-0 and directed the ERO to modify the Reliability Standard to include the reliability coordinator as an

⁶⁷ This is similar to our action in Order No. 693, where we approved certain Reliability Standards, but acknowledged that a particular requirement may be unenforceable. See Order No. 693 at P 147, 157–58.

⁶⁵ *Id.* at P 300.

⁶⁶ See discussion of PRC-007, PRC-008, and PRC-009, *infra*.

applicable entity.⁶⁸ Recognizing the importance NERC attributes to the reliability coordinator in connection with matters covered by EOP-001-0, the Commission was persuaded that specific responsibilities for the reliability coordinator in the development and coordination of emergency plans must be included as part of this Reliability Standard. The Commission reasoned that, while balancing authorities and transmission operators are capable of developing, maintaining and implementing plans to mitigate operating emergencies for their specific areas of responsibility, unlike reliability coordinators, they do not have a wide-area view.

o. Requests for Rehearing

84. Midwest ISO disagrees with the Commission's mandate to the ERO to make EOP-001-0 applicable to the reliability coordinator. It notes that the Commission correctly did not provide guidance on the reliability coordinators' role in the emergency planning process and appears to have left this issue up to the industry experts. Midwest ISO argues that the industry had already addressed any potential role of the reliability coordinator in emergency planning by declining to make the reliability coordinator an applicable entity in EOP-001-0.

p. Commission Determination

85. The Commission affirms its determination to mandate that the ERO make EOP-001-0 applicable to the reliability coordinator function because it is the highest level of authority responsible for reliable operation of the Bulk-Power System and has a wide-area view. Midwest ISO has not substantively disputed that Requirements for mitigation of emergencies will benefit from including a role for the entity with a wide-area view. The ERO may consider other equivalent alternatives and consider industry concerns in its modification of EOP-001-0.

2. EOP-002-2

86. EOP-002-2 applies to balancing authorities and reliability coordinators and is intended to ensure that they are prepared for capacity and energy emergencies. This Reliability Standard requires that balancing authorities have the authority to bring all necessary generation on line, communicate about energy and capacity emergencies with the reliability coordinator and coordinate with other balancing authorities. EOP-002-2 includes an

attachment that describes an emergency procedure to be initiated by a reliability coordinator that declares one of four energy emergency alert levels to provide assistance to the load-serving entity.

87. Order No. 693 approved Reliability Standard EOP-002-2. In addition, the Commission directed the ERO to develop a modification to EOP-002-2 that, among other things, would modify the Reliability Standard to ensure that the Transmission Loading Relief (TLR) procedure is not used to mitigate actual Interconnection Reliability Operating Limit (IROL) violations. The Commission found that the TLR procedure may be appropriate and effective for use in managing potential IROL violations, but that the TLR procedure is an inappropriate and ineffective tool for mitigating actual IROL violations or for use in emergency situations as called for in EOP-002-2. Accordingly, the Commission directed the ERO to modify the Reliability Standard to ensure that the TLR procedure is not used to mitigate actual IROL violations.⁶⁹

q. Requests for Rehearing

88. Midwest ISO requests that the Commission clarify which of the following conditions constitutes a "potential IROL" violation for purposes of EOP-002-2: (1) The operating limit has been exceeded, but 30 minutes has not elapsed and the operator may yet return the system to normal; or (2) the operating limit has not been exceeded, but appears that it may be if action is not taken quickly. Midwest ISO believes that the second circumstance is the one the Commission identified as being appropriate for TLR mitigation, but reasons that the terminology can be interpreted differently by different operators applying historically different operating practices.

r. Commission Determination

89. The Commission clarifies that a potential IROL violation refers to the second circumstance provided by Midwest ISO, in which "the operating limit has not been exceeded, but appears that it may be if action is not taken quickly." In such a situation, use of TLR procedures may be appropriate depending on the circumstances. Moreover, actions undertaken under the TLR procedure are not fast and predictable enough for use in situations in which an operating security limit is being violated.

3. EOP-008-0

90. EOP-008-0 addresses plans for loss of control center functionality. It requires each reliability coordinator, transmission operator and balancing authority to have a plan to continue reliable operations and to maintain situational awareness in the event its control center is no longer operable.

91. Order No. 693 approved Reliability Standard EOP-008-0. In addition, the Commission directed the ERO to develop a modification to EOP-008-0 that, among other things, includes a Requirement that provides for backup capabilities that, at a minimum, requires transmission operators and balancing authorities that have operational control over significant portions of generation and load to have minimum backup capabilities, but may do so through contracting for these services instead of through dedicated backup control centers.⁷⁰

s. Requests for Rehearing

92. Midwest ISO supports the outcome of Order No. 693 with regard to Commission mandates in EOP-008-0. However, it notes that ambiguities and potential misunderstandings could result from imprecise adjectives in the Reliability Standards. Specifically, for purposes of EOP-008-0, Midwest ISO advocates that the Commission should define an amount of load or generation that constitutes a "significant" portion of generation and load that would require entities to have minimum backup capabilities through backup control centers. Alternatively, Midwest ISO proposes that NERC could be directed to create a "safe-harbor" limit below which a system would not be considered significant unless found to be so by the Regional Entity or the ERO.

t. Commission Determination

93. The Commission reiterates its direction in Order No. 693 that the goal of this Reliability Standard is to provide the continuation of Reliable Operation and the maintenance of situational awareness in the event that the primary control center is no longer operational.⁷¹ To that end, every registered reliability coordinator, balancing authority, transmission operator, and centrally dispatched generator operator should have a plan and means of achieving the outcome of the plan upon the loss of their respective control centers. The Commission has identified three requirements as a minimum for the plans—*independence from the primary*

⁶⁸ *Id.* at P 566.

⁶⁹ Order No. 693 at P 583.

⁷⁰ *Id.* at P 672.

⁷¹ See Order No. 693 at P 659.

control center, capability to operate for a prolonged period corresponding to the time it would take to replace the primary control center, and the provision of a minimum set of tools and facilities to replicate the critical reliability functions of the primary control center. The Reliability Standard should provide specific Requirements, based on the size or impact to Reliable Operation, to achieve the Commission's requirements.

94. The Commission declines to define a "safe harbor" limit requested by Midwest ISO. We directed the ERO, through the Reliability Standards development process, to identify what Requirements are necessary on which size entities to achieve the Commission's directives and the goal of this Reliability Standard. Since there are many equally efficient ways of achieving the Commission's direction, we will not identify any specific method or safe harbor.

4. FAC-003-1

95. FAC-003-1 addresses vegetation management on transmission rights-of-way. As proposed, FAC-003-1 would apply to transmission lines operated at 200 kV or higher voltage (and lower-voltage transmission lines which have been deemed critical to reliability by a regional reliability organization). It would require each transmission owner to have a documented vegetation management program in place, including records of its implementation. Each program must be developed for the geographical area and specific design configurations of the transmission owner's system.

96. Order No. 693 approved Reliability Standard FAC-003-1. In addition, while we did not direct the ERO to submit a modification to the general limitation on applicability to facilities above 200 kV, we required the ERO to address Commission concerns regarding the applicability threshold through the ERO's Reliability Standards development process.⁷² The Commission was concerned that the bright-line applicability threshold of 200 kV in this Reliability Standard would exclude a significant number of transmission lines that could impact Bulk-Power System reliability. We stated that, in proposing to require the ERO to modify the Reliability Standard to apply to Bulk-Power System transmission lines that have an impact on reliability as determined by the ERO, we did not intend to make this Reliability Standard applicable to fewer facilities than it is currently, but to

extend the applicability to lower-voltage facilities that have an impact on reliability.

u. Requests for Rehearing

97. NRECA asks that the Commission clarify that Order No. 693 did not mandate that FAC-003-1 apply to lines below 200 kV. NRECA believes that a fair reading of Order No. 693 is that the Commission only directed the ERO to give additional consideration to having FAC-003-1 apply to lines below 200 kV and did not purport to require such a modification.⁷³ However, NRECA claims that other portions of Order No. 693 appear to go further, such as where the Commission states that it is requiring the Reliability Standard "to include a greater number of entities" * * *.⁷⁴ In view of the potential ambiguity, NRECA requests that the Commission clarify that it is not dictating a particular outcome to the ERO's deliberations, as such a directive would be contrary to section 215 of the FPA, Order Nos. 672 and 672-A, and other portions of Order No. 693. Alternatively, NRECA requests rehearing.

v. Commission Determination

98. We will grant NRECA's request for clarification. First, in Order No. 693, we specifically stated that "[w]e will not direct NERC to submit a modification to the general limitation on applicability [in FAC-003-1] as proposed in the NOPR."⁷⁵ Further, as a general matter, we stated that a direction for modification should not preclude the consideration of viable alternatives in the ERO's Reliability Standards development process.⁷⁶

99. In Order No. 693, the Commission stated that it was concerned that the bright-line applicability threshold of 200 kV would exclude a significant number of transmission lines that could impact Bulk-Power System reliability. We noted that, at that time no regional reliability organization had used its discretion to designate lower voltage lines under the proposed Reliability Standard, even though there are lower voltage lines involving IROL.⁷⁷ The

⁷³ NRECA at 23, citing Order No. 693 at P 706 ("We will not direct NERC to submit a modification to the general limitation on applicability as proposed in the NOPR. However, we will require the ERO to address the proposed modification through its Reliability Standards development process").

⁷⁴ NRECA at 23, citing Order No. 693 at P 711.

⁷⁵ Order No. 693 at P 706.

⁷⁶ *Id.* at P 185-86.

⁷⁷ The Commission notes that the Regional Entities have since filed their definitions of bulk electric system and that at least one Regional Entity, WECC, has designated lower voltage facilities that must comply with the Reliability Standards.

Commission was concerned that this approach would not require all transmission lines that could impact Bulk-Power System reliability to be included under this Reliability Standard. While the Commission did not mandate that FAC-003-1 apply to lines below 200 kV, the Commission did require the ERO to address the Commission's concerns through its Reliability Standards development process.

5. IRO-001-1

100. IRO-001-1 requires that a reliability coordinator have reliability plans, coordination agreements and the authority to act and direct reliability entities to maintain reliable system operations under normal, contingency and emergency conditions. Requirement R3 provides that a reliability coordinator "shall have clear decision-making authority to act and direct actions to be taken" by applicable entities to "preserve the integrity and reliability of the bulk electric system and these actions shall be taken without delay but no longer than 30 minutes."

101. Order No. 693 approved Reliability Standard IRO-001-1. In Order No. 693, the Commission declined to adopt a change suggested by Santa Clara that would only require the commencement of corrective control action within a 30-minute limit. We found that the requirement to take action without delay and within the 30-minute limit is important to minimize the amount of time the system operates in an insecure mode and is vulnerable to cascading outages.⁷⁸

w. Requests for Rehearing

102. Santa Clara seeks rehearing of the Commission's determination not to order the ERO to modify Reliability Standard IRO-001-1. Santa Clara is concerned that the 30-minute time period during which entities must take remedial action under this Reliability Standard could be too short with respect to physical actions that must be taken where the facilities which are subject to these actions cannot be readily accessed within the 30-minute time period.⁷⁹

103. First, Santa Clara maintains that the reliability coordinator could direct that load be dropped within Silicon Valley Power's (SVP) service territory.⁸⁰ According to Santa Clara, those

⁷⁸ *Id.* at P 898.

⁷⁹ In its comments to the NOPR, Santa Clara requested that this requirement of IRO-001-1 be revised to read: "Actions shall be commenced without delay, but in any event, shall commence within 30 minutes." Santa Clara Comments, December 28, 2006 at 30.

⁸⁰ SVP is the utility division of Santa Clara.

⁷² *Id.* at P 735.

directives could only be implemented through a physical activity, such as opening breakers within certain substations, and cannot be accomplished at all times using an electronic signal from SVP's control center. Therefore, Santa Clara claims that, while SVP personnel would respond to the reliability coordinator's directive immediately, the required action might not be able to be accomplished within 30 minutes.

104. As another example, Santa Clara states that SVP has a program through which certain SVP retail customers can commit to reduce base load by 10 percent where an emergency exists in its control area. However, Santa Clara maintains that reducing load by shutting down power to specific buildings can take longer than 30 minutes. Santa Clara states that it is not seeking to have the language in IRO-001-1 modified as it requested in comments to the NOPR. Rather, it seeks to have the Commission grant rehearing to direct NERC to modify IRO-001-1 and allow Santa Clara to work with NERC to develop clarifications and refinements to IRO-001-1 to remedy its concerns.

105. Avista seeks clarification of the intent of Order No. 693 as to whether the authority of a reliability coordinator to issue directives to reliability entities arises out of (i) reliability coordinator contracts or (ii) Commission-approved Reliability Standards without reliance on reliability coordinator contracts. According to Avista, if the authority of a reliability coordinator is non-contractual and arises out of Commission-approved Reliability Standards, the Commission must make sure that such authority is accompanied by equitable treatment of reliability entities. For example, Avista states that the Commission should require equitable compensation for re-dispatch of generation required by the reliability coordinator and emphasizes the need for fair and impartial procedures and methodologies are adopted to ensure that such equitable treatment is provided.

106. Avista states the Commission's statement in Order No. 693 that it "clarifies that it did not intend to change existing contracts, impose new organizational structures or otherwise affect existing agreements that set forth the responsibilities of various entities"⁸¹ applies to existing agreements that affect reliability coordinator functions. According to Avista, provisions of IRO-001-1 seem to imply that, as to the source and scope of authority for a reliability coordinator

to issue directives, existing contracts may have been superseded, or rendered moot or unnecessary, by Order No. 693. In particular, Avista contends that Requirement R8 of IRO-001-1 seems to suggest that contracts are unnecessary to authorize reliability coordinators to issue directives.⁸²

107. Avista asserts that, if transmission operators or balancing authorities or other reliability entities are subject to a non-contractual duty imposed by the Commission under Order No. 693 to comply with the directives of a reliability coordinator, the Commission should clearly indicate such a requirement. It notes that, in another proceeding, Western Electricity Coordinating Council (WECC) seems to suggest that it believes that when the reliability coordination Reliability Standards become mandatory, the existing contracts regarding reliability or security coordination no longer will be relevant and will not be necessary to authorize reliability coordinators to issue mandatory directives to reliability entities.⁸³

108. On the other hand, Avista maintains that additional provisions of IRO-001-1 suggest that reliability coordinators must have contracts or other written evidence in place that delineate and evidence their authority over reliability entities. For example, Avista cites measure M2 of IRO-001-1, which states that each reliability coordinator shall have and provide upon request evidence that could include, but is not limited to, job descriptions, signed agreements, an authority letter signed by an officer of the company, or other equivalent evidence that will be used to confirm that the reliability coordinator has the authority to act as described in Requirement 3. According to Avista,

⁸² Requirement R8 states: "R8. Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements. Under these circumstances, the Transmission Operator, Balancing Authority, Generator Operator, Transmission Service Provider, Load-Serving Entity, or Purchasing-Selling Entity shall immediately inform the Reliability Coordinator of the inability to perform the directive so that the Reliability Coordinator may implement alternate remedial actions."

⁸³ Supplemental Comments of the Western Electricity Coordinating Council (WECC) filed March 12, 2007, in Docket No. RR06-3-001 at 13 ("Currently the BAs [balancing authorities] and TOPs [transmission operators] have a contractual obligation to comply with such directives, except in narrow, enumerated circumstances. Once the reliability standards are mandatory, BAs and TOPs must obey such directives or be subject to major penalties or other sanctions.") (footnote omitted).

this provision suggests that the source of authority to issue directives lies in a contractual relationship between the reliability coordinator and each reliability entity covered by the requirements of Requirement R3.⁸⁴ In Avista's view, the language in the Purpose section indicates that the purpose of IRO-001-1 is to establish authority of reliability coordinators over reliability entities through contracts, in addition to establishing internal authority through delegations of authority and plans presumably through Requirement R2.

109. Avista asserts that the security coordinator in the Pacific Northwest, PNSC, does not have contractual relationships with reliability entities other than control area operators. Avista contends that, if the authority of a reliability coordinator to issue directives to reliability entities arises out of reliability coordinator contracts, the reliability coordinator will need to enter into contractual relationships with each of the reliability entities within its area—which would expand the scope of and parties to the current PNSC contracts. Further, Avista states that existing contracts may not contain provisions regarding the authority of reliability coordinators to issue directives to reliability entities that fully track the Reliability Standards.⁸⁵

110. Therefore, Avista requests rehearing and asks that the Commission require that (1) reliability coordinators develop and file contracts or tariffs that govern their reliability coordination authority and activities, and (2) such contracts or tariffs ensure equitable treatment of reliability entities by reliability coordinators and provide adequate procedures and methodologies to help ensure such equitable treatment. Avista also seeks rehearing for the purpose of expanding the time to transition from the current, voluntary contractual arrangements to the arrangements contemplated by Order No. 693.

111. Specifically, Avista asserts that the Commission should require reliability coordinators to file such contracts or tariffs under section 205 of the FPA. In this regard, Avista states that the Commission should, as a first

⁸⁴ Requirement R3 states, "The Reliability Coordinator shall have clear decision-making authority to act and to direct actions to be taken by Transmission Operators, Balancing Authorities, Generation Operators, Transmission Service Providers, Load Serving Entities and Purchasing-Selling Entities within its Reliability Coordinator Area to preserve the integrity and reliability of the Bulk Electric System."

⁸⁵ For example, Avista contends that Requirements R8 and R3 of IRO-001-1, when read together, contain very broad language.

⁸¹ Order No. 693 at P 141.

step, require reliability coordinators to submit for filing their existing contracts, such as the contracts between PNSC and the control area operators. According to Avista, filing of these contracts or tariffs under section 205 should ensure the equitable treatment of reliability entities, provide a mechanism for redress in the event of inequitable treatment, and provide a basis for the Commission's determination that the Reliability Standards approved by Order No. 693 are just and reasonable.

x. Commission Determination

112. In response to Avista, the Commission clarifies that a reliability coordinator's authority to issue directives arises out of the Commission's approval of Reliability Standards that mandate compliance with such directives. Avista is correct that contracts are unnecessary to authorize reliability coordinators to issue directives. Under the voluntary reliability scheme in place prior to section 215 of the FPA, a contractual basis was needed to assure that entities would comply with a reliability coordinator's directive. Pursuant to the current, mandatory reliability scheme established by statute, contracts are no longer needed. We view the concerns raised by Avista as part of the transition from a voluntary to mandatory scheme. Although, as noted by Avista, IRO-001-1 retains references to contracts, we view these as vestiges of an earlier program that no longer control given the current, mandatory mechanism.

113. Avista's assertion that, if transmission operators, balancing authorities or other reliability entities are subject to a non-contractual duty imposed by the Commission under Order No. 693 to comply with the directives of a reliability coordinator, the Commission should have clearly indicated such a requirement, is not justified. First, the Commission believes that this duty was clearly laid out in the Reliability Standards themselves. However, the duty to comply with Reliability Standards is imposed by section 215 of the FPA, not by contract. The Reliability Standards approved by the Commission include requirements that certain users, owners and operators of the Bulk-Power System follow directions given by the reliability coordinators.⁸⁶ The duty to follow such

directions lies in the duty to comply with Reliability Standards as laid out in section 215 of the FPA and the Commission's regulations.

114. The Commission notes that Avista uses the Commission's statement that it "clarifies that it did not intend to change existing contracts, impose new organizational structures or otherwise affect existing agreements that set forth the responsibilities of various entities"⁸⁷ for the proposition that the Commission did not intend to change or otherwise affect existing agreements about reliability coordinator functions. We disagree with Avista on this point. The Commission made this statement regarding the responsibility for functions in the Functional Model, especially regarding ISOs, RTOs or any organizations that pool resources. In that statement, we clarified that we were not changing any contract to which an ISO, RTO or pooled resource organization is a party as to who must comply with specific requirements of the Reliability Standards.

115. In response to Avista's arguments regarding Measure M2 of IRO-001-1, the Commission does not believe that this measure imposes a requirement that reliability coordinators must have contracts in place. Measure M-2 of IRO-001-1 requires each reliability coordinator to have and provide upon request evidence that it has the authority to have clear decision-making authority to act and to direct actions to be taken by certain users, owners and operators within its area to preserve the integrity and reliability of the bulk electric system. Neither the Reliability Standard nor the Commission prescribed the form of such evidence.

116. Avista's concerns regarding whether existing contracts, including those regarding the contracts with PNSC, and whether contracts, generally, have been superseded or rendered moot or unnecessary by Order No. 693 are beyond the scope of this proceeding. This proceeding established mandatory Reliability Standards, including those pertaining to directions by reliability coordinators. Reliability coordinator contracts are not before the Commission in this proceeding. Therefore, the Commission cannot rule here on any issue regarding such contracts.

117. The Commission denies Avista's request that the Commission require reliability coordinators to develop and file contracts or tariffs that govern their reliability coordination authority and activities. The Commission understands that reliability must be a primary goal. Each user, owner and operator of the

Bulk-Power System must be in compliance with the Reliability Standards so that everyone can have the benefits of using the system. As stated above, the Reliability Standards do not prescribe the form through which each reliability coordinator must provide evidence of its clear decision-making authority to act and to direct actions to be taken by certain entities. To that end, it is unnecessary to require each reliability coordinator to file a contract or tariff.

118. We deny Santa Clara's request for rehearing. In Order No. 693, the Commission noted that various commenters provided specific suggestions to improve or otherwise modify a Reliability Standard that address issues not raised in the NOPR. In such circumstances, the Commission directed the ERO to consider such comments as it modifies the Reliability Standards during the three-year review cycle contemplated by NERC's Work Plan through the ERO Reliability Standards development process. The Commission, however, did not direct any outcome other than that the comments receive consideration.⁸⁸

119. However, the Commission denied Santa Clara's specific request to modify Requirement R3 of IRO-001-1, explaining that, when system integrity or reliability is jeopardized, *e.g.*, when IROLs or SOLs are exceeded, the relevant reliability entities must take corrective control actions to return the system to a secure and reliable state as soon as possible but not longer than 30 minutes.⁸⁹ The Commission believes that this reaction time has been vetted through the industry and that the 30-minute time limit for action is important to minimize the amount of time the system operates in an insecure mode and is vulnerable to cascading outages.

6. IRO-005-1 and IRO-005-2

120. IRO-005-1 ensures energy balance and transmission reliability for the current day by identifying tasks that reliability coordinators must perform throughout the day. Order No. 693 approved Reliability Standard IRO-005-1.

y. Requests for Rehearing

121. TANC requests clarification as to whether the Commission intended to approve IRO-005-1 or IRO-005-2 in Order No. 693. Although the Commission states that it approves IRO-005-1,⁹⁰ TANC notes that NERC submitted a later version, IRO-005-2, in

⁸⁶ For example, Requirement R9 of IRO-001-1 states that transmission operators, balancing authorities, generator operators, transmission service providers, load-serving entities, and purchasing-selling entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements.

⁸⁷ Order No. 693 at P 141.

⁸⁸ See *id.* at P 188.

⁸⁹ *Id.* at P 898.

⁹⁰ See *Id.* at P 945, 951.

its November filing. Therefore, TANC seeks clarification that the Commission intended to approve IRO-005-1, rather than the more recently filed IRO-005-2.

z. Commission Determination

122. The Commission grants TANC's request for clarification. As stated in Order No. 693, the Commission approved version one of IRO-005.⁹¹

7. MOD-013-1

123. MOD-013-1 requires the regional reliability organizations within an Interconnection to develop comprehensive dynamics data requirements and reporting procedures needed to model and analyze the dynamic behavior and response of each Interconnection. More specifically, the regional reliability organization, in coordination with its transmission owners, transmission planners, generator owners and resource planners within an Interconnection, is required to: (1) Participate in development of documentation for their Interconnection data requirements and reporting procedures; (2) participate in the review of those data requirements and reporting procedures at least every five years; and (3) make the data requirements and reporting procedures available to NERC and other specified entities upon request.

124. Because MOD-013-1 is a fill-in-the-blank standard, the Commission stated that it will not approve or remand MOD-013-1 until the ERO submits additional information. However, the Commission directed the ERO to develop a modification to MOD-013-1 to (1) permit entities to estimate dynamics data if they are unable to obtain unit specific data for any reason; (2) require verification of the dynamic models with actual disturbance data and (3) expand the applicability section to include the planning authority, transmission operator and transmission planner.

aa. Requests for Rehearing

125. TANC requests that the Commission clarify that it erred in directing the ERO to apply MOD-013-1 to transmission operators and transmission planners. Although the Commission left Reliability Standard MOD-013-1 pending, TANC asserts that the Commission stated that it would adopt the NOPR proposal to expand the applicability section to include planning authorities, but in a later

summary paragraph directed the ERO to apply the standard to transmission operators and transmission planners, in addition to planning authorities.⁹² TANC states that the inclusion of transmission operators and transmission planners was neither mentioned in the NOPR nor discussed in Order No. 693. In the alternative, TANC requests rehearing.

126. ISO-New England requests rehearing of the Commission's determination to (1) permit entities to estimate dynamics data if they are unable to obtain unit specific data for any reason; (2) require verification of the dynamic models with actual disturbance data; and (3) expand the applicability section to include the planning authority, transmission operator and transmission planner. ISO-New England states that the Commission's direction to the ERO to modify MOD-013-1 appears internally inconsistent with other positions the Commission took in Order No. 693. First, ISO-New England notes that the Commission required the ERO to modify MOD-013-1 because it would allow the use of estimated data but, at the same time, required "verification of the dynamic models with actual disturbance data."

127. Second, ISO-New England observes that the Commission stated in Order No. 693 that "[f]ailure to provide the data needed for dynamics system modeling and simulation would halt regional reliability assessment processes and impede planners from accurately predicting future system conditions, which would be detrimental to system reliability."⁹³ Further, ISO-New England points to the Commission's statement in Order No. 693 that it believes "to achieve the goal of this Reliability Standard of having the ability to accurately model and analyze the dynamic behavior and response of each Interconnection, it is necessary to have accurate data."⁹⁴ In sum, ISO-New England argues that just as the Commission has recognized the importance of accurate data with respect to the administration of other NERC Reliability Standards, the Commission should equally recognize the importance with regard to MOD-013-1.

128. Further, ISO-New England argues that the Blackout Report suggests that actual data should be required.⁹⁵ Specifically, ISO-New England points to the Blackout Report's recommendation

to improve the quality of system modeling data and data exchange practices. ISO-New England notes that the Blackout Report indicates that "after-the-fact models developed to simulate August 14 conditions and events found that the dynamic modeling assumptions for generator and load power factors in regional planning and operating models were frequently inaccurate."⁹⁶ Further, ISO-New England states that the Task Force commented that, during the investigation process, it too found that data was frequently not available.⁹⁷ Consequently, ISO-New England maintains that the Task Force recommended the collection of *validated* data.⁹⁸

129. Finally, ISO-New England states that Order No. 693 leaves too much unclear in terms of its direction that entities should be permitted to estimate dynamics data if unit specific data is unavailable "for any reason." According to ISO-New England, this exemption appears "overbroad" and could serve as the basis for an asset owner's rejection of any reasonable request for the unit specific data. ISO-New England requests that, if the Commission retains its direction to permit entities to estimate dynamics data, that it narrow the scope of the exemption that asset owners may employ in providing unit specific data.

bb. Commission Determination

130. The Commission denies TANC's request for rehearing. TANC correctly identifies that the Commission did not approve or remand MOD-013-1, but provided direction to the ERO concerning the addition of entities not already identified in the Reliability Standard. Although we acknowledge that Order No. 693 did not include a discussion of the addition of transmission operators and transmission planners in the applicability section of this Reliability Standard, in directing the ERO to apply MOD-013-1 to transmission operators and transmission planners, we recognized that transmission operators and transmission planners would be required to perform coordination functions under Requirement R1 of MOD-013-1. Therefore, the Commission directed the ERO to specifically include transmission operators and transmission planners in the applicability section of MOD-013-1 so as to be clear what the Commission considers to be the minimum applicability of this

⁹¹ The Commission notes that many provisions of IRO-005-2 only become effective when BAL-002 is retired. If and when NERC proposes to retire BAL-002, we will make a determination on IRO-005-2.

⁹² Compare Order No. 693 at P 1199; 1200.

⁹³ *Id.* at P 1177.

⁹⁴ *Id.* at P 1188.

⁹⁵ ISO-New England at 4, citing Blackout Report at 160-61.

⁹⁶ Blackout Report at 160.

⁹⁷ *Id.* at 161.

⁹⁸ ISO-New England at 4, citing Blackout Report at 160-61.

Reliability Standard and to make the Reliability Standard internally consistent.

131. In response to ISO-New England's concerns, the Commission notes that the data referenced in Requirement R1.1 include "items such as inertia constant, damping coefficient, saturation parameters, and direct and quadrature axis reactances and time constants, excitation systems, voltage regulators, turbine-governor systems, power system stabilizers, and other associated generation equipment." Much of these data will be estimated from similar classes of facilities prior to the facilities going into service. The Commission clarifies that its determination to permit entities to estimate dynamics data if they are unable to obtain unit specific data for any reason is limited to the initial analysis of dynamics data. While we continue to believe that "[a]chieving the most accurate possible picture of the dynamic behavior of the Interconnection requires the use of actual data,"⁹⁹ we acknowledge that, in certain circumstances, actual data may not be initially available and only obtained through "verification of the dynamic models with actual disturbance data." In addition, in Order No. 693, we determined that "the Reliability Standard should include Requirements that such estimates be based on sound engineering principles and be subject to technical review and approval of any estimates at the regional level."¹⁰⁰ This procedure would allow peer review and approval at a regional level such that an entity could not avoid using sound engineering principles in obtaining the initial data for the model.

8. PRC-007-0, PRC-008-0, and PRC-009-0

132. PRC-007-0 requires transmission owners, transmission operators, load-serving entities and distribution providers to provide, and annually update, their underfrequency data to facilitate the regional reliability organization's maintenance of the UFLS program database.¹⁰¹ PRC-008-0 requires transmission owners and distribution providers to implement UFLS equipment maintenance and testing programs and provide program results to the regional reliability organization. PRC-009-0 ensures that the performance of a UFLS system is analyzed and documented following an

underfrequency event by requiring the transmission owner, transmission operator, load-serving entity and distribution provider to document the deployment of their UFLS systems in accordance with the regional reliability organization's program. Order No. 693 approved Reliability Standards PRC-007-0, PRC-008-0,¹⁰² and PRC-009-0.¹⁰³

133. These Reliability Standards reference PRC-006-0, which the Commission did not approve or remand because the regional procedures required by the Reliability Standard had not been submitted and because it applies to regional reliability organizations.¹⁰⁴ The Commission reasoned that since PRC-007-0, PRC-008-0, and PRC-009-0 are existing Reliability Standards that have been followed on a voluntary basis, transmission owners, transmission operators, distribution providers and load-serving entities are generally aware of their requirements. In addition, the Commission stated that a reference in an approved Reliability Standard to an unapproved Reliability Standard may be considered in an enforcement action, but is not a reason to delay approving and enforcing this Reliability Standard.

cc. Request for Rehearing

134. APPA requests rehearing of Commission approval of PRC-007-0, PRC-008-0, and PRC-009-0. As discussed more fully in the section concerning "Fill-in-the-Blank Standards above,"¹⁰⁵ APPA believes that each of these three Reliability Standards cannot be approved because it references a fill-in-the-blank standard that was not approved or remanded by the Commission.

135. According to APPA, PRC-006-0 is the Reliability Standard that requires the development of regional UFLS programs and contains detailed and exacting requirements that the regions develop and apply to applicable entities. According to APPA, PRC-006-0 is the source of the design and documentation of regional UFLS programs and is not merely administrative or a simple codification of established industry practice. Rather,

¹⁰² The Commission also directed the ERO to develop a modification to PRC-008-0 that includes a requirement that maintenance and testing of a protection system must be carried out within a maximum allowable interval that is appropriate to the type of the protection system and its impact on the reliability of the Bulk-Power System. The Commission's direction to modify PRC-008-0 is not at issue in this proceeding.

¹⁰³ Order No. 693 at P 1484, 1491, and 1498.

¹⁰⁴ *Id.* at P 1479.

¹⁰⁵ See section II.C.2., 2. Fill-in-the-Blank Standards, *supra*.

APPA asserts that PRC-006-0 sets forth very specific requirements that each regional UFLS program must meet.

136. APPA asserts that PRC-007-0, PRC-008-0 and PRC-009-0 go much further than imposing data requirements. APPA states that PRC-007-0 requires, among other things, that any transmission owner and distribution provider with a UFLS program must ensure that its UFLS program is consistent with its regional reliability organization's UFLS program requirements. PRC-008-0 requires transmission owners and distribution providers to implement UFLS equipment maintenance and testing programs and provide program results to the regional reliability organization. Finally, APPA maintains that PRC-009-0 requires a transmission owner, transmission operator, load-serving entity, and distribution provider that owns or operates a UFLS program to analyze performance under that unapproved program. According to APPA, because the required UFLS program has not been approved or reviewed by the Commission under PRC-006-0, users, owners and operators of the Bulk-Power System cannot be required to have a program consistent with it.

137. APPA maintains that the fact that these three Reliability Standards apply to specific users, owners and operators of the Bulk-Power System, rather than a regional reliability organization, does not justify approval of a reliability standard that requires users, owners and operators of the Bulk-Power System to comply with regional UFLS programs that have not been approved by NERC, and have not been shown to meet the procedural and substantive requirements of section 215 of the FPA and Order No. 672 for Reliability Standards that qualify for approval and enforcement by the ERO and this Commission. Further, APPA contends that, although the Commission appears to have approved these Reliability Standards in part because they have "been followed on a voluntary basis," many small entities have often not been part of regional reliability organizations and have not necessarily been aware of, much less followed, regional programs on a voluntary basis.

dd. Commission Determination

138. We deny APPA's request for rehearing and affirm our approval of Reliability Standards PRC-007-0, PRC-008-0 and PRC-009-0. However, as explained below, we clarify that the limited provisions that relate to the regional UFLS program developed under PRC-006-0 are not enforceable

⁹⁹ Order No. 693 at P 1197.

¹⁰⁰ *Id.*

¹⁰¹ A UFLS program is a "safety net" that will automatically drop load at specific locations in the power system in an effort to re-establish the balance between generation and load to avoid cascading.

until the Commission approves PRC-006-0.¹⁰⁶ Specifically, any entity that is responsible for compliance with PRC-007-0, PRC-008-0 or PRC-009-0 that currently does not have a UFLS program is not required to develop such a program until PRC-006-0 is approved. Likewise, a responsible entity with an existing UFLS program is not required to comply with a regional UFLS program until the Commission approves PRC-006-0. An explanation for this determination follows.

139. Each of the requirements in PRC-007-0, PRC-008-0 and PRC-009-0, with the exception of Requirement R1 in PRC-007-0, apply only to those entities that have a UFLS program. Therefore, contrary to APPA's assertion, PRC-007-0, PRC-008-0 and PRC-009-0 do not require any entity that does not have a UFLS program to develop one. That requirement would fall under PRC-006-0. To be clear, the Commission will not impose a penalty for the failure to have a UFLS program until such time as PRC-006-0 or a suitable substitute, and the attendant regional UFLS programs, are approved.

140. However, we disagree with APPA that the fact that Requirement R1 precludes us from approving PRC-007-0, PRC-008-0 and PRC-009-0, which provide for updating an entity's UFLS program (PRC-007-0), maintaining the entity's UFLS facilities (PRC-008-0), and reporting on events that involve the entity's UFLS (PRC-009-0). Rather, we uphold our earlier decision to approve these three Reliability Standards with the clarification that Requirement R1 of PRC-007-0 is not enforceable until the Commission approves PRC-006-0. We further clarify, consistent with our discussion above, that, until PRC-006-0 is approved, an entity that does not currently have a UFLS program is not required to develop one or to comply with PRC-007-0, PRC-008-0 and PRC-009-0. However, an applicable entity that currently has a UFLS program must continue to maintain that program as required by these three Reliability Standards. As discussed below, the Requirements of PRC-007-0, PRC-008-0 and PRC-009-0 are necessary for Bulk-Power System reliability and are not dependent on PRC-006-0.

141. PRC-007-0, Requirement R2 states that the applicable entities "shall provide, and annually update, its underfrequency data as necessary for its Regional Reliability Organization to maintain and update a UFLS program

database."¹⁰⁷ It is vital to maintain this safety net that each registered transmission owner, transmission operator, distribution provider and load-serving entity with a UFLS system has a program to annually review the location of their UFLS devices and the magnitude of load that can be collectively activated as necessary.¹⁰⁸ The reason for the annual review is that it is not unusual for loads to be switched among distribution feeders and, with load growth, additional distribution feeders may need to be included to meet the requirements of the entities' UFLS program. In addition, it is necessary to verify that sensitive and critical loads such as hospitals and high impact facilities continue to be excluded from the load shedding program. While it may be necessary to shed load to preserve the Bulk-Power System, it is also good public policy to limit the nature of the facilities that could be interrupted.

142. PRC-008-0, Requirement R1 states that the applicable entities "shall have a UFLS equipment maintenance and testing program in place." These programs are in place to assure that this last resort system, which has been proven to be necessary to limit the geographic scope of blackouts, operates as expected when required to in accordance with the reliability assessments.

143. PRC-009-0, Requirement R1 identifies what analysis must be completed by the applicable entities after an underfrequency event. It states that "[t]he analysis shall address the performance of UFLS equipment and program effectiveness following system events resulting in system frequency excursions below the initializing set points of the UFLS program." This requirement assures that actual data on the operation of the UFLS system can be correlated with simulations to provide a check on how well the UFLS system is performing its last resort function.

144. Requirement R1 of PRC-007-0 requires the transmission owner and distribution provider to "ensure that its UFLS program is consistent with its Regional Reliability Organization's UFLS program requirements." Because the regional UFLS program would be developed pursuant to PRC-006-0, and the Commission has not approved or remanded that Reliability Standard, we agree with APPA that Requirement R1 cannot be enforced as written until the

Commission approves PRC-006-0, because Requirement R1 would essentially require compliance with an unapproved Reliability Standard. Because Requirement R1 of PRC-007-0 is not enforceable until the Commission approves PRC-006-0, a transmission owner's or distribution provider's UFLS program cannot be judged for compliance with the unapproved regional UFLS program.

145. While the Commission will not enforce compliance with PRC-006-0, the possible reduction in the amount of load available for underfrequency load shedding can negatively impact the Reliable Operation of the Bulk-Power System. Because of the importance of the UFLS programs and the fact that there currently are no Commission-approved Reliability Standards by which to judge individual UFLS programs, the Commission believes it is important to monitor the current UFLS programs so that we can consider if they provide an adequate safety net for the Bulk-Power System. Therefore, the Commission directs the ERO to collect the frequency and magnitude of load in UFLS systems from applicable entities for this summer, from date of order through September 30, 2007, and perform an analysis as to the ability of the existing system to provide the required last resort function within 90 days of this order. This analysis should consider if the existing UFLS plans together provide an adequate safety net for the Bulk-Power System.

146. In discussing potential ambiguities in the proposed Reliability Standards in Order No. 693, the Commission stated that, even if some clarification of a particular Reliability Standard would be desirable at the outset, making it mandatory allows the ERO and the Regional Entities to provide that clarification on a going-forward basis while still requiring compliance with Reliability Standards that have an important reliability goal.¹⁰⁹ We believe that this principle applies equally to a Reliability Standard where one Requirement may not be enforceable, but the Reliability Standard must be approved to enable enforcement of other Requirements.

147. The reliability goal of PRC-007-0, PRC-008-0 and PRC-009-0 is to provide last resort system preservation measures by implementing an UFLS program. The Commission believes that this is an important reliability goal. The Commission understands that, until

¹⁰⁶ Such provisions would similarly be enforceable if NERC develops and the Commission approves a substitute for PRC-006-0.

¹⁰⁷ While Requirement R2 identifies the regional reliability organization, we note that this information should go to the Regional Entity or the ERO as the entities with statutory authority under section 215 of the FPA.

¹⁰⁸ Blackout Report at 62.

¹⁰⁹ Order No. 693 at P 277. See also Order No. 693 at P 147, 157-58, explaining that the Commission was approving and requiring modification to five Reliability Standards that apply partially to a regional reliability organization.

PRC-006-0 is approved, the UFLS program implemented will not be the one envisioned in PRC-006-0. We believe that, where a user, owner or operator does have a UFLS program, the data retention and reporting requirements incorporated in these Reliability Standards serve an extremely important goal of providing last resort system preservation measures. NERC can analyze the information to monitor whether the last resort system preservation measures are sufficient in the aggregate for the entire Bulk-Power System. Although the ERO and Regional Entities cannot penalize a user, owner or operator for an insufficient UFLS program until the Commission approves PRC-006-0, collection, analysis and submission of the UFLS information described above will provide NERC and the Commission with invaluable information regarding the reliability of the Bulk-Power System.

148. We further believe that, other than R1 in Reliability Standard PRC-007-0, the Requirements in the PRC Reliability Standards are independently enforceable. For example, R2 of Reliability Standard PRC-007-0 requires a transmission owner or distribution provider with a UFLS program to provide, and annually update, its underfrequency data. Although R2 contains the phrase “(as required by its Regional Reliability Organization),” the Commission believes that it is of vital importance for the transmission owner and distribution provider to update its UFLS data annually and provide it to the ERO. Because we have not approved any regional programs, this parenthetical currently has no meaning in the context of the approved Reliability Standard. Therefore, the Commission believes that these three Reliability Standards only apply to those entities that have a UFLS program, irrespective of whether a region requires it.

149. The Commission also denies rehearing of our approval of PRC-008-0. This Reliability Standard requires each transmission owner and distribution provider with a UFLS program to have a UFLS program in place that includes UFLS equipment identification and the schedule for UFLS equipment testing and maintenance. PRC-008-0 further requires each transmission owner and distribution provider with a UFLS program to implement its UFLS equipment maintenance and testing program and provide UFLS maintenance and testing program results to its regional reliability organization and NERC on request. In this Reliability Standard, any transmission owner or

distribution provider that already has a UFLS program must develop its own equipment maintenance and testing program that complies with PRC-008-0. The Commission believes it is of great importance to Bulk-Power System reliability for such entities to perform such maintenance and testing. Because the maintenance and testing programs do not rely on regional reliability organization requirements, but are, rather, developed by the applicable entity itself, the Commission continues to believe that this Reliability Standard is enforceable regardless of whether the Commission has approved PRC-006-0.

150. Finally, the Commission does not believe that the fact that PRC-006-0 has not been approved or remanded necessitates granting rehearing of our approval of PRC-009-0. This Reliability Standard requires a transmission owner, transmission operator, load-serving entity and distribution provider that owns or operates a UFLS program to analyze and document its UFLS program performance in accordance with its regional reliability organization's UFLS program. The Commission acknowledges, as stated above, that currently there is no Commission-approved UFLS program. However, R1 of PRC-009-0 also includes independent criteria by which a user, owner or operator of the Bulk-Power System must analyze its UFLS program. R1 states that:

The analysis shall address the performance of UFLS equipment and program effectiveness following system events resulting in system frequency excursions below the initializing set points of the UFLS program. The analysis shall include, but not be limited to:

R1.1. A description of the event including initiating conditions.

R1.2. A review of the UFLS set points and tripping times.

R1.3. A simulation of the event.

R1.4. A summary of the findings.

151. R2 of PRC-009-0 further requires the transmission owner, transmission operator, load-serving entity and distribution provider to provide documentation of the analysis of the UFLS program to its regional reliability organization and NERC on request after a system event. This analysis will better enable NERC to analyze system events and determine what actions need to be taken to ensure the Reliability of the Bulk-Power System.

152. Therefore, the Commission denies rehearing of our approval of PRC-007-0, PRC-008-0 and PRC-009-0. To be clear, we recognize that R1 of PRC-007-0 is not enforceable until the Commission approves PRC-006-0. Because, prior to that approval of PRC-

006-0, PRC-007-0, PRC-008-0 and PRC-009-0 only apply to those entities that already have a UFLS program, these Reliability Standards do not require any entity that does not have a UFLS program to develop one, and the Commission will not impose a penalty for an entity's failure to have a UFLS program until the Commission approves PRC-006-0. Further, until PRC-006-0 has been approved, a UFLS program cannot be judged for compliance with an unapproved regional UFLS program. Therefore, the Commission clarifies that, until PRC-006-0 has been approved, only the data retention and reporting requirements, as well as the requirements for maintenance, testing requirements and analysis of UFLS performance following a triggering event in PRC-007-0, PRC-008-0 and PRC-009-0, are mandatory and enforceable.

9. TOP-008-1

153. TOP-008-1 requires a transmission operator to take immediate steps to mitigate System Operating Limit (SOL) and Interconnection Reliability Operating Limit (IROL) violations. Order No. 693 approved Reliability Standard TOP-008-1.¹¹⁰ Order No. 693 summarized TOP-008-1 as requiring a transmission owner to take immediate steps to mitigate SOL and IROL violations.¹¹¹

ee. Requests for Rehearing

154. TANC requests clarification that the Commission intended to use the term transmission operator, rather than transmission owner, as the correct applicable entity in Reliability Standard TOP-008-1.¹¹² TANC states that the text of the ERO-proposed Reliability Standard lists the transmission operator as the only entity to which TOP-008-1 applies. Alternatively, TANC requests rehearing.

ff. Commission Determination

155. The Commission will grant TANC's request for clarification. TANC is correct that the Commission's use of the term transmission owner, rather than transmission operator, was in error. The transmission operator is the correct applicable entity in Reliability Standard TOP-008-1.

III. Information Collection Statement

156. Order No. 693 contains information collection requirements for which the Commission obtained approval from the Office of Management and Budget (OMB). Given that this

¹¹⁰ *Id.* at P 1679.

¹¹¹ *See id.* at P 1675.

¹¹² *See id.*

Order on Rehearing does not revise the regulation text of Order No. 693 and makes only minor clarifications to Order No. 693, OMB approval for this order is not necessary. However, the Commission will send a copy of this order to OMB for informational purposes.

IV. Document Availability

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

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

159. User assistance is available for eLibrary and the FERC's Web site during normal business hours from our Help line at (202) 502-8222 or the Public Reference Room at (202) 502-8371 Press 0, TTY (202) 502-8659. E-Mail the Public Reference Room at public.reference@ferc.gov.

By the Commission.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14340 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 173

[CBP Dec. 07-62]

Technical Correction: Voluntary Reliquidation of Deemed Liquidated Entries

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations by making technical corrections to § 173.3, which provides for voluntary

reliquidations. These technical corrections conform § 173.3 to 19 U.S.C. 1501, as amended by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004, which permits Customs and Border Protection to voluntarily reliquidate entries that are deemed liquidated by operation of law.

DATES: *Effective Date:* July 25, 2007.

FOR FURTHER INFORMATION CONTACT: Richard B. Wallio, Office of International Trade, Customs and Border Protection, Tel. (202) 344-2556.

SUPPLEMENTARY INFORMATION:

Background

This document makes technical corrections to § 173.3 of title 19 of the Code of Federal Regulations (19 CFR 173.3) to conform to changes to that section's underlying statutory authority.

Section 173.3 concerns the voluntarily reliquidation of entries and provides that within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, the port director may reliquidate on his own initiative a liquidation or reliquidation to correct errors in appraisalment, classification, or any other element entering into the liquidation or reliquidation.

Section 501 of the Tariff Act of 1930, as amended (19 U.S.C. 1501), provides the statutory authority for voluntary reliquidations and states that Customs and Border Protection (CBP) may reliquidate an entry within 90 days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Section 1501 was amended by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108-429, 118 Stat. 2598) to include "deemed liquidations" of 19 U.S.C. 1504 as among the types of liquidations CBP is authorized to voluntarily reliquidate. The date of original liquidation of an entry that liquidated by operation of law is the date of deemed liquidation.

This document makes technical corrections to § 173.3 to conform to the broadened scope of 19 U.S.C. 1501, as amended, which authorizes CBP to voluntarily reliquidate entries that have been deemed liquidated by operation of law pursuant to 19 U.S.C. 1504. Examples of types of entries which may be deemed liquidated by operation of law are countervailing duty (CVD), antidumping (AD), or drawback entries.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because the technical corrections to 19 CFR 173.3 set forth in this document

merely conform to the statutory amendments to 19 U.S.C. 1501 effected by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

Amendment to the Regulations

■ For the reasons stated above, part 173 of title 19 of the Code of Federal Regulations is amended as set forth below.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

■ 1. The authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.
* * * * *

■ 2. In § 173.3, paragraph (a) is amended by revising the first sentence to read as follows:

§ 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* Within 90 days from the date notice of deemed liquidation or notice of the original liquidation is given to the importer, consignee, or agent, the port director may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisalment, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. * * *

* * * * *

Dated: July 20, 2007.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E7-14406 Filed 7-24-07; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA-284I]

RIN 1117-AB11

Elimination of Exemptions for Chemical Mixtures Containing the List I Chemicals Ephedrine and/or Pseudoephedrine

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This Interim Rule removes the Controlled Substances Act (CSA) exemptions for chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent. The Combat Methamphetamine Epidemic Act of 2005 (CMEA) added additional controls on ephedrine and pseudoephedrine and mandated that DEA limit the domestic production and importation of materials containing ephedrine and pseudoephedrine to quantities necessary for medical, scientific and other legitimate purposes (21 U.S.C. 952(a)(1) as amended). DEA is eliminating exemptions for these chemical mixtures. As such, all ephedrine and pseudoephedrine chemical mixtures, regardless of concentration and form, shall be subject to the regulatory provisions of the CSA.

DEA is not prohibiting the importation, exportation, manufacture, or distribution of chemical mixtures containing ephedrine or pseudoephedrine in concentrations less than or equal to five percent. Rather, DEA is regulating the importation, exportation, manufacture, and distribution of these chemical mixtures by requiring persons who handle these chemical mixtures to register with DEA, maintain certain records common to business practice, and file certain reports, regarding these chemical mixtures. Chemical mixtures containing the List I chemicals ephedrine and pseudoephedrine will still be available for use.

DATES: Effective August 24, 2007.

Persons seeking registration must apply on or before August 24, 2007 in order to continue their business pending final action by DEA on their application. Written comments must be postmarked, and electronic comments must be sent, on or before September 24, 2007.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-284I" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be sent directly to DEA electronically by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online in the first paragraph of your comment and identify the information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential

business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and placed in the agency's public docket file, and, where possible, posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7183, fax (202) 353-1263, or e-mail ode@dea.usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Status of Dietary Supplements Containing Ephedrine and/or Pseudoephedrine

Dietary supplements containing the List I chemicals ephedrine or pseudoephedrine are regulated as chemical mixtures under the Controlled Substances Act (CSA). DEA originally exempted these products from CSA regulatory control if the total concentration of the ephedrine and/or pseudoephedrine was at or below five percent, in an effort to reduce the regulatory burden on the dietary and nutritional supplement industry (68 FR 23195, May 1, 2003). However, on February 11, 2004, the Food and Drug Administration (FDA) issued a Final Rule (69 FR 6787) declaring dietary supplements containing ephedrine alkaloids adulterated under the Federal Food, Drug, and Cosmetic Act (the FFD&C Act) because these dietary supplements present an unreasonable risk of illness or injury. Effective April 12, 2004, the rule prohibits the sale of dietary supplements containing ephedrine alkaloids such as ephedra (also known as Ma Huang, *sida cordifolia* and *pinellia*). The effect of the FDA rule was to ban the lawful marketing of these products.

DEA notes that the FDA ban addresses only the marketing of dietary supplements containing ephedrine alkaloids. The raw materials used to manufacture these dietary supplements are not restricted by the FDA ban. Accordingly, to control those materials, DEA must address the importation, exportation, manufacture, or distribution of chemical mixtures with

concentration limits of ephedrine and/or pseudoephedrine at or below five percent. The importation, exportation, manufacture, and distribution of chemical mixtures with concentration limits at or below five percent ephedrine and/or pseudoephedrine are addressed by the CSA and its implementing regulations. As there yet may be legitimate uses for chemical mixtures with concentration limits at or below five percent, the importation, exportation, manufacture, and distribution of these chemical mixtures (for purposes other than use in dietary supplements containing ephedrine alkaloids) are not prohibited by either FDA's ban regarding the marketing of such dietary supplements or by DEA law and regulations. Accordingly, as discussed further below, for DEA to regulate the importation, exportation, manufacture, and distribution of chemical mixtures containing ephedrine and/or pseudoephedrine with concentration limits at or below five percent, DEA must remove these chemical mixtures from their exempt status under CSA regulations.

DEA recognizes that ephedra materials containing ephedrine and/or pseudoephedrine are used legitimately by practitioners of Traditional Chinese Medicine. This rulemaking does not restrict the utilization of such material for such legitimate purposes. This rulemaking will simply require importers and suppliers of such material to comply with DEA recordkeeping, registration, quota and import/export requirements.

Plant Material Included in This Regulatory Action

The ephedrine alkaloids, including, among others, ephedrine, pseudoephedrine, norephedrine, N-methylephedrine, norpseudoephedrine, N-methylpseudoephedrine, are chemical stimulants that occur naturally in some botanicals, but can be synthetically derived. The ingredient sources of the ephedrine alkaloids include raw botanicals (*i.e.*, plants) and extracts from botanicals. Ma Huang, ephedra, Chinese Ephedra, and epitonin are several names used for botanical ingredients, primarily from *Ephedra sinica* Stapf, *ephedra equisetina* Bunge, *Ephedra intermedia* var. *tibetica* Stapf and *Ephedra distachya* Linne. (the Ephedras), that are sources of ephedrine alkaloids (including ephedrine and pseudoephedrine). Other plant sources that contain such ephedrine alkaloids include *Sida cordifolia* L. and *Pinellia ternata* (Thunb.) Makino. Common names that have been used for the various plants that contain ephedrine

alkaloids include sea grape, yellow horse, joint fir, popotillo, and country mallow. Although the proportions of the various ephedrine alkaloids in botanical species vary from one species to another, in most species used commercially, ephedrine is typically the predominant alkaloid in the raw material. In addition to chemical mixtures from synthetic sources, this rulemaking includes those plant sources that contain the ephedrine alkaloids, ephedrine and/or pseudoephedrine.

The names desert herb, squaw tea, Brigham tea, and Mormon tea refer to North American species of ephedra that do not contain ephedrine alkaloids but have been misused to identify ephedrine alkaloid containing ingredients. This rulemaking does not pertain to species of ephedra that do not contain ephedrine and/or pseudoephedrine.

Combat Methamphetamine Epidemic Act of 2005 (CMEA)

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005. The CMEA mandates that DEA limit the domestic production and importation of materials containing ephedrine and pseudoephedrine (including ephedra) to quantities necessary for medical, scientific and other legitimate purposes (21 U.S.C. 826 and 952(a)(1) as amended). DEA is concerned about the illicit use of ephedra type material in the clandestine production of methamphetamine. While the legitimate market for dietary supplements containing such material has been cut by FDA's recent action, DEA has seen an increasing number of requests for importation of below-five percent ephedrine and/or pseudoephedrine material. DEA notes that there may be legitimate uses for these chemical mixtures. However, in light of FDA's action, DEA is concerned about the intended purpose of such material, especially given that such material has been seized in clandestine drug laboratories.

Chemical Mixture Regulatory Control History

The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) (CDTA) was passed by Congress to curtail the diversion of specific chemicals used in the illicit manufacture of controlled substances. The CDTA established recordkeeping and reporting requirements necessary for DEA to identify and track chemical diversion. While the CDTA achieved

initial success in curtailing the diversion of chemicals, traffickers soon found and took advantage of certain shortcomings in the law. In the United States (U.S.), traffickers were able to obtain needed supplies by purchasing products that were exempted from regulation under the CDTA. Such products include chemical mixtures.

Chemical Mixture Definition

The CDTA created a definition of "chemical mixture" (21 U.S.C. 802(40)), and exempted chemical mixtures from the definition of "regulated transaction." (21 U.S.C. 802(39)(A)(vi) as amended by CMEA) Chemical mixtures are defined as "a combination of two or more chemical substances, at least one of which is not a list I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity." (21 U.S.C. 802(40))

Chemical Mixtures Containing Ephedrine and Pseudoephedrine

Ephedrine and pseudoephedrine are List I chemicals. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Chemical mixtures containing both these List I chemicals include dietary and nutritional supplements. Prior to FDA's 2004 Final Rule, dietary and nutritional supplements containing both of these chemicals were readily available in the U.S., commonly sold to the public in drug and grocery stores, health and nutrition stores, and through direct marketing campaigns. These dietary and nutritional supplements contained ephedra plant material, or extracts from the ephedra plant. If these dietary and nutritional supplements met certain criteria under the FFD&CA, they were not recognized as drugs under the FFD&CA, but nonetheless were considered to be chemical mixtures governed by DEA law and regulations. In contrast, over-the-counter (OTC) and prescription drug products containing these listed chemicals are not considered chemical mixtures (as long as they are in final FDA approved labeled package form) and instead are specifically addressed in 21 U.S.C. 802(39)(A)(iv) and (v) as amended by CMEA. Also see 21 CFR 1300.02(b)(28)(i).

Initial Chemical Mixture Controls

Prior to the Domestic Chemical Diversion Control Act of 1993 (DCDCA), enacted in April of 1994, transactions involving all chemical mixtures

(including dietary supplements) were exempt from recordkeeping, registration and other chemical regulatory control requirements of the CSA. The DCDCA amended the CSA (21 U.S.C. 802(39)(A)(v)) to limit the application of the above stated exemption and provided the Attorney General with the authority to exempt a chemical mixture containing a listed chemical if it is "formulated in such a way that it cannot be easily used in the illicit production of a controlled substance" and "the listed chemical or chemicals contained in the mixture cannot be readily recovered." As such, only those chemical mixtures meeting these criteria would be exempted from control. Until regulations which delineated criteria and procedures for exempting specific chemical mixtures were finalized, as a practical interpretation of the law, DEA treated all chemical mixtures, including dietary and nutritional supplements, as being exempt from the chemical regulatory requirements of the CSA. (Note that OTC and prescription drug products are not considered chemical mixtures and are addressed separately under 21 U.S.C. 802(39)(A)(iv)). Unless exempted pursuant to law and regulations, the requirements for chemical mixtures included registration for certain handlers of List I chemicals, recordkeeping, reporting and security.

Concern Regarding Chemical Mixtures

Some chemical mixtures can be and have been used by traffickers in the illicit manufacture of controlled substances. This exemption provided traffickers with an unregulated source for obtaining these chemicals. To address these problems, the DCDCA amended the exemption to provide that only those chemical mixtures specified by regulation would be exempt from the definition of "regulated transaction."

Regulations regarding the exemption of chemical mixtures were initially proposed by DEA on October 13, 1994 (59 FR 51888). In response to industry concerns, the proposed regulations were withdrawn on December 9, 1994 (59 FR 63738). After consulting with the private sector and carefully considering industry and other concerns, new regulations regarding chemical mixtures were proposed on September 16, 1998 (63 FR 49506). The comment period, which was twice extended, closed on April 16, 1999.

There are thousands of chemical mixtures in legitimate commerce, the majority of which are not useful to the illicit laboratory operator. The NPRM proposed criteria for the determination of whether a chemical mixture would be automatically exempt from CSA

regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

The DEA proposed that each chemical be assigned a concentration limit that, if found at or below the limit, will cause the mixture to be treated as exempt from specific provisions of the CSA. This quantitative approach to identifying regulated mixtures was considered necessary due to the complexity of chemical-based commodities and the huge variety of products. These criteria were expected to exempt the vast majority of chemical mixtures containing listed chemicals from regulatory control. The NPRM included the proposed creation of a "Table of Concentration Limits," in 21 CFR 1310.12. This table lists the concentration limits for each listed chemical.

In recognition that not all mixtures that qualify for exemption can be identified by concentration or category, the DEA also proposed an application process to exempt additional mixtures which are not likely to be diverted for use in the illicit production of controlled substances.

DEA originally proposed a concentration limit of two percent for chemical mixtures containing ephedrine and/or pseudoephedrine. However, based on the comments received from the NPRM (63 FR 49506, Sept. 16, 1998), DEA determined that a five percent concentration limit would be more appropriate. On May 1, 2003, DEA published a Final Rule (68 FR 23195) which established a concentration limit of five percent for chemical mixtures which contain ephedrine and/or pseudoephedrine.

If the concentration of the total ephedrine and/or pseudoephedrine was at or below the five percent limit in a chemical mixture, the mixture was automatically exempted from the registration, reporting, recordkeeping and security requirements of the CSA. That Final Rule primarily addressed those chemicals encountered in dietary and nutritional supplements.

The May 1, 2003, Final Rule also established an exemption for the category of products consisting of unaltered harvested plant material in 21 CFR 1310.12(d)(1). Finally, that rule provided for a process whereby a manufacturer of a product which would otherwise be subject to regulation may request an exemption for that specific product. This process allows chemical mixtures not automatically exempt by the concentration limit to be considered for exempt status under the CSA.

Recent FDA Action Pertaining to Dietary Supplements Containing Ephedrine Alkaloids

In 2004, FDA issued a Final Rule declaring dietary supplements containing ephedrine alkaloids "adulterated" under the FFD&C Act (69 FR 6787, February 11, 2004). FDA issued this rule after concluding that these products present an unreasonable risk of illness or injury. FDA's Final Rule prohibits the sale of these products and FDA has been seizing dietary supplements containing ephedrine alkaloids since the Final Rule became effective in April 2004. The FDA Final Rule addressed the marketing of dietary supplements containing ephedrine alkaloids; it did not address the importation, exportation, manufacture or distribution of ephedrine and/or pseudoephedrine chemical mixtures with concentration limits at or below five percent, if the chemical mixture is not being marketed as a dietary supplement containing ephedrine alkaloids. DEA notes that there yet may be legitimate uses for such mixtures. As there yet may be legitimate uses for chemical mixtures with concentration limits at or below 5 percent, the importation, exportation, manufacture, and distribution of these chemical mixtures (for purposes other than use in dietary supplements containing ephedrine alkaloids) are not prohibited by either FDA's ban regarding the marketing of such dietary supplements or by DEA law and regulations. In spite of FDA's ban, and corresponding reduction in legitimate need for these chemical mixtures, DEA has seen a significant increase in the number of import requests for ephedra, sparking a concern that these chemical mixtures are being diverted for use in the illicit manufacture of methamphetamine.

Combat Methamphetamine Epidemic Act of 2005 (CMEA)

On March 9, 2006, the President signed the USA PATRIOT Improvement and Reauthorization Act of 2005 which included the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (Title VII of Pub. L. 109-177). The CMEA placed additional controls on ephedrine and pseudoephedrine and tasked DEA with limiting the domestic production and importation of ephedrine and pseudoephedrine materials to quantities necessary for medical, scientific and other legitimate purposes (21 U.S.C. 826 and 952(a)(1) as amended).

The CMEA imposed new requirements regarding the retail sale of scheduled listed chemical products (products containing ephedrine,

pseudoephedrine, or phenylpropanolamine, that may be marketed or distributed lawfully in the United States under the FFD&CA as nonprescription products). In a separate rulemaking, "Retail Sales of Scheduled Listed Chemical Products; Self-Certification of Regulated Sellers of Scheduled Listed Chemical Products" [Docket No. DEA-291, RIN 1117-AB05] (71 FR 56008, September 26, 2006; corrected at 71 FR 60609, October 13, 2006), DEA promulgated regulations implementing these provisions. The CMEA also subjects material containing ephedrine, pseudoephedrine and phenylpropanolamine to manufacturing and import restrictions. Specifically, the CMEA requires that importers of all listed chemicals provide DEA with information regarding the transferee, (*i.e.*, the downstream customer) of the chemical, as well as information regarding the quantity of the chemical to be transferred. Importers are further required to provide DEA with a return declaration regarding each import after the transaction is completed (CMEA section 716, 21 U.S.C. 971(d) and (g), as amended). In a separate rulemaking, "Implementation of the Combat Methamphetamine Epidemic Act of 2005; Notice of Transfers Following Importation or Exportation" [Docket No. DEA-292, RIN 1117-AB06] (72 FR 17401, April 9, 2007; Temporary Stay of Certain Provisions 72 FR 28601, May 22, 2007), DEA promulgated regulations implementing these provisions. Further, the CMEA requires that the notice of importation (DEA Form 486) for ephedrine, pseudoephedrine, and phenylpropanolamine "shall include all information known to the importer on the chain of distribution of such chemical from the manufacturer to the importer." (CMEA section 721, 21 U.S.C. 971(h) as amended). In a separate rulemaking, "Information of Foreign Chain of Distribution for Certain List I Chemicals" [Docket No. DEA-295, RIN 1117-AB07], DEA is promulgating regulations to implement this provision. Finally, the CMEA requires DEA to establish import and production quotas for ephedrine, pseudoephedrine, and phenylpropanolamine (CMEA sections 713 and 715, 21 U.S.C. 826 and 952 as amended). In a separate rulemaking, "Import and Production Quotas for Certain List I Chemicals" [Docket No. DEA-293, RIN 1117-AB08] (72 FR 37439, July 10, 2007) DEA promulgated regulations to implement these provisions.

DEA is removing the exemption for five percent ephedrine and/or pseudoephedrine, in part, to fulfill the

Congressional mandate of restricting such material to quantities necessary for medical, scientific, and other legitimate purposes (21 U.S.C. 826 and 952(a)(1) as amended). Without removing the exemption for these products, DEA would be unable to effectively limit the importation of ephedrine and pseudoephedrine, as required by the CMEA.

Present Concerns: Use at Illicit Laboratories

DEA is also authorized to remove an exemption for particular exempt chemical mixtures if it finds evidence of diversion pursuant to 21 CFR 1310.12(e). This regulation provides that should DEA find such evidence, it can "issue, and publish in the **Federal Register**, notification of the removal of an exemption." Interested parties are invited to file written comments or objections to the order within 60 days of the date of publication. If any comment or objection raises "significant issues regarding any finding of fact or conclusion of law upon which the order is based, [DEA] shall immediately suspend the effectiveness of the order" and reconsider the application for exemption in light of the comments received.

At most methamphetamine laboratories seized in the U.S., the precursor material was obtained via the diversion of OTC ephedrine or pseudoephedrine products marketed in tablet and capsule form. While the vast majority of products seized at illicit methamphetamine laboratories were OTC drug products, ephedra and ma huang extracts containing ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine, and dietary supplement products (containing ephedra and ma huang extracts) have been seized. At this time, the frequency with which these dietary supplement products and extracts are encountered is small. From 1998 through 2005, DEA has documented 20 methamphetamine laboratories where ephedra materials have been seized. The source of precursor chemicals in a seized clandestine laboratory is often not evident, so it is likely that the number of seized laboratories that used such mixtures is actually greater. Ephedra, therefore, can and is being diverted for use as a precursor material for the illicit production of methamphetamine. Were DEA not to regulate chemical mixtures containing ephedrine and/or pseudoephedrine at or below the current five percent concentration limit,

DEA is concerned that these products would be more widely diverted for illicit production of methamphetamine, particularly as traffickers look for easily-obtainable product due to the new retail sales, quota and import restrictions imposed by CMEA.

DEA Concerns Regarding Recent Importations

Recently DEA has seen an increasing number of requests for importation of large shipments of ephedra material in concentrations below the five percent ephedrine and pseudoephedrine exemption limit. Traditionally, such ephedra extract material has always been between 6-8 percent ephedrine and/or pseudoephedrine.

As noted above, DEA has seen chemical mixtures with concentration limits of ephedrine and/or pseudoephedrine at or below five percent in clandestine methamphetamine laboratories. Subsequent to implementing regulations which allowed an exemption for below five percent material, DEA has witnessed increased ability of clandestine laboratory operators to extract ephedrine and pseudoephedrine from various bulk materials (including low concentration mixtures). These extraction procedures are shared via the Internet. While these mixtures may contain low concentrations of ephedrine and/or pseudoephedrine, they can be a ready source of supply for methamphetamine traffickers.

Therefore, due to the existing clandestine methamphetamine laboratory problem and the illicit use of extracts and dietary supplements (containing ephedrine and related List I chemicals) as precursor material for the clandestine production of methamphetamine, and the new limitations imposed by the CMEA, DEA is removing the exemption for chemical mixtures having a total concentration of less than (or equal to) five percent ephedrine or pseudoephedrine and is removing the exemption for unaltered ephedra plant material.

Action Taken in This Interim Rule

This Interim Rule announces the removal of the exemption for chemical mixtures having a total concentration of ephedrine and/or pseudoephedrine of five percent (or less). By removing these exemptions, all chemical mixtures containing ephedrine and/or pseudoephedrine will be regulated chemical mixtures subject to control under the Controlled Substances Act, including registration, recordkeeping, reporting, and security controls. This action will be effective August 24, 2007.

This rulemaking also removes the exemption for the category of products consisting of harvested plant material which is specified in 21 CFR 1310.12(d)(1). Harvested plant material (*i.e.*, ephedra) that contains ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and/or pseudoephedrine, meeting the definition of chemical mixture, shall no longer be exempt from CSA provisions, even when the plant material is unaltered from its natural state.

II. Provisions Specifically Applying to Regulated Chemical Mixtures Containing These List I Chemicals

Effective August 24, 2007, any chemical mixture that contains ephedrine or pseudoephedrine will be treated as a List I chemical. Transactions that meet or exceed the cumulative monthly threshold for the listed chemical, set forth at 21 CFR 1310.04, shall be regulated transactions. Persons interested in handling a regulated mixture must comply with the following:

Registration. Any person who manufactures, distributes, imports or exports a regulated mixture, or proposes to engage in such activities, with respect to a regulated mixture containing a List I chemical, shall obtain a registration pursuant to the CSA (21 U.S.C. 822). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

Separate registration is required for manufacture, distribution, importing, and exporting. A separate registration is required for each principal place of business at one general physical location where List I chemicals are manufactured, distributed, imported, or exported by a person (21 CFR 1309.23). Effective August 24, 2007, any person manufacturing, distributing, importing, or exporting any amount of a regulated mixture will become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who are subject to the registration requirement to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, in order to allow continued legitimate commerce in regulated mixtures, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to engage in activities with regulated mixtures, provided that DEA receives a properly completed application for registration on or before August 24,

2007. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, are effective on August 24, 2007. Therefore, all transactions of chemical mixtures containing ephedrine or pseudoephedrine will be regulated, if at or above threshold, while an application for registration or exemption is pending. This is necessary because not regulating these transactions could result in increased diversion of chemicals desirable to drug traffickers.

Additionally, the temporary exemption does not suspend applicable federal criminal laws relating to the regulated mixture, nor does it supersede state or local laws or regulations. All handlers of a regulated mixture must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a List I chemical. Only a distribution, receipt, sale, importation, exportation, brokerage or trade of a regulated mixture above the established threshold is a regulated transaction (21 CFR 1300.02(b)(28)).

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory, and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, *e.g.* formulating a nonregulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that causes the regulated person to believe that the listed chemical will be used in violation of the CSA. Section 1310.03(c) requires that regulated persons who engage in a transaction with a nonregulated person or who engage in an export transaction that involves ephedrine or pseudoephedrine, including drug

products containing these chemicals, and uses or attempts to use the Postal Service or any private or commercial carrier must file monthly reports of each such transaction.

Imports/Exports. All imports/exports and brokered transactions of regulated mixtures containing ephedrine and/or pseudoephedrine shall comply with the CSA (21 U.S.C. 952, 957 and 971). Regulations for importation and exportation of List I chemicals are described in 21 CFR part 1313. Separate registration is necessary for each activity (21 CFR 1309.22).

Security. Regulated persons must provide effective controls and procedures to guard against theft and diversion of regulated mixtures. Regulated persons must store the regulated mixtures in containers sealed so that tampering will be evident; if the mixture cannot be stored in a sealed container, access to the chemicals must be controlled (21 CFR 1309.71).

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated mixture or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR Part 1316 Subpart A.

Regulatory Certifications

Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that agencies, prior to issuing a new rule, publish a notice of proposed rulemaking in the **Federal Register**. The APA also provides, however, that agencies may be excepted from this requirement when "the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

With publication of this interim rule, DEA is invoking this "good cause" exception to the APA's notice requirement based on the combination of several extraordinary factors. Section 713 of the CMEA (21 U.S.C. 826 as amended) requires the establishment of production quotas for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. DEA implemented these requirements in a separate rulemaking, "Import and

Production Quotas for Certain List I Chemicals” [Docket No. DEA–293, RIN 1117–AB08] (72 FR 37439, July 10, 2007). DEA cannot establish such quotas if certain products containing these List I chemicals are not regulated. To not regulate these products while at the same time establishing production quotas would create a loophole which traffickers could exploit domestically. CMEA also mandates that imports of ephedrine, pseudoephedrine, and phenylpropanolamine are prohibited except for such quantities as the Attorney General (DEA by delegation) finds necessary to provide for medical, scientific, or other legitimate purposes (CMEA section 715, 21 U.S.C. 952 as amended). DEA is further required to establish import quotas for these three List I chemicals. In order for DEA to establish quotas and meet its obligation to prohibit imports except those necessary to provide for a medical, scientific, or other legitimate purpose, as required by the CMEA, DEA must exercise regulatory control over chemical mixtures containing pseudoephedrine and ephedrine. To exercise this control, DEA must eliminate the exemption for chemical mixtures containing these List I chemicals.

DEA is concerned about the increasing number of requests for importation of below-five percent ephedrine or pseudoephedrine material. After the recent FDA action which bans dietary supplements containing such material, DEA has not been able to determine the legitimate need for importation of such material. Therefore, in an effort to eliminate the undocumented importation and domestic distribution of such material, and to comply with all of the new requirements imposed by the CMEA discussed above, DEA is removing these exemptions.

As has been discussed previously in this rulemaking, DEA has seized chemical mixtures containing ephedrine and/or pseudoephedrine with concentrations of less than five percent at 20 domestic clandestine laboratories over the past several years. The source of precursor chemicals in a seized clandestine laboratory is often not evident, so it is likely that the number of seized laboratories that used such mixtures is actually greater. Further, the CMEA specifically prohibits all importation of ephedrine, pseudoephedrine, and phenylpropanolamine except those quantities which the Attorney General finds to be necessary for medical, scientific, and other legitimate purposes. These seizures, coupled with

the new requirements limiting importation of ephedrine, pseudoephedrine, and phenylpropanolamine, as well as the establishment of production and import quotas for these three List I chemicals, necessitate that DEA remove the concentration limit for these previously exempt chemical mixtures. Engaging in traditional notice and comment rulemaking would prevent DEA from complying with the mandates of CMEA to limit the importation and domestic production of these materials.

Were DEA not to regulate chemical mixtures containing ephedrine and/or pseudoephedrine at or below the current five percent concentration limit, DEA is concerned that these products would be more widely diverted for illicit production of methamphetamine, particularly with the new quota and import restrictions imposed by CMEA. Accordingly, DEA finds that it is impracticable to conduct notice and comment rulemaking regarding the removal of the exemption for chemical mixtures with concentration limits at or below the current five percent limit. If DEA did not act in this manner, traffickers would have ready access to chemical mixtures which DEA has demonstrated are being used currently to illicitly manufacture methamphetamine. Allowing such illicit manufacture to continue during the pendency of rulemaking would be contrary to the public interest and the intent of the Combat Methamphetamine Epidemic Act of 2005. The broad scope of the new law, as well as the expedited effective dates, is a clear reflection of Congress’ concern about the nation’s growing methamphetamine epidemic and its desire to act quickly to prevent further illicit use of these chemicals.

In light of these factors, DEA finds that “good cause” exists to issue this interim rule without engaging in traditional notice and comment rulemaking. In so doing, DEA recognizes that exceptions to the APA’s notice and comment procedures are to be “narrowly construed and only reluctantly countenanced.” *Am. Fed’n of Gov’t Employees v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981) (quoting *New Jersey Dep’t of Env’t. Prot. v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)). Based on the totality of the circumstances associated with the CMEA, DEA finds that invocation of the “good cause” exception is justified.

Further, the APA also provides that, while agencies are generally required to publish final rules at least 30 days before they become effective, they may be exempt from this requirement as well “for good cause found and published

with the rule.” 5 U.S.C. 553(d)(3). As discussed previously, DEA has recently seen a significant increase in the number of requests for importation of large quantities of these chemical mixtures. After the recent FDA action which bans dietary supplements containing such material, DEA has not been able to determine the legitimate need for importation of such material. DEA is concerned about the potential illicit use of such material for clandestine methamphetamine manufacture, particularly as traffickers look for easily-obtainable product due to the retail sales limits recently imposed by the CMEA. Delaying the effective date of this rule could provide a significant loophole for domestic illicit methamphetamine manufacturers to take advantage of for their illegal activities. Therefore, DEA finds good cause not to delay the effective date of this rule.

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)). The (RFA) applies to rules that are subject to notice and comment. As explained above, DEA has determined that public notice and comment are not necessary. Consequently, the RFA does not apply. DEA notes, however, that as explained in the discussion under Executive Order 12866, the costs of this rule are low, requiring only registration, maintenance of records, reports on unusual transactions, thefts or losses, and mail order transactions, and security. Other than the registration fee and the reports, these requirements can generally be met by standard business practices.

DEA has determined that dietary supplements containing ephedrine alkaloids, including bulk material used to formulate these supplements, are the principal chemical mixtures that contain ephedrine and/or pseudoephedrine. Dietary supplements containing such ephedrine alkaloids have been banned by FDA. Due to (1) The CMEA mandate that DEA limit the domestic production and importation of materials containing ephedrine and pseudoephedrine to quantities necessary for medical, scientific and other legitimate purposes; (2) the elimination of the previous lawful status of such products as dietary supplements; and (3) the potential illicit use of such products as precursor material for illicit production of methamphetamine, DEA is removing the exemption for low concentration material, including harvested plant

material. This industry is comprised mainly of small businesses, as defined by U.S. Small Business Administration (SBA) regulations (13 CFR part 121). However, the lawful marketing of dietary supplements containing ephedrine alkaloids has been banned by FDA. As such, this regulatory action is not expected to impact any manufacturers whose product can still lawfully be marketed under the FFD&CA. Persons who import or distribute chemical mixtures containing ephedrine and/or pseudoephedrine at or below the previously-exempt five percent concentration limit will be affected by this rule. This rule will not have a significant economic impact on those persons. However, DEA is seeking comment specifically regarding the potential impacts of this regulation.

DEA is not prohibiting the importation, exportation, manufacture, or distribution of chemical mixtures containing ephedrine or pseudoephedrine in concentrations less than or equal to five percent. Rather, DEA is regulating the importation, exportation, manufacture, and distribution of these chemical mixtures by requiring persons who handle these chemical mixtures to register with DEA, maintain certain records common to business practice, and file certain reports, regarding these chemical mixtures. Chemical mixtures containing the List I chemicals ephedrine and pseudoephedrine will still be available for use.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. DEA has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget (OMB).

The rule will impose relatively low costs on regulated persons. Other than the annual registration fee of \$1,247, there are few costs associated with the rule. The records required on regulated transactions can be met with standard business records. Reports on unusual sales, thefts, and losses will be filed infrequently by any one person. Those who sell covered mixtures and deliver them to the end user through the mail or other delivery services will have to file a monthly report. The monthly report requires only the registrant's name and registration number, the purchaser's name and address, the shipping address (if different), the name and quantity of the chemical, and the

date of shipment; all of this information is available from standard business and shipping records. These reports may be filed electronically. The security requirements do not exceed standard business practices for the protection of both the security and quality of these products. DEA has not determined the number of firms potentially affected by the rule, but does not expect it to be high.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Drug Enforcement Administration is eliminating the current exemption for chemical mixtures with concentration limits of the List I chemicals ephedrine and/or pseudoephedrine of less than or equal to five percent. This means that all chemical mixtures containing the List I chemicals ephedrine and/or pseudoephedrine are regulated chemical mixtures, regardless of concentration limits.

Due to this change in the regulations, all persons who import, export, manufacture, or distribute chemical mixtures containing these two List I chemicals will be required to register with DEA. They will also be required to file reports regarding certain transactions, should certain criteria be met.

DEA does, however, provide a mechanism whereby a person may seek an exemption from these regulatory requirements for a specific chemical mixture, if DEA determines that such a chemical mixture cannot be used by

traffickers to manufacture controlled substances illicitly.

DEA notes that the lawful marketing of dietary supplements containing this material has been banned by FDA. As such, this regulatory action is expected to impact no manufacturers, whose product can still lawfully be marketed under the FFD&CA.

Therefore, as the impact of this regulation is minimal, DEA is making minor adjustments to the OMB information collections entitled "Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993" (OMB control number 1117-0031, DEA Form 510), "Report of Mail Order Transactions" (OMB control number 1117-0033), and "Import/Export Declaration for List I and List II Chemicals" (OMB control number 1117-0023). DEA is specifically seeking comment regarding the number of persons who may be affected by this regulation.

Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, List I and List II chemicals, Reporting and Recordkeeping requirements.

■ For the reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Section 1310.09 is amended by adding a new paragraph (j) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(j) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain

a registration to manufacture, distribute, import, or export regulated chemical mixtures which contain ephedrine, and/or pseudoephedrine, pursuant to Sections 1310.12 and 1310.13, is temporarily exempted from the registration requirement, provided that DEA receives a properly completed application for registration or application for exemption on or before August 24, 2007. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, 1313, and 1315 of this

chapter remain in full force and effect. Any person who manufactures, distributes, imports, or exports a chemical mixture whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for these persons, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

■ 3. Section 1310.12 is amended as follows:

■ A. By revising the Table of Concentration Limits in paragraph (c) by revising the entries for “Ephedrine, its salts, optical isomers, and salts of optical isomers” and “Pseudoephedrine, its salts, optical isomers, and salts of optical isomers”; and

■ B. By removing paragraph (d)(1) and redesignating paragraphs (d)(2) through (d)(5) as paragraphs (d)(1) through (d)(4) as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code number	Concentration (percent)	Special conditions
List I Chemicals			
* * * Ephedrine, its salts, optical isomers, and salts of optical isomers.	8113	* Not exempt at any concentration.	* Chemical mixtures containing any amount of ephedrine and/or pseudoephedrine, and their salts, optical isomers and salts of optical isomers are not exempt due to concentration, unless otherwise exempted.
* * * Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.	8112	* Not exempt at any concentration.	* Chemical mixtures containing any amount of ephedrine and/or pseudoephedrine, and their salts, optical isomers and salts of optical isomers are not exempt due to concentration, unless otherwise exempted.
* * *		* *	* *
List II Chemicals			
* * *		* *	* *

* * * *

Dated: July 2, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7-14295 Filed 7-24-07; 8:45 am]

BILLING CODE 4410-09-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2007-7]

Technical Amendments to online registration of claims to copyright; corrections

AGENCY: Copyright Office, Library of Congress

ACTION: Interim Regulations for online registration; correction.

SUMMARY: The Copyright Office published in the **Federal Register** on July 6, 2007, an interim regulation implementing an online copyright registration system. This document

makes technical corrections to that interim regulation.

DATES: Effective on July 25, 2007.

FOR FURTHER INFORMATION CONTACT:

Tanya Sandros, Acting General Counsel, or Nanette Petruzzelli, Special Legal Advisor to the Register for Reengineering, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: The Copyright Office published an interim regulation in the Federal Register on July 6, 2007, which, for the purpose of implementing an online registration system, amended its regulations governing the procedures by which the public submits, and the Office processes, copyright registrations and

recordations. This document makes non-substantial corrections to errors contained in the interim regulations.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Registration requirements.

■ In consideration of the foregoing, the Copyright Office corrects part 202 of 37 CFR by making the following correcting amendments:

PART 202 — REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Amend § 202.3 as follows:

■ a. By removing “(b)(3)” and adding “(b)(4)” in paragraph (b)(1)(iv);

■ b. By removing “(b)(3) through (b)(8)” and adding “(b)(4) through (b)(10)” in paragraph (b)(4)(ii);

■ c. By removing “(b)(7)” and adding “(b)(8)” in paragraph (b)(8)(ii);

■ d. By removing “(b)(7)(i)(E)” and adding “(b)(8)(i)(E)” in paragraph (b)(8)(ii)(C); and

■ e. By removing “(b)(9)(iv)” and adding “(b)(10)(iv)” in paragraph (b)(10)(vi); and

■ f. By adding the footnote designation “6” after “and § 202.20.” in paragraph (c)(2); and by adding footnote 6 to read as follows:

§ 202.3 Registration of copyright.

* * * * *

⁶In the case of applications for group registration of newspapers, contributions to periodicals, and newsletters, under paragraphs (b)(7), (b)(8), and (b)(9) of this section, the deposits shall comply with the deposits specified in the respective paragraphs, and the fees with those specified in § 201.3.

§ 202.20 [Amended]

■ 3. Amend § 202.20 as follows:

■ a. By removing “(b)(2)(vi)” and adding “(b)(2)(vii)” in paragraph (b)(2)(i); and

■ b. By removing “(b)(2)(iii) through (vi)” and adding “(b)(2)(iv) through (vii)” in paragraph (b)(2)(ii).

Dated: July 20, 2007

Maria Pallante,

Deputy General Counsel

[FR Doc. E7-14372 Filed 7-24-07; 8:45 am]

BILLING CODE 1410-33-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0174; FRL-8445-6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Attainment Determination, Redesignation of the Franklin County Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Franklin County nonattainment area (“Franklin County Area” or “Area”) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the PADEP submitted SIP revisions consisting of a maintenance plan for the Franklin County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base-year inventory for the Franklin County Area which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Franklin County Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, and the maintenance plan, and the 2002 base-year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on July 25, 2007 pursuant to the authority of 5 U.S.C. 553(d)(1).

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0174. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 2007 (72 FR 29914), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's redesignation request, a SIP revision that establishes a maintenance plan for the Franklin County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 14, 2006. Other specific requirements of Pennsylvania's redesignation request and SIP revision for the maintenance plan, and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04-1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour

ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area nonattainment New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. In addition the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the May 30, 2007 (72 FR 29914) proposed rulemaking, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with the redesignation of the Franklin County Area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

In the May 30, 2007 (72 FR 29914) proposed rulemaking, EPA proposed to find that the Franklin County Area had satisfied the requirements under the 1-hour standard whether the 1-hour standard was deemed to be reinstated or whether the Court's decision on the petition for rehearing was modified to require something less than compliance with all applicable 1-hour requirements.

Because EPA proposed to find that the Franklin County Area satisfied the requirements under either scenario, EPA is proceeding to finalize the redesignation and to conclude that the Franklin County Area met the requirements under the 1-hour standard applicable for purposes of redesignation under the 8-hour standard. These include the provisions of EPA's anti-backsliding rules, as well as the additional anti-backsliding provisions identified by the court in its rulings. In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, EPA finds that the Franklin County Area has met the anti-backsliding requirements, see 40 CFR 51.900 *et seq.*; 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the Franklin County Area's classification for the 1-hour ozone NAAQS, as well as the four additional anti-backsliding provisions identified by the Court, or alternatively, that such requirements are not applicable for purposes of redesignation. In addition, with respect to the requirement for transportation conformity under the 1-hour standard, the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must continue to comply with the applicable requirements of EPA's conformity regulations at 40 CFR Part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

II. Final Actions

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and the 2002 base-year emissions inventory because the requirements for approval have been satisfied. EPA has evaluated Pennsylvania's redesignation request that was submitted on December 14, 2006, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Franklin County Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Franklin County Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Franklin

County Area submitted on December 14, 2006 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base-year emissions inventory submitted by PADEP on December 14, 2006 as a revision to the Pennsylvania SIP. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the Franklin County Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Franklin County Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER DAY (TPD)—ROUNDED UPWARD TO ONE DECIMAL PLACE

Budget year	NO _x	VOC
2009	12.7	7.3
2018	6.7	5.1

With respect to the 1-hour ozone NAAQS, EPA has determined pursuant to section 181(b)(2) of the CAA that the Franklin County Area has attained the 1-hour NAAQS for ozone. On the basis of this determination, EPA is also determining that the following nonattainment area requirements of part D to Title 1 of the CAA are not applicable to the Franklin County Area for so long as it continues to attain the 1-hour NAAQS for ozone: The requirements of section 172(c)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements, the requirements of section 172(c)(2) concerning reasonable further progress (RFP), and the requirements of section 172(c)(9) concerning contingency measures for RFP or attainment. If a violation of the 1-hour ozone NAAQS is monitored in the Franklin County 1-hour ozone nonattainment area, these determinations shall no longer apply.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the

Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or allows the state to avoid adopting or implementing other requirements, 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 approves a state rule implementing a Federal requirement, and does not alter

the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by September 24, 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, approving the redesignation of the Franklin County Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year emissions inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 18, 2007.

James W. Newsom,
Acting Regional Administrator, Region III.

■ 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-hour Ozone Maintenance Plan and the 2002 Base Year Emissions Inventory for the Franklin County, Pennsylvania Area at the end of the table to read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	*
(1)	*	*	*	*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Franklin County Area (Franklin County).	9/20/06, 11/08/06	7/25/07 [Insert page number where the document begins].	

■ 3. Section 52.2037 is amended by adding paragraph (m) to read:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(m) Determination—EPA has determined that, as of July 25, 2007, the Franklin County ozone nonattainment area has attained the 1-hour ozone standard and that the following requirements of section 172(c)(2) of the Clean Air Act do not apply to this area

for so long as the area does not monitor any violations of the 1-hour ozone standard of 40 CFR 50.9: the attainment demonstration and reasonably available control measure requirements of section 172(b)(1), the reasonable further progress requirement of section 172(b)(2), and the related contingency requirements of section 172(c)(9). If a violation of the 1-hour ozone NAAQS is monitored in the Franklin County 1-hour ozone nonattainment area, these determinations shall no longer apply.

PART 81—[AMENDED]

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

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

■ 5. In § 81.339, the table entitled “Pennsylvania-Ozone (8-Hour Standard)” is amended by revising the entry for the Franklin County, PA Area to read as follows:

§ 81.339 Pennsylvania

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
Franklin Co., PA: Franklin County	July 25, 2007	Attainment		
* * * * *				

^a Includes Indian County located in each county or area, except otherwise noted.

¹ This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 07–3631 Filed 7–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0323; FRL–8445–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Harrisburg-Lebanon-Carlisle Ozone Nonattainment Area to Attainment and Approval of the Area’s Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Harrisburg-Lebanon-Carlisle ozone nonattainment area (“Harrisburg Area”) be redesignated as attainment for the 8-hour ozone ambient air quality standard (NAAQS). EPA is approving the ozone redesignation request for the Harrisburg Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for the Harrisburg Area that provides for continued

attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is approving the 8-hour maintenance plan. PADEP also submitted a 2002 base-year inventory for the Harrisburg Area which EPA is approving. In addition, EPA is approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Harrisburg Area maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request, and the maintenance plan and the 2002 base-year emissions inventory as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on July 25, 2007 pursuant to the authority of 5 U.S.C. 553(d)(1).

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0323. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for

public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth (215) 814–2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2007 (72 FR 30521), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania’s redesignation request, a SIP revision that establishes a maintenance plan for the Harrisburg Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation, and a 2002 base-year emissions inventory. The formal SIP revision was submitted by PADEP on March 27, 2007. Other specific requirements of Pennsylvania’s redesignation request, the SIP revision for the maintenance plan, and the rationale for EPA’s proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates, and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. In addition the June 8 decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity

regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

For the reasons set forth in the proposal, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with the redesignation of this Area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

In its proposal, EPA proposed to find that the Area had satisfied the requirements under the 1-hour standard whether the 1-hour standard was deemed to be reinstated or whether the Court's decision on the petition for rehearing was modified to require something less than compliance with all applicable 1-hour requirements. Because EPA proposed to find that the Area satisfied the requirements under either scenario, EPA is proceeding to finalize the redesignation and to conclude that the Area has met the requirements under the 1-hour standard applicable for purposes of redesignation under the 8-hour standard. These include the provisions of EPA's anti-backsliding rules, as well as the additional anti-backsliding provisions identified by the Court in its rulings. In its June 8, 2007 decision, the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, EPA finds that the Area has met the anti-backsliding requirements, see 40 CFR 51.900 *et seq*; 70 FR 30592, 30604 (May 26, 2005) which apply by virtue of the Area's classification for the 1-hour ozone NAAQS, as well as the four additional anti-backsliding provisions identified by the Court, or that such requirements are not applicable for purposes of redesignation. In addition, with respect to the requirement for transportation conformity under the 1-hour standard,

the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets, anti-backsliding requires only that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. The Court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

II. Final Action

EPA is approving the Commonwealth of Pennsylvania's redesignation request, maintenance plan, and the 2002 base-year emissions inventory because the requirements for approval have been satisfied. EPA has evaluated Pennsylvania's redesignation request that was submitted on March 27, 2007 and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Harrisburg Area has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Harrisburg Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the maintenance plan for the Harrisburg Area submitted on March 27, 2007 as a revision to the Pennsylvania SIP. EPA is also approving the MVEBs submitted by PADEP in conjunction with its redesignation request. In addition, EPA is approving the 2002 base-year emissions inventory as a revision to the Pennsylvania SIP submitted by PADEP on March 27, 2007. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_x and VOCs in the Harrisburg Area for the 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, the Harrisburg Area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN KILOGRAMS PER DAY (TONS PER DAY—ROUNDED)

Year	VOC	NO _x
Harrisburg Area Transportation Study (HATS)—Cumberland, Dauphin, and Perry Counties		
2009	23,014 (25.4)	41,917 (46.2)
2018	16,136 (17.8)	18,409 (20.3)

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS IN KILOGRAMS PER DAY (TONS PER DAY—ROUNDED)—Continued

Year	VOC	NO _x
Lebanon County MPO (LEBCO)		
2009	4,301 (4.7)	8,928 (9.8)
2018	2,512 (2.8)	3,684 (4.1)

*Note: Tons per day are informational only. Differences occur due to rounding.

The Harrisburg Area is subject to the CAA's requirement for the basic nonattainment areas until and unless it is redesignated to attainment.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Because this action affects the status of a geographical area, does not impose any new requirements on sources, or

allows the state to avoid adopting or implementing other requirements, 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 approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 USC. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 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, approving the redesignation of the Harrisburg Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year emissions inventory, and the MVEBs identified in the maintenance plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory for the Harrisburg-Lebanon-Carlisle,

Pennsylvania Area at the end of the table to read as follows:

§ 52.2020 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
8-Hour Ozone Maintenance Plan and 2002 Base Year Emissions Inventory.	Harrisburg-Lebanon-Carlisle, PA: Cumberland County, Dauphin County, Lebanon County, Perry County.	03/27/07	07/25/07	[Insert page number where the document begins].

PART 81—[AMENDED]

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

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

■ 4. In § 81.339, the table entitled “Pennsylvania-Ozone (8-Hour Standard)” is amended by revising the entry for the Harrisburg-Lebanon-

Carlisle, Pennsylvania Area to read as follows:

§ 81.339 Pennsylvania

*	*	*	*	*

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation ^a		Category/Classification	
	Date ¹	Type	Date ¹	Type
Harrisburg-Lebanon-Carlisle PA: Cumberland County, Dauphin County, Lebanon County, Perry County.	07/25/07	Attainment		

^a Includes Indian County located in each county or area, except otherwise noted.

¹ This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 07–3632 Filed 7–24–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 174**

[EPA–HQ–OPP–2006–0913; FRL–8134–3]

Bacillus thuringiensis Vip3Aa19 Protein in Cotton; Exemption from the Requirements of a Tolerance; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a direct final rule in the **Federal Register** of April 25, 2007 (72 FR 20431), concerning plant-incorporated protectant tolerance exemptions. On May 9, 2007 EPA issued a final rule revising the tolerance exemption for *Bacillus thuringiensis*

Vip3Aa19 in cotton. This technical amendment is being issued to clarify the status and the wording of the tolerance exemption for *Bacillus thuringiensis* Vip3Aa19 in cotton.

DATES: This final rule is effective July 25, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0913. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in www.regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Alan Reynolds, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number: (703) 605–0515, e-mail address: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

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

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

II. What Does this Correction Do?

In a direct final rule published on April 25, 2007, (72 FR 20431)(FRL-7742-2) EPA took action to move existing active and inert ingredient plant-incorporated protectant tolerance exemptions from 40 CFR part 180, *Tolerances and Exemptions from Tolerances for Pesticide Chemicals in Food* to 40 CFR part 174, *Procedures and Requirements for Plant-Incorporated Protectants*, subpart W. EPA also made some conforming changes to the text of the individual exemptions that were transferred from part 180 so that they would be consistent with part 174, as well as some minor technical corrections to the wording of certain individual exemptions. Since this action was issued as a direct final rule the changes had a delayed effective date and did not become effective until July 24, 2007. Included in the redesignation and revision of part 174, subpart W was §174.452 which was redesignated as §174.501.

In the May 9, 2007 issue of the **Federal Register** (72 FR 26300), EPA issued a final rule which extended the temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a plant-incorporated protectant (PIP) by revising §174.452. The extension of the temporary exemptions was requested in a petition submitted by Syngenta Seeds, Inc. to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The May 9, 2007 final rule eliminated the need to establish a maximum permissible level for residues of the *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a PIP

on cotton. The temporary tolerance exemption expires on May 1, 2008.

Section 174.452 as printed in the May 9, 2007 issue of the **Federal Register** codified the current and correct version of the *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a PIP on cotton in §174.452. The May 9, 2007 version of §174.452 became effective on May 9, 2007. However, §174.452 was redesignated as §174.501 in the April 25, 2007 issue of the **Federal Register**. The redesignation and revision becomes effective no earlier than July 24, 2007, if no adverse comment is received. Once the direct final rule becomes effective the revision of §174.452 as published in the May 9, 2007 issue of the **Federal Register** will be wiped out because §174.452 will no longer exist. With this technical amendment EPA is revising §174.501 to read the same as §174.452 which, as was stated above, will be eliminated once the direct final rule becomes effective.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because the original issuance of the revised §174.452 was properly executed and the impact of the delayed effective date for the April 25, 2007 final rule removing the content of that section was inadvertent. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

No. This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any

enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

EPA's compliance with these statutes and Executive Orders for the May 9, 2007 final rule, which established an extension of the temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Vip3Aa19 protein in cotton when applied or used as a plant-incorporated protectant (PIP), is discussed in the preamble for the final rule (72 FR 26300).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2007.

Janet L. Andersen,

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

■ Therefore, 40 CFR part 174 is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.501 is revised to read as follows:

§174.501 *Bacillus thuringiensis* Vip3Aa19 protein in cotton; temporary exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vip3Aa19 protein in cotton are temporarily exempt from the requirement of a tolerance when used as a plant-incorporated protectant (PIP) in the food and feed commodities of cotton; vegetative-insecticidal protein in cotton seed, cotton oil, cotton meal, cotton hay, cotton hulls, cotton forage, and cotton gin byproducts. This temporary exemption from the requirement of tolerance will permit the use of the food commodities in this section when treated in accordance with the provisions of the experimental use permit (EUP) 67979–EUP–7, which is being issued in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked May 1, 2008. However, if the EUP is revoked, or if any experience with or scientific data on this pesticide indicate that the temporary tolerance exemption is not safe, this temporary exemption from the requirement of a tolerance may be revoked at any time. [FR Doc. E7–14373 Filed 7–24–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0446; FRL–8136–7]

Diflubenzuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline in or on lemon. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on lemon. This regulation establishes a maximum permissible level for combined residues of diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline, in this food commodity. The tolerance expires and is revoked on December 31, 2010.

DATES: This regulation is effective July 25, 2007. Objections and requests for hearings must be received on or before September 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0446. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the www.regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in www.regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–9364; e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–

OPP-2007-0446 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2007-0446, by one of the following methods:

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

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

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for of the insecticide, diflubenzuron and its metabolites p-chlorophenylurea and p-chloroaniline, in or on lemon at 0.8 parts per million (ppm). This tolerance expires and is revoked on December 31, 2010. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the

application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

EPA is also revising the tolerance expression in § 180.377(b) to be consistent with the preferable wording as expressed in § 180.377(a)(2).

III. Emergency Exemption for Diflubenzuron on Lemon and FFDCA Tolerances

In the fall of 2005 and spring of 2006, active infestations of Diaprepes root weevil were detected including one lemon orchard (28 acres) in commercial sites in Long Beach, Newport Beach, Carlsbad, Encinitas, and La Jolla, California. The California Department of Food and Agriculture (CDFA) has quarantined these sites and has already initiated eradication treatments using products that impact various life stages of this insect. The emergency use of diflubenzuron is needed to treat the egg stage of the weevil when they are detected in lemon. The overall program involves treatment for larval and adult

stages as well. EPA has authorized under FIFRA section 18 the use of diflubenzuron on lemon for control of Diaprepes root weevil in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of diflubenzuron in or on lemon. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance expires and is revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on lemon after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether diflubenzuron meets EPA's registration requirements for use on lemon or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of diflubenzuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diflubenzuron, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflubenazuron and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of diflubenazuron in or on lemon at 0.8 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

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

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at <http://www.epa.gov/pesticides/health/human.htm>. A summary of the toxicological endpoints for diflubenazuron used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of September 19, 2002 (67 FR 59006) (FRL-7200-4).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances for residues of

diflubenazuron are established under 40 CFR 180.377. Tolerances listed in 40 CFR 180.377(a)(1) are expressed in terms of diflubenazuron *per se*. Under this section, tolerances of 0.05–6.0 ppm are established for residues in/on eggs; milk; fat and meat of cattle, goat, hog, horse, poultry, and sheep; poultry meat byproducts; cottonseed; mushroom; grapefruit, orange (sweet); tangerine; soybean hulls; and globe artichoke. Tolerances listed in 40 CFR 180.377(a)(2) are expressed in terms of the combined residues of diflubenazuron and its metabolites 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA). Under this section, tolerances of 0.02–55.0 ppm are established for residues in/on rice grain and straw; barley grain, straw, and hay; oat, forage, grain, hay, and straw; wheat forage, grain, hay, and straw; grain aspirated fractions; brassica, leafy greens, subgroup 5B; grass, forage, fodder, and hay, group 17; tree nuts (group 14); peanut, peanut hay and refined oil; pistachios; fruit, stone (group 12) except cherry; meat byproducts of cattle, goat, hog, horse, and sheep; pear; pepper; pummelo; turnip greens; and almond hulls. Time-limited tolerances listed in 40 CFR 180.377(b) are expressed in terms of the combined residues of diflubenazuron and its metabolites CPU and PCA, expressed as the parent diflubenazuron, in connection with use of the pesticide under Section 18 Emergency Exemptions granted by EPA. Risk assessments were conducted by EPA to assess dietary exposures from diflubenazuron in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The diflubenazuron toxicology studies indicated no possibility of such an effect for either the general U.S. population (including infants and children) or the females 13–50 years old population subgroup for diflubenazuron; therefore, an acute dietary exposure analysis was not performed.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A chronic dietary-exposure

assessment was conducted using the established/recommended tolerances for all food commodities, 100% CT information for all proposed and existing uses, and DEEM(™) Version 7.81 default processing factors for some processed commodities.

iii. *Cancer.* The Agency has classified diflubenazuron as “Group E,” evidence of non-carcinogenicity for humans, based on lack of evidence of carcinogenicity in rats and mice. There are also two metabolites of diflubenazuron; PCA and CPU. PCA tested positive for splenic tumors in male rats and hepatocellular adenomas/carcinomas in male mice in a National Toxicology Program (NTP) study. Therefore, EPA classified PCA as a “Group B2” probable human carcinogen. The Agency determined for those commodities that contained PCA and CPU, the Q1* of PCA should be used to calculate the cancer risk from the sum of these two metabolites.

Based on the submitted metabolism studies, there are two possible sources for dietary exposure to PCA and CPU: Residues in mushrooms and residues in milk and liver. Because human exposure to PCA and CPU will not be affected by the proposed new uses, and EPA has previously concluded that exposure to these compounds is safe, therefore, the cancer dietary risk from PCA and CPU will not be addressed in this document. For a detailed discussion on the exposure and risks to PCA and CPU, please refer to the September, 2002 **Federal Register** document titled *Diflubenazuron; Pesticide Tolerances* (September 19, 2002, FR 67 59006); <http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm>.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to assess dietary exposure to diflubenazuron in drinking water based on measured drinking water concentrations. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of diflubenazuron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppfed1/models/water/index.htm>. Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentrations in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of diflubenazuron and the major degradate CPU for chronic exposures are estimated

to be 2.76 parts per billion (ppb) for surface water and 0.208 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For chronic dietary risk assessment, the annual average concentration of 2.76 ppb was used to represent the drinking water contribution to chronic dietary exposure for diflubenzuron.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Although there are no registered homeowner uses, there are registered uses for professional applications to outdoor residential and recreational areas to control mosquitoes, moths, and other insects. In addition, certain residential use sites will be treated in association with this emergency exemption for the control of the Diaprepes root weevil. However, EPA considers the potential for post-application residential exposure to be low. Further, diflubenzuron has a low dermal absorption rate (0.5%) and will be only applied to the tree canopy.

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

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

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Based on the developmental and reproductive toxicity studies, there is no indication of increased susceptibility of rats or rabbits to *in utero* or postnatal exposure.

3. *Conclusion.* There is a complete toxicity database for diflubenzuron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the additional FQPA 10X safety factor to protect infants and children was not needed. This decision was based on the following:

- i. There is a complete toxicity database for diflubenzuron;
- ii. There is no indication of increased susceptibility of rats or rabbits to *in utero* or postnatal exposure;
- iii. A developmental neurotoxicity study (DNT) with diflubenzuron is not required;
- iv. Food and drinking water exposure assessments will not underestimate the potential exposure for infants and children; and
- v. The potential for post-application residential exposures are expected to be limited. Due to the low dermal absorption rate (0.5%) of diflubenzuron, and since it is only applied to the tree canopy to control gypsy moths and mosquitoes, minimal bystander contact is expected.

D. Aggregate Risks and Determination of Safety

1. *Acute risk.* Because there were no toxic effects attributable to a single dose of diflubenzuron, it is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to diflubenzuron from food will utilize 12% of the cPAD for the U.S. population, 12% of the cPAD for all infants less than 1 year old and 38% of the cPAD for children 1–2 years old. There are no residential uses for

diflubenzuron that result in chronic residential exposure to diflubenzuron. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

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

The aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. Intermediate-term risk.

Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

The aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population.* Based on the available evidence, which included adequate carcinogenicity studies in rats and mice, and battery of negative mutagenicity studies, diflubenzuron has been classified as "Group E," evidence of non-carcinogenicity for humans, by the Agency. As noted in Unit III.C.1.iii. of this document, the Agency has concluded that human exposure to PCA and CPU (metabolites of diflubenzuron) will not be affected by the proposed new uses. EPA has previously found aggregate exposure to these compounds to be safe. (September 19, 2002, 67 FR 59006); <http://www.epa.gov/fedrgstr/EPA-PEST/2002/September/Day-19/p23818.htm>.

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

V. Other Considerations

A. Analytical Enforcement Methodology

There are adequate enforcement methods, published in the Pesticide Analytical Manual (PAM, Vol. II), for determining diflubenzuron residues of concern. In addition, a new analytical methodology for plant commodities was successfully validated by an independent laboratory as well as by Agency chemists at the Analytical Chemistry Branch (ACB)/Biological and Economics Analysis Division (BEAD) in conjunction with an approved rice petition (PP 8F4925). The new methods were forwarded to the Food and Drug Administration (FDA) for publication in PAM Vol. II as Roman Numeral Methods. These methods can separately determine residues of diflubenzuron by

gas chromatography/electron-capture detection (GC/ECD), CPU by GC/ECD, and PCA by GC/mass spectrometry (MS).

B. International Residue Limits

The Codex Alimentarius has established maximum residue limits (MRL), expressed in terms of diflubenzuron *per se*, for many commodities including: Apple (5 ppm), citrus fruits (0.5 ppm), edible offal (mammalian) (0.1 ppm), eggs (0.05 ppm), meat (from mammals other than marine mammals) (0.1 ppm), milks (0.02 ppm), mushrooms (0.3 ppm), pear (5 ppm), pome fruits (5 ppm), poultry meat (0.05 ppm), rice (0.01 ppm), and rice straw and fodder (dry) (0.7 ppm). As the U.S. residue definition includes CPU and PCA, compatibility is not possible with the proposed tolerance.

VI. Conclusion

Therefore, the tolerance is established for of the insecticide diflubenzuron, (N-[[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenylurea and 4-chloroaniline in or on lemon at 0.8 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special

considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 6, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.377, paragraph (b) is amended by:

i. Revising the introductory text and

ii. Alphabetically adding the commodity "Lemon" to the table to read as follows:

§180.377 Diflubenzuron; tolerances for residues.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for of the insecticide diflubenzuron, (N-[[[4-chlorophenyl]amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenylurea and 4-chloroaniline, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/revocation date
Lemon	0.8	12/31/2010

* * * * *

[FR Doc. E7-14161 Filed 7-24-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 180**

[EPA-HQ-OPP-2006-0076; FRL-8137-7]

Penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide; Pesticide Tolerance**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues or residues of penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) in or on fish; fish, shellfish, mollusc; and fish, shellfish, crustacean. Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 25, 2007. Objections and requests for hearings must be received on or before September 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0076. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Philip V. Errico, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6663; e-mail address: errico.philip@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at

<http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0076 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2006-0076, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of April 14, 2006 (72 FR Page 19507) (FRL-8063-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F7012) by Dow AgroSciences LLC, Dow AgroSciences

LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. The petition requested that 40 CFR 180.605 be amended by establishing an exemption from tolerance for residues of the herbicide penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide, in or on fish and shellfish resulting from its use as an aquatic herbicide. That notice referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV. below.

The Registrant modified their submission and requested tolerances be established. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D), of the FFDCA and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide)

on fish, shellfish, mollusc; fish; and shellfish, crustacean at 0.02, 0.01, and 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 24, 2004 (EPA-HQ-OPP-2004-0286), (FRL-7678-6).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UF) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable uncertainty/safety factors is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure

will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

A summary of the toxicological endpoints for penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) used for human risk assessment can be found at www.regulations.gov in document "Penoxsulam. Human Health Risk Assessment for Proposed Uses on Fish and Shellfish. PC Code: 119031, Petition No: 5F7012, DP Num: 325461." at page 42 in Docket ID EPA-HQ-OPP-2006-0076.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide), EPA considered exposure under the petitioned-for tolerances as well as all existing penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) tolerances in (40 CFR 180.605). EPA assessed dietary exposures from penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) in food as follows:

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

No such effects were identified in the toxicological studies for penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998; Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to

residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer.* Penoxsulam was classified as "Suggestive Evidence of Carcinogenic Potential." There is some cancer concern, but the data are judged not sufficient for a stronger conclusion or a quantitative cancer risk assessment (see Unit III.E.5).

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA assumed tolerance level residues and 100% of the crop is treated.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide). Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the FQPA Index Reservoir Screening Tool and Screening Concentrations in Groundwater models, the estimated environmental concentrations (EECs) of penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) for acute exposures are estimated to be 150 parts per billion (ppb) for surface water and 150 ppb for ground water. The EECs for chronic exposures are estimated to be 150 ppb for surface water and 150 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 150 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 150 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure

(e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) is currently registered for the following residential non-dietary sites: Turf/lawn. EPA assessed residential exposure using the following assumptions:

- 1,000 ft² per day by low pressure hand wand or back pack sprayer for spot treatment of lawns
- 0.5 acres per day by push-type granular spreader for broadcast treatment of lawns
- 0.06 lb active ingredient (ai) per acre for broadcast treatment
- 0.0014 to 0.0016 lbs per 1,000 ft² for spot treatment

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) and any other substances and penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional ("10X") tenfold margin of

safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Based on the results of the submitted toxicology studies, EPA concluded that no FQPA safety factor is needed (i.e. 1X) since there are no residual uncertainties for prenatal and/or postnatal toxicity.

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

i. There was no toxicologically significant evidence observed of neurotoxicity in either the acute or chronic neurotoxicity study.

ii. No definitive quantitative or qualitative susceptibility was observed in either of the developmental rat or rabbit studies.

iii. Significant dose-related effects in the 2-generation reproduction study were limited to the delay in preputial separation. No other endpoints of reproductive toxicity or offspring growth and survival were affected by treatment.

iv. The chronic dietary food exposure assessment utilizes proposed tolerance level residues and 100% crop treated for all commodities. By using these conservative assessments, actual and chronic exposures/risks will not be underestimated.

v. The dietary drinking water assessment (Tier 1 estimates) utilizes values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable uncertainty/safety factors.

For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable uncertainty/safety factors is not exceeded.

1. *Acute risk.* There were no treatment-related effects observed in any of the available toxicity studies on penoxsulam that could be considered to have resulted from a single dose of penoxsulam. Therefore no acute exposure is expected.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) for the most highly exposed population subgroup from food and water, which utilizes 7% of the cPAD is all infants (<1 year old).

3. *Short-term risk and intermediate term risk.* For this aquatic use pattern, short- and intermediate-term aggregate exposure takes into account residential exposure, exposure while swimming, plus chronic exposure to food and water (considered being a background exposure level). There is a potential for post application exposure from oral and dermal routes of exposure while swimming in aquatic sites and/or from turf (lawns, golf courses, sports fields, and sod farms) sites treated with penoxsulam.

EPA used the SWIMODEL from the Residential Standard Operating Procedures (SOPs) to assess dermal and oral exposure to recreational swimmers. Parameters used in calculating exposure and risk are based on information for competitive swimmers both adult and children (6 years old) in swimming pools which includes an exposure duration of 5 hours. It is anticipated that recreational swimmers in weed infested areas would be less likely to swim with their heads immersed than recreational swimmers in weed-free swimming pools. Since there were no short-term dermal, systemic, neuro or developmental toxicity concerns, the short-term post application assessment addresses only the oral exposure, which results in the same estimated dose for intermediate-term exposure. Thus a short-term aggregate exposure was not required, and the intermediate-term post application exposure assessment combined both oral and dermal exposures, and is also protective for short-term exposure. Short- and

intermediate-term postapplication exposures resulted in MOEs > 100 and are therefore not a concern to the Agency. The Agency considers the swimmer dermal and oral MOEs to be over estimates of the actual risk, and therefore swimming exposure assessment was not used in assessing the short- and intermediate-term aggregate risk, and only the exposure resulting from the turf use was assessed.

The short-term aggregate risk assessment estimates include both oral and inhalation exposures appropriate to the population of concern. Short-term dermal exposure was not aggregated because no toxicological endpoint was selected. For adults, short-term exposure to penoxsulam can occur as a result of the residential use on turf. Because oral exposure from the residential use as a handler is not expected in adults and no short-term dermal endpoint was selected, only the short-term residential exposure by inhalation is expected in adults. The worst-case MOE residential exposure estimate was aggregated with the chronic dietary (food + water) to provide a worst-case estimate of short-term aggregate risk for U.S. population. As the aggregate MOE is greater than 100, the short-term aggregate risk to adults does exceed EPA's level of concern.

For children/toddlers, short-term exposure to penoxsulam can occur as a result of the residential use on turf. Because post-application inhalation exposure is negligible and no short-term dermal endpoint was selected, only short-term residential exposure from oral exposure was included with food and drinking water in the short-term aggregate risk assessment for children/toddlers. The worst-case MOE residential exposure estimate for children was aggregated with the chronic dietary (food + water) to provide a worst-case estimate of short-term aggregate risk for all infants (<1 year old), the child population subgroup with the highest estimated chronic dietary food exposure. As the aggregate MOE is greater than 100, the short-term aggregate risks to children do not exceed EPA's level of concern.

Because the amount of residues on turf after 30 days will be negligible, both inhalation and dermal exposure is negligible, and therefore no intermediate-term aggregate exposure assessment from this turf use is required.

4. *Aggregate cancer risk for U.S. population.* The cancer potential for penoxsulam is classified as "Suggestive Evidence of Carcinogenic Potential." The classification is based on an

increase in large granular lymphocyte leukemia (also called mononuclear cell leukemia (MNCL)) in male Fischer 344 rats. There were increased tumors at all dose levels which exceeded the laboratory historical control data. There is considerable controversy as to the significance and relevance of the tumors for humans, but they cannot be discounted in the overall weight of the evidence. While there is some cancer concern, the data are judged not sufficient for a stronger conclusion or a quantitative cancer risk assessment.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide) residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, using high performance liquid chromatograph with tandem mass spectroscopy-mass spectroscopy detector (LC/MS/MS), and is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no CODEX maximum residue limits (MRLs) for fish; fish, shellfish, mollusc; and fish, shellfish, crustacean.

C. Response to Comments

Comments were received from a private citizen objecting to this product being used in the world, and that the product is too dangerous to be allowed use. A print-out of what appears to be EPA's summary of the toxicological effects and tolerances for rice were included. No other information was provided. EPA has found that there is a reasonable certainty of no harm to humans after considering all pertinent toxicology studies and the exposure levels of humans to penoxsulam.

V. Conclusion

Therefore, the tolerance is established for residues of penoxsulam (2-(2,2-difluoroethoxy)-N-(5,8-dimethoxy[1,2,4]triazolo[1,5-c]pyrimidin-2-yl)-6-(trifluoromethyl)benzenesulfonamide,

in or on fish, shellfish, mollusc; fish; and shellfish, crustacean at 0.02, 0.01, and 0.01 ppm. The registrant initially requested exemptions from tolerances for fish and shellfish. Based upon review of the data supporting the petition by EPA and subsequent to completion of this risk assessment, the registrant revised their submission and requested tolerances for finfish at 0.01 ppm; shellfish, crustacean at 0.01 ppm; and shellfish, mollusc at 0.02 ppm. For consistency the commodity terms are revised to fish at 0.01 ppm; fish, shellfish, crustacean at 0.01 ppm; and fish, shellfish, mollusc at 0.02 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national

government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 13, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.605 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.605 Penoxsulam; tolerances for residues.

(a) * * *

Commodity	Parts per million
Fish	0.01
Fish, shellfish, crustacean	0.01
Fish, shellfish, mollusc	0.02
* * *	*

[FR Doc. E7-14335 Filed 7-24-07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2007-0313; FRL-8137-4]

Glufosinate-ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of Glufosinate-ammonium in or on pistachio. Interregional Research Project No. 4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 25, 2007. Objections and requests for hearings must be received on or before September 24, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0313. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access

this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2007-0313 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 24, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2007-0313, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of May 9, 2007 (72 FR 26375) (FRL-8128-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 7E7196) by Interregional Research Project No. 4, 500 College Road East, Suite 201W, Princeton, NJ 08540-6635. The petition requested that 40 CFR 180.473 be amended by establishing a tolerance for combined residues of the herbicide glufosinate-ammonium and its metabolites expressed as butanoic acid, 2-amino-4-(hydroxymethyl phosphinyl)-, monoammonium salt, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as glufosinate free acid equivalents, in or on pistachio at 0.1 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience LP, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe”. Section 408(b)(2)(A)(ii) of the FFDCA defines “safe” as that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information”. This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .” These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for combined residues of glufosinate-ammonium and its metabolites on pistachio at 0.10 ppm. EPA’s assessment of exposures and risks associated with establishing the tolerance follows.

On May 3, 2006 the Agency published a final rule (71 FR 25942, FRL-8060-3) establishing tolerances for combined residues of glufosinate ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt, and its metabolite, 3-methylphosphinopropionic acid in or on barley hay, barley straw, buckwheat fodder, buckwheat forage, oat forage, oat hay, oat straw, rye forage, rye straw, teosinte, triticale, wheat forage, wheat hay and wheat straw at 0.40 ppm. On September 29, 2003, the Agency published a final rule (68 FR 55833, FRL-7327-9) establishing tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on bushberry subgroup, lingonberry, junberry and salal at 0.15 ppm, cattle, fat at 0.40 ppm, cattle, meat at 0.15 ppm, cattle, meat byproducts at 6.0 ppm, cotton, gin byproducts at 15 ppm, cotton, undelinted seed at 4.0 ppm, egg at 0.15 ppm, goat, fat at 0.40 ppm, goat, meat at 0.15 ppm, goat, meat byproducts at 6.0 ppm, hog, fat at 0.40 ppm, hog, meat at 0.15 ppm, hog, meat byproducts at 6.0 ppm, horse, fat at 0.40 ppm, horse, meat at 0.15 ppm, horse, meat byproducts at 6.0 ppm, milk at 0.15 ppm, poultry, fat at 0.15 ppm, poultry, meat at 0.15 ppm, poultry, meat byproducts at 0.60 ppm, sheep, fat at 0.40 ppm, sheep, meat at 0.15 ppm, and sheep, meat byproducts at 6.0 ppm, rice, grain at 1.0 ppm, rice, straw at 2.0 ppm, and rice, hull at 2.0 ppm.

When the Agency conducted the risk assessments in support of the 2003 and 2006 tolerance actions, it assumed that glufosinate-ammonium residues would be present on pistachio at 0.10 ppm, equivalent to the previously established tolerance for the tree nut crop group. Under current regulations, pistachio is not included in the tree nut crop group; however, the residue field trial data required to establish a tolerance on the tree nut crop group may be relied upon to establish a tolerance at the same level on pistachio. Since EPA assumed glufosinate-ammonium residues would be present on pistachio at 0.10 ppm in its most recent risk assessments, establishing the pistachio tolerance will not change the estimated aggregate risks resulting from use of glufosinate ammonium, as discussed in the May 3,

2006 (71 FR 25942, FRL-8060-3) and September 29, 2003 (68 FR 55833, FRL-7327-9) **Federal Registers**. Refer to these **Federal Register** documents, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** documents in support of this action.

Based on the risk assessments discussed in the final rules published in the **Federal Registers** of May 3, 2006 (71 FR 25942, FRL-8060-3) and September 29, 2003, (68 FR 55833, FRL-7327-9), EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to glufosinate-ammonium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There is an established CODEX maximum residue limit (MRL) of 0.1 ppm for residues of glufosinate-ammonium on tree nuts, including pistachios, which is consistent with the U.S. tolerance being established for pistachio. There are no Canadian or Mexican MRLs established for tree nuts or pistachio.

V. Conclusion

Therefore, the tolerance is established for combined residues of glufosinate-ammonium, (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on pistachio at 0.10 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735,

October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not

a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: July 13, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.473 is amended by alphabetically adding “pistachio” to the table in paragraph (a)(1) to read as follows:

§ 180.473 Glufosinate-ammonium; tolerances for residues.

(a)(1) * * *

Commodity						Parts per million
Pistachio	*	*	*	*	*	0.10
	*	*	*	*	*	

* * * * *

[FR Doc. E7–14170 Filed 7–24–07 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7983]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community’s scheduled suspension is the third date (“Susp.”) listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office.

FOR FURTHER INFORMATION CONTACT:

David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of

the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA’s initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10,

Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV:				
Kentucky: Carroll County, Unincorporated Areas.	210045	March 26, 1997, Emerg, September 1, 1998, Reg, July 17, 2007, Susp.	07/17/2007	07/17/2007.
Prestonville, City of, Carroll County	210047	August 2, 1976, Emerg, September 18, 1986, Reg, July 17, 2007, Susp.	*Do ...	Do.

*Do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 13, 2007.

David I. Maurstad,

*Assistant Administrator, Mitigation,
Department of Homeland Security, Federal
Emergency Management Agency.*

[FR Doc. E7-14344 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07-2747; MB Docket No. 04-427; RM-11127; RM-11239]

Radio Broadcasting Services; Ammon and Dubois, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: At the parties' request, this document dismisses the petition for reconsideration of the *Report and Order* in this proceeding. The withdrawal of the petition for reconsideration was filed jointly by Millcreek Broadcasting, LLC, licensee of Stations KNJQ(FM), Manti, Utah, KUUV(FM), South Jordan, Utah, and KUDD(FM), Roy, Utah; Simmons SLC-LS, LLC, licensee of

Stations KDWY(FM), Diamondville, Wyoming, KAOX(FM), Kemmerer, Wyoming, and KRAR(FM), Brigham City, Utah; Rocky Mountain Radio Network, Inc., licensee of Station KRMF(FM), Evanston, Wyoming; 3 Point Media—Coalville, LLC, licensee of Station KCUA(FM), Naples, Utah, and College Creek Broadcasting, LLC successful bidder and applicant for four vacant auction allotments.

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

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 04-427 adopted June 20, 2007, and released June 22, 2007. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402,

Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. The Commission will not send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the petition for reconsideration was dismissed.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7-14368 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[ET Docket No. 04-151, WT Docket No. 05-96 and ET Docket No. 02-380; FCC 07-99]

Wireless Operations in the 3650-3700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses petitions for reconsideration filed in response to the Commission's *Report and Order* relating to the 3650–3700 MHz band (3650 MHz band) proceeding. The Commission affirms its previous decisions to create a spectrum environment that will encourage multiple entrants and stimulate the expansion of broadband service to rural and under served areas. To facilitate rapid deployment in the band, the Commissions maintain the previously adopted, non-exclusive licensing scheme. The clarification and modification will facilitate operation of the widest variety of broadband technologies with minimal risk of interference in both the near and long terms. They should further reduce the potential for co-channel interference, provide additional protections to the multiple users in the band under the current licensing regime, and create incentives for the rapid development of broadly compatible contention technologies.

DATES: Effective August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Jeffrey Dygert, Policy and Rules Division, Office of Engineering and Technology, (202) 418–7300, e-mail: Jeffrey.Dygert@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 04–151, FCC 07–99, adopted May 22, 2007 and released June 17, 2007. The full text of this document is available on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail FCC@BCPIWEB.COM.

Summary of the Memorandum Opinion and Order

1. The Memorandum Opinion and Order (MO&O) addresses petitions for reconsideration filed in response to the Commission's *Report and Order*, 70 FR 24712, May 11, 2005, in prior proceedings relating to the 3650–3700 MHz band (3650 MHz band). The parties petitioning for reconsideration were: BRN Phoenix (BRN); the Enterprise Wireless Alliance (EWA);

Intel Corporation, Redline Communications and Alvarion (jointly); Motorola; Redline Communications; the Satellite Industry Association (SIA); the Wireless Communications Association (WCA); and the Wi-Max Forum.

2. The MO&O affirms the Commission's previous decisions to create a spectrum environment that will encourage multiple entrants and stimulate the expansion of broadband service to rural and under served areas. To facilitate rapid deployment in the band, the Commission maintains the previously adopted, non-exclusive licensing scheme. Additionally, the Commission declines to reconsider the requirement that equipment operating in the 3650 MHz band incorporate a contention-based protocol, a technology that permits multiple licensees to share spectrum by ensuring that all licensees receive reasonable opportunities to operate in the band. The Commission clarifies the meaning of contention-based protocol and modifies the rules to limit the operation of equipment using "restricted" contention-based protocols (those that are not capable of avoiding co-frequency interference with all other types of contention-based protocols) to the lower 25 megahertz portion of the 3650 MHz band. The Commission's actions should facilitate operation of the widest variety of broadband technologies with minimal risk of interference in both the near and long terms. The order should further reduce the potential for co-channel interference, provide additional protections to the multiple users in the band under the current licensing regime, and create incentives for the rapid development of broadly compatible contention technologies.

3. Additionally, the Commission denies requests for reconsideration of the previously adopted power limits for fixed and mobile transmissions in the band, concluding that the limits adopted serve to protect against interference both among the band's licensees and with satellite earth stations. Finally, it denies requests to modify the out-of-band emission limits in the rules and declines to revise the rules regarding coordination with satellite licensees operating in the grandfathered exclusion zones around satellite earth stations.

Licensing and Use of the Band

4. The Commission adopted a nationwide non-exclusive licensing scheme for the 3650 MHz band in order to create a spectrum environment conducive to the prompt entry by multiple broadband providers in under-served markets—and at low entry costs

and with minimal regulatory delay. The Commission concluded that the non-exclusive licensing model, in conjunction with operational and technical safeguards (such as the contention-based protocol and a registration requirement), would obligate licensees to cooperate to avoid harmful interference. The Commission concluded that the licensing rules it adopted would "ensure open access to this spectrum for nominal application fees and allow effective and efficient use of this spectrum in response to market forces." This, the Commission reasoned, would encourage "rapid deployment of broadband technologies" and advance the "goal of bringing broadband services to all Americans, including consumers living in less densely populated rural and suburban areas."

5. All of the arguments for making modifications to the licensing rules rest on the assumption that non-exclusive licensing will frustrate potential users of the band and its efficient use. The Commission disagrees with these projections. While it acknowledges that the use of a non-exclusive licensing approach must be accompanied with the means to ensure that multiple users can operate successfully in the band, the Commission concludes that it adopted appropriate and practical mechanisms to ensure such an outcome.

6. The Commission declines to alter the band's cooperation requirement to approximate the rights available in an exclusive licensing model. It is not persuaded that the various steps that parties suggest in this regard would more effectively further the public interest and the Commission's goals in this proceeding than the current non-exclusive licensing scheme or that the benefits of these proposed changes outweigh the costs. For example, creating the type of first-in-time rights that parties suggest would give initial market entrants the ability to structure their operations in a manner that could impede subsequent providers' ability to offer viable services and diminish any incentive that such initial market entrants might have in negotiating interference avoidance measures to accommodate new entrants. Requiring the use of third-party frequency coordinators would also add an unnecessary extra layer of process that operators would have to satisfy before deploying their equipment and initiating service. Given the use of contention protocols in the band, the Commission declines to require a separate entity to serve as a gate-keeper for the spectrum. Similarly, performance standards and the attendant reporting obligation would

duplicate the discipline that the market will already provide. If an operator is not providing adequate service, other operators will be free to deploy their facilities in the market and begin their own operations.

7. The Commission disagrees that non-exclusive licensing will make the band unusable. The licensing procedures adopted for the band provide no first-in-time right to exclude others from entering a market, as would be necessary to make squatting behavior profitable. To the contrary, the cooperation and contention-based protocol rules both require that licensees take various steps to accommodate (or at least avoid interfering with) the operations of other licensees in their area. Similarly, these requirements should eliminate licensee behavior that could overcrowd the band to the detriment of all users. They will prevent licensees from consuming the full band and crowding out the transmissions of other operators. Licensees that must coordinate their operations with other licensees and deploy equipment that avoids harmful interference will not be able to overwhelm their neighbors.

8. In contrast to an exclusive licensing model in which a licensee may exclude others from a particular license area, the non-exclusive licensing model adopted in the *3650 MHz Order* requires a potential entrant to consider that the presence of other licensees will require cooperative use and may, at times, restrict the amount of spectrum and/or time that spectrum is available to any particular licensee. That trade-off, however, does not automatically render the spectrum unusable.

Contention-Based Protocol

9. In the *3650 MHz Order*, the Commission explained that contention-based protocols, which it required for fixed, base and mobile equipment operating in the band, would “allow multiple users to share the same spectrum by defining the events that must occur when two or more devices attempt to simultaneously access the same channel and establishing rules by which each device is provided a reasonable opportunity to operate.” The Commission’s goal in adopting the contention requirement was to speed deployment in the 3650 MHz band by allowing multiple entrants to provide service. It saw the protocol as a means to “ensure efficient and cooperative shared use of the spectrum.” The Commission chose not to require a specific contention-based protocol, leaving it to industry and standards bodies to determine appropriate

protocols. The Commission cautioned, though, that equipment would not be certified for use in the band if it appeared “to be designed to preclude others from using this spectrum.” The Commission stated that it would monitor use of the spectrum, and would modify the rules if there appeared to be significant problems in this regard.

10. The Commission concludes that the public interest is best served by retaining the requirement that fixed, base and mobile equipment operating in the band incorporate a contention-based protocol. Given the decision to retain non-exclusive licensing in the 3650 MHz band, the Commission continues to believe that equipment incorporating a contention-based protocol will provide a cost-effective means to enable multiple users to operate on the same frequencies in the band without interfering with one another. With contention-based protocol requirement, operators and their customers will not have to rely on frequency coordination prior to the initiation of service; this will reduce costs and delay.

11. The Commission is not persuaded that the shortcomings that petitioners ascribe to contention protocols will necessarily limit use of the band to short range applications. Competing evidence indicates that contention technology is suitable for many different applications that the *3650 MHz Order* envisioned, including long range operations. Long range transmissions typically would be point-to-point using narrow beams. Point-to-point transmissions at the power limits adopted for the band will have a lower potential for interference and allow providers to use this band for backhaul operations, especially in less congested rural areas. The Commission’s goal of providing for multiple entrants in the band can best be accomplished if users have the flexibility to choose the technology most appropriate to meet their needs. Accordingly, the Commission denies those petitions for reconsideration that seek elimination of the contention protocol requirement.

12. The Commission clarifies that the 3650 MHz rules provide for certification of a variety of devices that may use different types of protocols or interference avoidance mechanisms that satisfy the contention definition that applies to the 3650 MHz band. The definition of what constitutes a valid contention protocol for the 3650 MHz band is broad enough to encompass different types of contention protocols and interference avoidance mechanisms, thereby promoting innovation and product development. As stated in the *3650 MHz Order*,

equipment for use in the 3650 MHz band must incorporate a mechanism that allows “multiple users to share the same spectrum * * * and establish[es] rules by which each device is provided a reasonable opportunity to operate.”

13. The record reveals two broad categories of contention-based protocols, both of which appear to the requirements for operation in the 3650 MHz band. Nonetheless, they may not be compatible with each other, and the use of both types could result in co-frequency interference and thus frustrate the Commission’s goal of allowing for multiple entrants in the band. Under the Commission’s rules, contention-based protocols can be categorized as either “unrestricted” or “restricted.” Unrestricted protocols are broadly compatible and function to prevent interference even with other, dissimilar contention technologies on the market. A listen-before-talk technology like that in Wi-Fi devices is a prime example of an unrestricted contention-based protocol. On the other hand, restricted contention protocols can prevent interference only with other devices incorporating the same protocol.

14. Allowing the use of different protocols in the band will serve the goal of speeding deployment of service, since operators will be able to deploy many different technologies, including those already being developed for use in the 3650 MHz band world-wide. Nonetheless, the potential exists for conflict between certain types of protocols, which could result in interference and/or a denial of access to the band for certain users. To resolve this conflict, the Commission will certify equipment using a restricted contention protocol but will limit the operation of such equipment to the lower 25 megahertz of the 3650 MHz band. On the other hand, equipment using an unrestricted contention protocol will be allowed to operate throughout the 50 megahertz in the 3650 MHz band, since it will be able to detect other transmissions throughout the band and thus avoid co-frequency interference anywhere in the band. The Commission concludes that this approach will ensure efficient use of the spectrum and permit the prompt deployment in this country of equipment that is already being used in this spectrum in other countries around the globe. Permitting a number of different contention based technologies to operate in the band will also provide additional flexibility to licensees to choose the best suitable technology for the type of services they plan to provide.

15. The Commission will implement this approach through the equipment certification process, under which it will examine for compliance with the rules all equipment proposed for use in the 3650 MHz band. It will condition the certification for equipment using a restricted protocol to limit its operation and tuning range to the bottom 25 megahertz of the band. The registration database will include the FCC identification number, reflecting the equipment certification condition restricting the licensee's operating frequency range if the licensee employs equipment using a restricted contention-based protocol.

16. The Commission recognizes that manufacturers, through software upgrades or other means may alter the emission characteristics of previously deployed devices so that they move from the restricted to the unrestricted category. To the extent that this occurs, the manufacturer will be responsible for complying with the Commission's rules regarding the need for new equipment certification before the device will be permitted to tune over the full 50 megahertz of the 3650 MHz band. Further, affected licensees must update their base and fixed station registrations to reflect this change.

17. By contrast, the Commission will not condition the certification for equipment incorporating an unrestricted contention-based protocol, thus allowing such equipment to operate throughout the full 50 MHz of the band. This should create an added incentive for industry groups and manufacturers to speed their development and deployment of such technology. In the long term, this, should improve the quality of service in the 3650 MHz band, furthering the public interest. At the same time, however, permitting restricted contention technologies to operate in the lower 25 MHz of the band will ensure that a wider range of currently available equipment may be immediately deployed in the band.

18. The Commission denies the petitions for reconsideration to the extent that they seek elimination of the requirement that equipment in the 3650 MHz band incorporate a contention-based protocol.

19. The Commission notes the request by BRN Phoenix that the Commission certify its Advanced Antenna System as the (apparently sole) contention-based protocol for use in the 3650 MHz band. The Commission expects that a variety of different contention technologies will qualify for deployment in the band. BRN, like other parties may seek certification for its Advanced Antenna System from the Laboratory Division of

the Commission's Office of Engineering and Technology.

Emissions Limits

20. In setting the power limits for transmissions in the 3650 MHz band, the Commission balanced numerous competing factors to "serve the public interest and foster the expeditious introduction of new terrestrial services in the 3650 MHz band." These factors included (1) the importance of interference protection for grandfathered satellite earth stations and federal government radiolocation stations and (2) the need to ensure efficient use of the band by avoiding mutual interference among licensed operators. To this end, the Commission adopted a peak power density of 25 Watts per 25 MHz of bandwidth and no greater than 1 watt per 1 MHz of bandwidth for fixed operations and imposed a limit of 1 Watt per 25 MHz of bandwidth for mobile operations.

Fixed and Mobile Power Limits

21. The Commission declines to increase the power limits for either fixed or mobile operations in the 3650 MHz band. In adopting power limits for this band, the Commission balanced the potential for inter-service and intra-service interference with the need to provide for satisfactory service by 3650 MHz devices. At the same time, the Commission was concerned that the combination of power limits and the size of the earth station exclusion zones that it adopted would adequately protect from harmful interference the grandfathered satellite operations and Federal Government radiolocation stations.

22. The Commission concludes that the *3650 MHz Order* set the 3650 MHz power limits at an appropriate level. The levels adopted are adequate to support commercially viable services and will allow licensees to operate effectively in the band without unacceptably interfering with each other's operations (provided they deploy equipment incorporating an appropriate contention technology). At the same time, the power limits, combined with the size of the protection zones for grandfathered satellite earth stations, will prevent terrestrial operations in the band from interfering with in-band satellite operations.

Advanced Antenna Systems

23. The Commission declines BRN's request to reconsider the limit on power output in the 3650 MHz band. In the *3650 MHz Order*, the Commission balanced the public interest factors that BRN raises in its petition. Specifically,

it considered the issues surrounding "deployment of advanced antenna systems, including sectorized and adaptive array systems." It balanced the need for "flexibility for licensees to employ a wide variety of advanced antennas to meet their needs" with the goal of protecting satellite earth stations. In so doing, it concluded that, "to allow flexibility in deployment" of these systems, it would allow such antennas to operate with a slightly higher power output. BRN Phoenix identifies no deficiency in the Commission's decision that would warrant reconsideration. Accordingly, the Commission denies its petition in this regard.

FSS Satellite Issues

24. The Commission took several steps to minimize the extent to which terrestrial operations in the 3650 MHz band would affect the operations of satellite operators in both the conventional C-band (3700–4200 MHz) and the extended C-band (3625–3700 MHz). First, the Commission established protection zones with a radius of 150 km around the earth stations of grandfathered Fixed Satellite Service (FSS) operators in the 3650 MHz band. The Commission ruled that licensees in the 3650 MHz band could establish Fixed Service operations within the protection zones only with the consent of the affected FSS operator. For 3650 MHz licensees, the Commission established fixed station operating power limits of 25 Watts and mobile station operating power limits of 1 Watt. Additionally, the Commission sought to avoid out-of-band interference by requiring operators to limit emissions into adjacent bands by a minimum attenuation of $43 + 10 \log(P)$ below the transmit power.

Out-of-Band Interference

25. The Satellite Industry Association (SIA) sought reconsideration of the *3650 MHz Order*, arguing that the newly authorized terrestrial operations in the 3650 MHz band will create interference in the adjacent 3700–4200 band that, contrary to the public interest, could disrupt C-band satellite operations. The Commission concludes that SIA's analysis contains overly conservative assumptions about path loss attenuation, the necessary C/I protection ratio and the arrival angle of a 3650 MHz signal at a satellite earth station. Each of these assumptions contributes to the overly pessimistic picture that SIA paints in its analysis. When these assumptions are adjusted to reflect more realistic operational scenarios the attenuation requirement in the *3650*

MHz Order adequately protects operations in adjacent bands.

26. The Commission may, however, require greater suppression of the out-of-band emissions of a 3650 MHz operator in those rare instances when a 3650 MHz transmitter falls near the main beam and in a line of sight of a satellite earth station.

Power Limits and LNB Saturation

27. SIA argued that the potential exists for emissions from the 3650 MHz transmitters to saturate the low noise block converters (LNBs) on FSS earth stations operating in the adjacent C-band at 3700–4200 MHz. SIA requests that the Commission reconsider the permissible power level for fixed and base stations, at least in the upper half of the 3650 MHz band (that closest to the C-band) and set it at a level below the 25-watt figure that the prior order adopted.

28. The Commission declines to reconsider the permissible power limits in the 3650 MHz band as SIA requests. A review of the analysis that SIA provides for its argument on LNB saturation reveals that it is based on two very conservative assumptions. The predicted saturation is most pronounced when the arrival angle of the satellite antenna is 5 degrees. At greater arrival angles—as will exist for the great majority of earth stations—the interference projected by SIA's analysis is reduced. The Commission also notes that SIA has again assumed free space assumptions for its propagation analysis. Employing a path loss exponent greater than 2, as was done for the OOB emissions estimate, significantly reduces the potential interference.

29. Given the smaller separation distances necessary to alleviate LNB saturation predicted by a more realistic propagation model, a modest coordination effort should allow satellite earth stations to operate effectively, despite the presence of nearby operations in the 3650 MHz band. The Commission expects 3650 MHz licensees and satellite operators to undertake such coordination where necessary. The registration requirement for fixed and base station operations in the band will facilitate this coordination. In the registration process, licensees in the 3650 MHz band will be required to provide identification and location information for their fixed and base stations, as well as the technical information necessary for interference analysis.

30. The Commission rejects the argument that the authorization of operations in the 3650 MHz band

improperly places the burden of avoiding interference on incumbents. It is not Commission policy to protect incumbent licensees against all emissions from adjacent bands; this is particularly true when the emissions are a foreseeable result of prior allocation orders. Installation of appropriate filters on satellite earth stations can adequately address the LNB saturation issue that SIA now raises.

Satellite Coordination Requirements

31. Petitioners urge the Commission to impose the guidelines of the Commission's part 101 rules as a framework for the coordination of 3650 MHz operations within the exclusion zones established around grandfathered FSS earth stations. They contend that this would expedite fixed station entry without creating interference risk to the grandfathered FSS earth stations.

32. The Commission declines to adopt the part 101 rules as the sole means of coordination for those 3650 MHz licensees seeking to operate fixed services within the exclusion zones that the Commission established around grandfathered FSS earth stations. The part 101 rules, *inter alia*, "prescribe the manner in which portions of the radio spectrum may be made available for private * * * microwave operations that require transmitting facilities on land." In doing so, however, they set out specific coordination procedures and interference protection criteria for covered fixed microwave transmitters. Rather than impose these specific procedures and criteria, the Commission prefers to allow the parties involved to choose for themselves the rules governing their particular negotiations.

Ordering Clauses

33. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(c), 303(f), and 307, this Order on Reconsideration is hereby adopted.

34. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g), and 405, that the petitions for reconsideration, filed by Motorola and Redline and seeking clarification regarding the contention-based protocol requirement are granted to the extent discussed in the Memorandum Opinion and Order.

35. Part 90 of the Commission's rules is amended as specified in rule changes, and such rule amendments shall be effective August 24, 2007.

36. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g), and 405, that the remainder of the petitions for reconsideration filed by Motorola and Redline, as well as the reconsideration petitions of BRN Phoenix, the Enterprise Wireless Alliance, the Satellite Industry Association, the Wireless Communications Association, the Wi-Max Forum, and the joint petition of Intel, Redline and Alvarion are denied.

Report to Congress

37. The Commission will send a copy of the Memorandum Opinion and Order, in a report to be sent to Congress pursuant to the Congressional Review Act.¹ In addition, the Commission will send a copy of the Memorandum Opinion and Order, to Congress and the Government Accountability Office.

List of Subjects in 47 CFR part 90

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rule

■ For reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.7 is amended by revising the definition of "Contention-based protocol" to read as follows.

§ 90.7 Definitions.

* * * * *

Contention-based protocol. A protocol that allows multiple users to share the same spectrum by defining the events that must occur when two or more transmitters attempt to simultaneously access the same channel and establishing rules by which a transmitter provides reasonable opportunities for other transmitters to operate. Such a protocol may consist of procedures for initiating new transmissions, procedures for determining the state of the channel

¹ See 5 U.S.C. 801(a)(1)(A).

(available or unavailable), and procedures for managing retransmissions in the event of a busy channel. Contention-based protocols shall fall into one of two categories:

(1) An unrestricted contention-based protocol is one which can avoid co-frequency interference with devices using all other types of contention-based protocols.

(2) A restricted contention-based protocol is one that does not qualify as unrestricted.

* * * * *

■ 3. Section 90.203 is amended by revising paragraph (o) to read as follows:

§ 90.203 Certification required.

* * * * *

(o) *Equipment certification for transmitters in the 3650–3700 MHz band.* (1) Applications for all

transmitters must describe the methodology used to meet the requirement that each transmitter employ a contention based protocol and indicate whether it is capable of avoiding co-frequency interference with devices using all other types of contention-based protocols (see §§ 90.7, 90.1305 and 90.1321 of this part);

(2) Applications for mobile transmitters must identify the base stations with which they are designed to communicate and describe how the requirement to positively receive and decode an enabling signal is incorporated (see § 90.1333 of this part); and

(3) Applications for systems using advanced antenna technology must provide the algorithm used to reduce the equivalent isotropically radiated power (EIRP) to the maximum allowed in the event of overlapping beams (see § 90.1321 of this part).

(4) Applications for fixed transmitters must include a description of the installation instructions and guidelines for RF safety exposure requirements that will be included with the transmitter. (See § 90.1335).

■ 4. Section 90.1319 is revised to read as follows:

§ 90.1319 Policies governing the use of the 3650–3700 MHz band.

(a) Channels in this band are available on a shared basis only and will not be assigned for the exclusive use of any licensee.

(b) Any base, fixed, or mobile station operating in the band must employ a contention-based protocol.

(c) Equipment incorporating an unrestricted contention-based protocol (i.e. one capable of avoiding co-frequency interference with devices using all other types of contention-based

protocols) may operate throughout the 50 megahertz of this frequency band. Equipment incorporating a restricted contention-based protocol (i.e. one that does not qualify as unrestricted) may operate in, and shall only tune over, the lower 25 megahertz of this frequency band.

(d) All applicants and licensees shall cooperate in the selection and use of frequencies in the 3650–3700 MHz band in order to minimize the potential for interference and make the most effective use of the authorized facilities. A database identifying the locations of registered stations will be available at <http://wireless.fcc.gov/uls>. Licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.

[FR Doc. E7–14211 Filed 7–24–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XB66

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 22, 2007, through 2400 hrs, A.l.t., December 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 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 4,244 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,194 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 19, 2007.

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

prior notice and opportunity for public comment.

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

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

Dated: July 19, 2007.

Emily Menashes,

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

[FR Doc. 07-3638 Filed 7-20-07; 2:05 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XB68

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 23, 2007, through 2400 hrs, A.l.t., December 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 TAC of northern rockfish in the Western Regulatory Area of the GOA is 1,439 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region,

NMFS (Regional Administrator), has determined that the 2007 TAC of northern rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,389 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 19, 2007.

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

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

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

Dated: July 19, 2007.

Emily Menashes,

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

[FR Doc. 07-3636 Filed 7-20-07; 2:05 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XB67

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2007 total allowable catch (TAC) of pelagic shelf rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 23, 2007, through 2400 hrs, A.l.t., December 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 TAC of pelagic shelf rockfish in the Western Regulatory Area of the GOA is 1,466 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 TAC of pelagic shelf rockfish in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,416 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for pelagic shelf rockfish in the Western Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5

U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pelagic shelf rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 19, 2007.

The AA also finds good cause to waive the 30 day delay in the effective

date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: July 19, 2007.

Emily Menashes,

Acting Director, Office Of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07-3637 Filed 7-20-07; 2:05 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 72, No. 142

Wednesday, July 25, 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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement for the Channel Islands National Marine Sanctuary Management Plan Review

AGENCY: National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary Program (NMSP) is preparing a Supplemental Draft Environmental Impact Statement (SDEIS) to supplement and/or replace information contained in the Draft Environmental Impact Statement (DEIS) for the Channel Islands National Marine Sanctuary (CINMS or Sanctuary) management plan review. The SDEIS will analyze revisions to the Sanctuary's proposed action that would, in effect, prohibit the following discharges within the Sanctuary: (1) All sewage from vessels 300 gross registered tons (GRT) or more, including cruise ships and oceangoing ships; and (2) graywater from vessels 300 GRT or more, including from cruise ships, and from oceangoing ships with the capability to hold graywater while within the Sanctuary.

DATES: Because the NMSP has previously requested (64 FR 31528 and 71 FR 29096) and received extensive information from the public on issues to be addressed in the SDEIS, and because the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) do not require additional scoping for this SDEIS process (40 CFR 1502.9(c)(4)), the NMSP is not asking for

further public scoping information and comment at this time. Upon release of the SDEIS the NMSP will provide a 45-day public review/comment period.

ADDRESSES: Copies of the 2006 DEIS are available at Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, California and on the Web at <http://channelislands.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884-1464 or michael.murray@noaa.gov.

SUPPLEMENTARY INFORMATION: During the DEIS public review period (May 15 through July 21, 2006) NOAA received a wide range of comments, including substantial public and agency comments about changes proposed for Sanctuary regulation of sewage¹ and graywater discharges from large vessels.² The DEIS provided three regulatory alternatives: The preferred alternative, alternative 1, and the no-action alternative. The DEIS preferred alternative and NOAA's then-proposed action would clarify that a type I or II marine sanitation device (MSD) is required for discharge of treated sewage within the Sanctuary and proposes that graywater discharge from all vessels be excepted from the discharge prohibition. Alternative 1 also proposes a graywater exception from the prohibition for all vessels, but would prohibit discharge into the Sanctuary of treated or untreated sewage from large vessels (greater than or equal to 300 GRT). The no action alternative would retain the status quo regulation on discharge, which is ambiguous with regard to graywater and imprecise with regard to the type of MSD required for vessel sewage discharge within the sanctuary.

Comments included a request that NOAA adopt the discharge regulation under alternative 1, which would prohibit any sewage discharges from large vessels, whether treated or untreated. Comments also included a request that NOAA prohibit cruise ship

discharges in Sanctuary waters. In addition, there were suggestions that NOAA implement recommendations contained in the water quality needs assessment developed by a working group of the Sanctuary Advisory Council (available at <http://www.channelislands.noaa.gov/sac/pdf/10-17-05.pdf>), which provides a comprehensive evaluation of water quality threats and provides a broad range of management advice. This assessment includes a recommendation that NOAA prohibit cruise ship discharges in Sanctuary waters. In addition, comments from State agencies and a suite of environmental non-governmental organizations indicated that NOAA's proposed exception for graywater discharges is inconsistent with the California Clean Coast Act (California Public Resources Code Sec 72420-72422) that prohibits graywater discharges from vessels 300 gross registered tons or more within state waters. The types of comments described above were the only types of comments received on the issues of graywater and sewage discharge from large vessels.

In May 2006 NOAA submitted its Coastal Zone Management Act consistency finding to the California Coastal Commission (Commission), in compliance with Federal consistency regulations (15 CFR part 930). In July 2006 the Commission conditionally concurred with the finding that the proposed revised Sanctuary management plan and regulations are fully consistent with the enforceable policies of the California Coastal Management Program. The Commission voted to concur with the consistency finding on the condition that NOAA revise the proposed discharge and deposit regulation to prohibit vessels of 300 GRT or more from discharging sewage or graywater into the waters of the Sanctuary.

After reviewing these public comments, considering the Commission's action, and further analyzing the vessel discharge issues raised, NOAA proposes to revise its proposed action with regard to prohibition of graywater and sewage discharges from large vessels. NOAA also proposes to define the terms "oceangoing ship" and "cruise ship" within the Sanctuary regulations. The SDEIS, in conjunction with the

¹ Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes (40 CFR 140.1(a)).

² "Large vessel" is used herein to mean any vessel of 300 GRT or more. 300 GRT is an established state and federal size class threshold for vessel discharge regulation purposes. This includes oceangoing ships and cruise ships. "Oceangoing ship" means a private, commercial, government, or military vessel of 300 GRT or more, not including cruise ships. "Cruise ship" means a vessel with 250 or more passenger berths for hire.

concomitant supplemental proposed rule, will evaluate the revised proposed action and provide the public with an opportunity for additional review and comment.

Authority: 16 U.S.C. 1431 *et seq.*

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: July 18, 2007.

William Corso,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 07-3608 Filed 7-24-07; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 260 and 284

[Docket Nos. RM07-10-000 and AD06-11-000]

Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act of 2005

July 17, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed rulemaking; notice of workshop and program.

SUMMARY: The Federal Energy Regulatory Commission is holding an informal workshop to discuss implementation and other technical issues associated with the proposals set forth in the Notice of Proposed Rulemaking issued April 14, 2007, in Commission Docket Nos. RM07-10-000 and AD06-11-000. 72 FR 20791 (April. 26, 2007).

DATES: July 24, 2007, 9:30 a.m. until 3:30 p.m.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Rooms 3M-2A and B, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lee Choo, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202-502-6334, lee-ken.choo@FERC.gov.

SUPPLEMENTARY INFORMATION: As announced on June 1, 2007, the staff of the Federal Energy Regulatory Commission (Commission) will hold an informal workshop in the above-referenced proceedings on July 24, 2007, at the Federal Energy Regulatory Commission, 888 First Street, NE.,

Washington, DC 20426 in Meeting Room 3M-2A&B from 9:30 a.m. until 3:30 p.m. (EST). The staff is holding this workshop to discuss implementation and other technical issues associated with the proposals set forth in the Notice of Proposed Rulemaking (NOPR), *Transparency Provisions of Section 23 of the Natural Gas Act*, 72 FR 20791 (Apr. 26, 2007), FERC Stats. & Regs. ¶ 32,614 (2007).

All interested persons are invited, and there is no registration fee to attend. As stated in the first notice, this workshop will neither be web-cast nor transcribed. Reply comments should be filed in Docket No. RM07-10-000, in accordance with the dates set in the rulemaking docket. The workshop will be held on the third floor in Conference rooms 3M-2A & B.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

The workshop will consist of two sessions to be organized as follows:

In the morning, staff plans to discuss issues related to implementing the proposal that intrastate pipelines post flow and capacity information of a daily basis. Participants are invited to bring up their implementation questions and issues. Some of the questions of interest to staff include:

1. Under the proposal, what are workable definitions of the terms "intrastate Docket Nos. RM07-10-000 and AD06-11-000 pipeline," "major" and "segments?"
2. How can posting requirements be adjusted to accommodate particular pipeline operational characteristics?
3. What and at what locations do intrastate pipelines already collect information for use in day-to-day operations? Can the proposal be modified to make effective use of existing information?
4. Which types of pipelines should be exempt (e.g., pipelines with a single customer)? Others?
5. What should be the *de minimis* criterion? (Criteria proposed in the comments include, e.g., three customers, 50,000 Dth/d, less than 110 miles, and less-than 24 inch diameter.)
6. What is a realistic turnaround time for posting?
7. Are there strategies to develop the same or similar information that would impose less of a burden on intrastate pipelines?

After a lunch break, staff plans to discuss implementing the proposal to collect aggregated annual data from buyers and sellers of physical natural gas. Again, the focus is to be on implementation issues. The following are possible questions to address at the workshop. Some of the questions of interest to staff include:

1. Do the questions set forth in the Appendix of the NOPR elicit sufficient data to assess the overall size of the physical wholesale markets as well as the relative portion that form price indices versus the portion that use or depend on price indices?
2. What specific formats, definitions and submittal technology should be used to ensure consistency of data for accurate aggregation and analysis?
3. What information should be made public? When?
4. Given various annual reporting obligations, what is a reasonable annual report date?
5. Is any additional information needed?

Questions regarding the conference should be directed to Lee Choo by e-mail at lee-ken.choo@FERC.gov or by phone at 202-502-6334.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14341 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0476; FRL-8445-3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Erie 8-hour Ozone Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan and 2002 Base-Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Erie ozone nonattainment area ("Erie Area" or "Area") be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Erie Area is comprised of Erie County, Pennsylvania. EPA is proposing

to approve the ozone redesignation request for the Erie Area. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for the Erie Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Erie Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality monitoring data for 2004–2006. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Erie Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, the Commonwealth of Pennsylvania has also submitted a 2002 base-year inventory for the Erie Area, and EPA is proposing to approve that inventory for the Erie Area as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the maintenance plan for the Erie Area for purposes of transportation conformity, and is also proposing to approve those MVEBs. EPA is proposing approval of the redesignation request and of the maintenance plan and 2002 base-year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 24, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0476 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail:*
cripps.christopher@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0476, Christopher Cripps, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0476. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *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 *www.regulations.gov* or e-mail. The *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.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. What Are the Actions EPA Is Proposing To Take?

On April 24, 2007, the PADEP formally submitted a request to redesignate the Erie Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for the Erie Area as a SIP revision to ensure continued attainment in the Area over the next 11 years. PADEP also submitted a 2002 base-year inventory for the Erie Area as a SIP revision. The Erie Area is comprised of Erie County. It is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that the Erie Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Erie Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Erie maintenance plan as a SIP revision for the Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in the Erie Area for the next 11 years. EPA is also proposing to approve the 2002 base-year inventory for the Erie Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Erie maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the Erie Area for transportation conformity purposes.

II. What Is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_x and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_x and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality

management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Erie Area was designated a basic 8-hour ozone nonattainment area in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003.

On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Erie Area (as well as most other areas of the country), effective June 15, 2005. *See*, 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) (hereafter "*South Coast*"). On June 8, 2007, in *South Coast Air Quality Management Dist. v. EPA*, Docket No. 04–1201, in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under Subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment

classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations. Elsewhere in this document, mainly in section VI.B. "The Erie Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA," EPA discusses its rationale why the decision in *South Coast* is not an impediment to redesignating the Erie Area to attainment of the 8-hour ozone NAAQS.

The CAA, title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for ozone nonattainment areas. In 2004, the Erie Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Erie Area is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. The ozone monitoring data indicates that the Erie Area has a design value of 0.079 ppm for the 3-year period

of 2004–2006, using complete, quality-assured data. Therefore, the ambient ozone data for the Erie Area indicates no violations of the 8-hour ozone standard.

B. The Erie Area

The Erie Area consists of Erie County, Pennsylvania. Prior to its designation as an 8-hour ozone nonattainment area, the Erie Area was a marginal 1-hour ozone nonattainment Area, and therefore, was subject to requirements for marginal nonattainment areas pursuant to section 182(a) of the CAA. *See* 56 FR 56694 (November 6, 1991). EPA determined that the Erie Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995).

On April 24, 2007, the PADEP requested that the Erie Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2004–2006, indicating that the 8-hour NAAQS for ozone had been achieved in the Erie Area. The data satisfies the CAA requirements that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value), must be less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June, 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,” Memorandum from John Calcagni Director, Air Quality Management Division, October 28, 1992;

- “Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;
- “Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On April 24, 2007, the PADEP requested redesignation of the Erie Area to attainment for the 8-hour ozone standard. On April 24, 2007, PADEP submitted a maintenance plan for the Erie Area as a SIP revision, to ensure continued attainment of the 8-hour ozone NAAQS over the next 11 years, until 2018. PADEP also submitted a 2002 base-year inventory concurrently with its maintenance plan as a SIP revision. EPA has determined that the Erie Area has attained the 8-hour ozone standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of the Erie Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base-year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Erie Area for the next 11 years, until 2018. The maintenance plan includes contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the NO_x and VOC MVEBs for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—ERIE COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO _x
2009	6.5	15.6
2018	4.0	6.7

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that the Erie Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The following is a description of how the PADEP's April 24, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Erie Area Has Attained the 8-Hour NAAQS

EPA is proposing to determine that the Erie Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of Part 50,

based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor, within the area, over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the

monitoring period required for demonstrating attainment.

In the Erie Area, there is one ozone monitor, located in Erie County that measures air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2004–2006 for the Erie Area. This data has been quality assured and is recorded in the AQS. The PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The fourth-high 8-hour daily maximum concentrations, along with the three-year average are summarized in Table 2.

TABLE 2.—ERIE AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES ERIE COUNTY MONITOR/AIRS ID 42–049–0003

Year	Annual 4th highest reading (ppm)
2004	0.074
2005	0.086
2006	0.077

The average for the 3-year period 2004–2006 is 0.079 ppm.

The air quality data for 2004–2006 show that the Erie Area has attained the standard with a design value of 0.079 ppm. The data collected at the Erie Area monitor satisfies the CAA requirement that the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The PADEP's request for redesignation for the Erie Area indicates that the data is complete and was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58. In summary, EPA has determined that the data submitted by Pennsylvania and data taken from AQS indicate that the Area has attained the 8-hour ozone NAAQS.

B. The Erie Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Erie Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Erie Area and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum

from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that came due prior to the submittal of a complete redesignation request. *See also*, Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). *See also*, 68 FR at 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which includes enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the

implementation of part C requirements (Prevention of Significant Deterioration (PSD));

- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and

- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_x SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_x SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25162). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Erie Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also*, the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the

Pittsburgh redesignation (66 FR at 53099, October 19, 2001). Similarly, with respect to the NO_x SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_x SIP Call rules are not “an” ‘applicable requirement’ for purposes of section 110(1) because the NO_x rules apply regardless of an area’s attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.” 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area’s nonattainment status are not applicable for purposes of redesignation. As we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due for the Erie Area prior to submission of the redesignation request.

2. Part D Nonattainment Requirements Under the 8-Hour Standard

Pursuant to an April 30, 2004, final rule (69 FR 23951), the Erie Area was designated a basic nonattainment area under subpart 1 for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area’s nonattainment classification.

With respect to the 8-hour standard, the court’s ruling rejected EPA’s reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation of the area cannot now go forward. This belief is based upon (1) EPA’s longstanding policy of evaluating redesignation requests in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Erie Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA’s longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the

submission of a complete redesignation request. See September 4, 1992 Calcagni memorandum (“Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, See, *Sierra Club v. Whitman*, 285 F. 3d 63 (D.C. Cir. 2002), in which the DC Circuit upheld a District Court’s ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: “Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.” *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to 8-hour subpart 2 requirements, if the Erie Area initially had been classified under subpart 2, the first two Part D subpart 2 requirements applicable to the Erie Area under section 182(a) of the CAA would be: a base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, the emissions statement requirement pursuant to section 182(a)(3)(B).

As stated previously, these requirements are not yet due for purposes of redesignation of the Erie Area, but nevertheless, Pennsylvania already has in its approved SIP, an emissions statement rule for the 1-hour standard that covers all portions of the designated 8-hour nonattainment area and, that satisfies the emissions statement requirement for the 8-hour standard. See, 25 Pa. Code 135.21(a)(1),

codified at 40 CFR 52.2020; 60 FR 2881, January 12, 1995. With respect to the base-year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base-year inventory for the Erie Area, which was submitted on April 24, 2007, concurrently with its maintenance plan, into the Pennsylvania SIP. EPA is proposing to approve the 2002 base-year inventory as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA. A detailed evaluation of Pennsylvania’s 2002 base-year inventory for the Erie Area can be found in a Technical Support Document (TSD) prepared by EPA for this rulemaking. EPA has determined that the emission inventory and emissions statement requirements for the Erie Area have been satisfied.

In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes that the general conformity and NSR requirements do not require approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. See, *Wall v. EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also, 60 FR 62748 (December 7, 1995).

In the case of the Erie Area, EPA has also determined that before being redesignated, the Erie Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR

program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D NSR Requirements or Areas Requesting Redesignation to Attainment." Normally, State's Prevention of Significant Deterioration (PSD) program will become effective in the area immediately upon redesignation to attainment. See the more detailed explanations in the following redesignation rulemakings: Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, 53669, October 23, 2001); Grand Rapids, MI (61 FR 31831, 31836–31837, June 21, 1996). In the case of the Erie Area the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the OTR. The OTR NSR requirements are more stringent than that required for a marginal or basic ozone nonattainment area. On October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Erie Area.

EPA has also interpreted the section 184 OTR requirements, including the NSR program, as not being applicable for purposes of redesignation. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and Vehicle Inspection and Maintenance programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the Erie Area by virtue of the Area's designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

In its June 8, 2007 decision the Court limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore the Area must meet the federal anti-backsliding

requirements, see 40 CFR 51.900, *et seq.*; 70 FR 30592, 30604 (May 26, 2005) which apply by virtue of the area's classification for the 1-hour ozone NAAQS. As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the Court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone NAAQS requirements that continue to apply after revocation of the 1-hour ozone NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

The area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in paragraph (a)(1)(iii) of paragraph (b) of this section. * * *

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that: Applicable requirements means for an area the following requirements to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time of designation for the 8-hour NAAQS.

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation control measures (TCMs) under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO_x requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii).

Pursuant to 40 CFR 51.905(c), the Area is subject to the obligations set forth in 51.905(a) and 51.900(f).

Prior to its designation as an 8-hour ozone nonattainment area, the Erie Area was designated a marginal nonattainment area for the 1-hour standard. With respect to the 1-hour standard, the applicable requirements under the anti-backsliding provisions at 40 CFR 51.905(a)(1) for the Erie Area are

limited to RACT and I/M programs specified in section 182(a) of the CAA and are discussed in the following paragraphs:

Section 182(a)(2)(A) required SIP revisions to correct or amend RACT for sources in marginal areas, such as the Erie Area, that were subject to control technique guidelines (CTGs) issued before November 15, 1990 pursuant to CAA section 108. On December 22, 1994, EPA fully approved into the Pennsylvania SIP all corrections required under section 182(a)(2)(A) of the CAA (59 FR 65971, December 22, 1994). EPA believes that this requirement applies only to marginal and higher classified areas under the 1-hour NAAQS pursuant to the 1990 amendments to the CAA; therefore, this is a one-time requirement. After an area has fulfilled the section 182(a)(2)(A) requirement for the 1-hour NAAQS, there is no requirement under the 8-hour NAAQS.

Section 182(a)(2)(B) relates to the savings clause for vehicle inspection and maintenance (I/M). It requires marginal areas to adopt vehicle I/M programs. This provision was not applicable to the Erie Area because this area did not have and was not required to have an I/M program before November 15, 1990.

In addition the Court held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) Nonattainment area NSR; (2) Section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour motor vehicle emission budgets that were yet not replaced by 8-hour emissions budgets. These requirements are addressed below:

With respect to NSR, EPA has determined that areas being redesignated need not have an approved nonattainment New Source Review program, for the same reasons discussed previously with respect to the applicable Part D requirement for the 8-hour standard.

The section 185 penalty fee requirement applies only to severe and extreme nonattainment areas, and was never applicable in the Erie 1-hour marginal nonattainment area.

With respect to the requirement for submission of contingency measures for the 1-hour standard, section 182(a) does not require contingency measures for marginal areas.

The conformity portion of the Court's ruling does not impact the redesignation request for the Erie Area except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour MVEBs, anti-backsliding

requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. There are no applicable 1-hour MVEBs for the Erie Area. (As discussed elsewhere in this document, EPA is proposing to approve 8-hour MVEBs for the Erie Area.) To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. The court clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

Thus EPA has concluded that the Erie Area has met all requirements applicable for redesignation under the 1-hour standard.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and

maintenance, and Stage II vapor recovery or a comparable measure.

In the case of the Erie Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation. On October 19, 2001, EPA approved the 1-hour NSR SIP revision for the area. See 66 FR 53094 (October 19, 2001).

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. Reading, PA Redesignation, 61 FR 53174, (October 10, 1996), 62 FR 24826 (May 7, 1997). The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

5. Erie Has a Fully Approved SIP for Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of this redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. *Calcagni Memo*, p.3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F. 3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR at 25425 (May 12, 2003) and citations therein.

C. The Air Quality Improvement in the Erie Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Erie Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DDAY (TPSD)

Year	Point *	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
2002	1.4	25.1	8.7	11.1	46.3
2004	1.6	25.2	8.5	9.4	44.7
Diff. (02–04)	+0.2	+0.1	–0.2	–1.7	–1.6
Nitrogen Oxides (NO_x)					
2002	4.0	2.1	10.9	25.3	42.3
2004	3.1	2.1	10.5	22.4	38.1
Diff (02–04)	–0.9	0.0	–0.4	–2.9	–4.2

* The stationary point source emissions shown here do not include banked emission credits of 4.1 tpd of VOC and 361.8 tpd of NO_x as indicated in Technical Appendix A–4 to Pennsylvania's SIP submission.

Between 2002 and 2004, VOC emissions decreased by 1.6 tpsd from 46.3 tpsd to 44.7 tpsd; NO_x emissions decreased by 4.2 tpsd from 42.3 tpsd to 38.1 tpsd. These reductions, and anticipated future reductions, are due to the following permanent and enforceable measures.

1. Stationary Point Sources

Federal NO_x SIP Call (66 FR 43795, August 21, 2001)

2. Stationary Area Sources

Solvent Cleaning (68 FR 2206, January 16, 2003)

Portable Fuel Containers (69 FR 70893, December 8, 2004)

3. Highway Vehicle Sources

Federal Motor Vehicle Control Programs (FMVCP)

—Tier 1 (56 FR 25724, June 5, 1991)

—Tier 2 (65 FR 6698, February 10, 2000)

Heavy-duty Engine and Vehicle Standards (62 FR 54694, October 21, 1997, and 65 FR 59896, October 6, 2000)

National Low Emission Vehicle (NLEV) Program (PA) (64 FR 72564, December 28, 1999)

Vehicle Emission Inspection/Maintenance Program (70 FR 58313, October 6, 2005)

4. Non-Road Sources

Non-road Diesel (69 FR 38958, June 29, 2004)

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the Area achieving attainment of the 8-hour ozone standard.

D. The Erie Area Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Erie Area to attainment status, Pennsylvania submitted a SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Area for at least 11 years after redesignation. The Commonwealth is requesting that EPA approve this SIP revision as meeting the requirement of CAA 175A. Once approved, the maintenance plan for the 8-hour ozone NAAQS will ensure that the SIP for the Erie Area meets the requirements of the CAA regarding maintenance of the applicable 8-hour ozone standard.

What Is Required in a Maintenance Plan?

Section 175 of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) Attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and

- (e) A contingency plan.

Analysis of the Erie Area Maintenance Plan

(a) Attainment inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. PADEP determined that the appropriate attainment inventory year is 2004. That year establishes a reasonable year within the three-year block of 2004–2006 as a baseline and accounts for reductions attributable to implementation of the CAA requirements to date. The 2004 inventory is consistent with EPA guidance and is based on actual “typical summer day” emissions of VOC and NO_x during 2004 and consists of a list of sources and their associated emissions.

The 2002 and 2004 point source data was compiled from actual sources. Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data Systems and EPA’s publication series AP-42, and are based on Source Classification Codes (SCC). The 2002 area source data was compiled using county-level activity data, from census numbers, from county numbers, etc. The 2004 area source data was projected from the 2002 inventory using temporal allocations provided by the Mid-Atlantic Regional Air Management Association (MARAMA).

The on-road mobile source inventories for 2002 and 2004 were compiled using MOBILE6.2 and Pennsylvania Department of Transportation (PENNDOT) estimates for VMT. The PADEP has provided detailed data summaries to document the calculations of mobile on-road VOC and NO_x emissions for 2002, as well as for the projection years of 2004, 2009, and 2018 (shown in Tables 5 and 6 below).

The 2002 and 2004 emissions for the majority of non-road emission source categories were estimated using the EPA NONROAD 2005 model. The

NONROAD model calculates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types and includes growth factors. The NONROAD model does not estimate emissions from locomotives or aircraft. For 2002 and 2004 locomotive emissions, the PADEP projected emissions from a 1999 survey using national fuel consumption information and EPA emission and conversion factors. There are no significant commercial aircraft operations (aircraft that can seat over 60 passengers) in Erie County. The Erie Airport in Erie County supports some air taxi operations that account for a very small amount of emissions. For 2002 and 2004 aircraft emissions, PADEP estimated emissions using small airport operations statistics from <http://www.airnav.com>, and emission factors and operational characteristics in the EPA-approved model, Emissions and Dispersion Modeling System (EDMS).

More detailed information on the compilation of the 2002, 2004, 2009, and 2018 inventories can be found in the Technical Appendices, which are part of the April 24, 2007 state submittal.

(b) Maintenance Demonstration—On April 24, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Erie Area maintenance plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_x remain at or below the attainment year 2004 emissions levels throughout the Erie Area through the year 2018. A maintenance demonstration need not be based on modeling. *See, Wall v. EPA, supra; Sierra Club v. EPA, supra. See also*, 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO_x emissions for the Erie Area for 2004, 2009, and 2018. The PADEP chose 2009 as an interim year in the maintenance demonstration period to demonstrate that the VOC and NO_x emissions are not projected to increase above the 2004 attainment level during the time of the maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Point	1.6	1.4	1.8
Area	25.2	25.5	29.1
Mobile	9.4	6.9	4.5
Nonroad	8.5	7.2	5.9
Total	44.7	41.0	41.3

TABLE 5.—TOTAL NO_x EMISSIONS FOR 2004–2018 (TPSD)

Source category	2004 NO _x emissions	2009 NO _x emissions	2018 NO _x emissions
Point	3.1	4.5	5.0
Area	2.1	2.2	7.3
Mobile	22.4	16.1	7.3
Non-road	10.5	9.1	7.4
Total	38.1	31.9	21.9

Additionally, the following programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

- The Clean Air Interstate Rule (CAIR) (71 FR 25328, April 28, 2006).
- The Federal NO_x SIP Call (66 FR 43795, August 21, 2001).
- Area VOC regulations concerning portable fuel containers (69 FR 70893, December 8, 2004), consumer products (69 FR 70895, December 8, 2004), and architectural and industrial maintenance coatings (AIM) (69 FR 68080, November 23, 2004).
- Federal Motor Vehicle Control Programs (light-duty) (Tier 1, Tier 2; 56 FR 25724, June 5, 1991; 65 FR 6698, February 10, 2000).
- Vehicle emission/inspection/maintenance program (70 FR 58313, October 6, 2005)
- Heavy duty diesel on-road (2004/2007) and low sulfur on-road (2006); 66 FR 5002, (January 18, 2001).
- Non-road emission standards (2008) and off-road diesel fuel 2007/2010); 69 FR 38958 (June 29, 2004).
- NLEV/PA Clean Vehicle Program (54 FR 72564, December 28, 1999)—Pennsylvania will implement this program in car model year 2008 and beyond.
- Pennsylvania Heavy-Duty Diesel Emissions Control Program. (May 10, 2002).

Based on the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Erie Area.

(c) Monitoring Network—There is currently one monitor measuring ozone in the Erie Area. PADEP will continue to operate its current air quality monitor (located in Erie County), in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—In addition to maintaining the key elements of its regulatory program, the Commonwealth will track the attainment status of the ozone NAAQs in the Area by reviewing air

quality and emissions data during the maintenance period. The Commonwealth will perform an annual evaluation of Vehicle Miles Traveled (VMT) data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if they exceed the attainment year inventory (2004) by more than 10 percent. The PADEP will also continue to operate the existing ozone monitoring station in the Area pursuant to 40 CFR part 58 throughout the maintenance period and submit quality-assured ozone data to EPA through the AQS system. Section 175A(b) of the CAA states that eight years following redesignation of the Erie Area, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made that commitment to meet the requirement section 175A(b).

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the Commonwealth will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Erie Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in the Area remaining at or below 2004 levels. The Commonwealth's maintenance plan

projects VOC and NO_x emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the Erie County monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will also analyze the conditions leading to the excessive ozone levels and evaluate which measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will also be considered in the event that a violation of the 8-hour ozone standard occurs at the Erie County, Pennsylvania monitor. In the event of a violation of the 8-hour ozone standard, PADEP will adopt additional emissions reduction measures as expeditiously as practicable in accordance with the implementation schedule listed later in this notice and in the Pennsylvania Air Pollution Control Act in order to return the Area to attainment with the standard. Contingency measures to be considered for the Erie Area will include, but not be limited to the following:

- Regulatory measures:
- Additional controls on consumer products.
 - Additional controls on portable fuel containers.

- Non-Regulatory measures:
- Voluntary diesel engine "chip reflash" (installation software to correct the defeat device option on certain heavy-duty diesel engines).

- Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local on-road or off-road fleets.
- Idling reduction technology for Class 2 yard locomotives.
- Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.
- Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.
- Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The plan lays out a process to have any regulatory contingency measures in effect within 19 months of the trigger. The plan also lays out a process to implement the non-regulatory contingency measures within 12–24 months of the trigger.

VII. Are the Motor Vehicle Emissions Budgets Established and Identified in the Erie Maintenance Plan Adequate and Approvable?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. In the maintenance plan, the MVEBs are termed “on-road mobile source emission budgets.” Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. An MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. An MVEB serves as a ceiling on emissions from an area’s planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs

in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must “conform” to (i.e., be consistent with) the part of the State’s air quality plan that addresses pollution from cars and trucks. “Conformity” to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not “conform,” most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring conformity of such transportation activities to a SIP.

When reviewing submitted “control strategy” SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein “adequate” for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects “conform” to the SIP as required by section 176(c) of the CAA. EPA’s substantive criteria for determining “adequacy” of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA’s process for determining “adequacy” consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA’s adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA’s May 14, 1999 guidance, “Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.” This guidance was finalized in the Transportation Conformity Rule Amendments for the “New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court

Decision and Additional Rule Change” on July 1, 2004 (69 FR 40004). EPA consults this guidance and follows this rulemaking in making its adequacy determinations.

The MVEBS for the Erie Area are listed in Table 1 of this document for 2009 and 2018, and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs (safety margin allocation for 2009 and 2018 only). These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A “safety margin” is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Erie Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The State used 2004 as the year to determine attainment levels of emissions for the Erie Area. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 44.7 tpsd of VOC and 38.1 tpsd of NO_x. The PADEP projected emissions out to the year 2018 and projected a total of 41.3 tpsd of VOC and 21.9 tpsd of NO_x from all sources in the Erie Area. The safety margin for 2018 would be the difference between these amounts, or 3.4 tpsd of VOC and 16.2 tpsd of NO_x. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area’s air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR ERIE

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2004 Attainment	44.7	38.1
2009 Interim	41.0	31.9
2009 Safety Margin	3.7	6.2
2004 Attainment	44.7	38.1
2018 Final	41.3	21.9

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR ERIE—Continued

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2018 Safety Margin	3.4	16.2

The PADEP allocated 0.4 tpsd VOC and 0.5 tpsd NO_x to the 2009 interim VOC projected on-road mobile source emissions projection and the 2009 interim NO_x projected on-road mobile source emissions projection to arrive at

the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 0.5 tpsd VOC and 0.6 tpsd NO_x from the 2018 safety margins to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety

margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBs for Erie.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR ERIE COUNTY

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2009 projected on-road mobile source projected emissions	6.5	15.6
2009 Safety Margin Allocated to MVEBs	0.4	0.5
2009 MVEBs	6.9	16.1
2018 projected on-road mobile source projected emissions	4.0	6.7
2018 Safety Margin Allocated to MVEBs	0.5	0.6
2018 MVEBs	4.5	7.3

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Erie Area are approvable because the MVEBs for VOCs and NO_x continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Erie Maintenance Plan?

The MVEBs for the Erie Area maintenance plan are being posted to EPA's conformity Web site concurrently with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Erie MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the

adequacy process as a separate action. Our action on the Erie Area MVEBs will also be announced on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/index.htm> (once there, click on "Adequacy Review of SIP Submissions").

VIII. Proposed Actions

EPA is proposing to determine that the Erie Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of the Erie Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated Pennsylvania's redesignation request and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Erie Area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Erie Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for the Erie Area, submitted on April 24, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Erie Area because it meets the requirements of section 175A as described previously in this notice. EPA is also proposing to approve the 2002 base-year inventory for the Erie Area, and the MVEBs submitted by Pennsylvania for the Erie Area in conjunction with its redesignation

request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule, proposing to approve the redesignation of the Erie Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base-year inventory, and the MVEBs identified in the maintenance plan, does not impose an

information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: July 16, 2007.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. E7-14360 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-D-7808]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering

Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*;
Reorganization Plan No. 3 of 1978, 3 CFR,
1978 Comp., p. 329; E.O. 12127, 44 FR 19367,
3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Avery County, North Carolina and Incorporated Areas				
Beech Creek	At the confluence with Watauga River	None	+2,444	Unincorporated Areas of Avery County.
	Approximately 1,100 feet upstream of the confluence of Buckeye Creek.	None	+2,776	
Brushy Creek	At the confluence with North Toe River	None	+2,622	Unincorporated Areas of Avery County.
	Approximately 2.0 miles upstream of the confluence with North Toe River.	None	+2,792	
Buckeye Creek	At the confluence with Beech Creek	None	+2,731	Unincorporated Areas of Avery County.
	Approximately 950 feet upstream of the confluence of Clingman Mine Branch.	None	+2,940	
Clear Creek	At the confluence with North Toe River	None	+2,776	Unincorporated Areas of Avery County.
	Approximately 1,300 feet upstream of the confluence with North Toe River.	None	+2,816	
Cranberry Creek	At the confluence with Elk River	None	+2,898	Unincorporated Areas of Avery County.
	Approximately 0.5 mile upstream of Substation Road ..	None	+3,113	
Curtis Creek	At the confluence with Elk River	None	+3,036	Unincorporated Areas of Avery County.
	Approximately 170 feet downstream of Alton Palmer Road (State Road 1324).	None	+3,249	
Elk River	At the North Carolina/Tennessee state boundary	None	+2,693	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 0.5 mile upstream of Glove Factory Lane.	+3,672	+3,673	
Tributary 1	At the North Carolina/Tennessee state boundary	None	+2,772	Unincorporated Areas of Avery County.
	Approximately 1,500 feet upstream of the confluence of Hanging Rock Creek.	None	+3,198	
Fall Creek	At the confluence with Elk River	None	+2,713	Unincorporated Areas of Avery County.
	Approximately 0.8 mile upstream of the confluence with Elk River.	None	+3,174	
Gragg Prong Creek	At the confluence with Lost Cove Creek	None	+1,707	Unincorporated Areas of Avery County.
	Approximately 1,350 feet upstream of the confluence with Webb Creek.	None	+2,199	
Hanging Rock Creek	At the confluence with Elk River	+3,656	+3,658	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 160 feet downstream of Dobbins Road (State Road 1337).	None	+3,848	
Henson Creek	At the confluence with North Toe River	None	+2,838	Unincorporated Areas of Avery County.
	Approximately 700 feet upstream of Henson Creek Road (State Road 1126).	None	+3,351	
Horney Creek	At the confluence with Elk River	None	+3,391	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 1,620 feet upstream of Banner Elk Highway/US-194.	None	+3,586	
Horse Bottom Creek	At the confluence with Hanging Rock Creek	+3,685	+3,686	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 650 feet upstream of Guignard Lane	None	+3,774	
Kentucky Creek	At the confluence with North Toe River	+3,586	+3,590	Unincorporated Areas of Avery County, Town of Newland.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Little Elk Creek	Approximately 0.5 mile upstream of Damon Vance Lane.	None	+3,762	Unincorporated Areas of Avery County, Town of Elk Park.
	At the confluence with Elk River	None	+2,865	
Tributary 1	Approximately 0.8 mile upstream of Little Elk Road (State Road 1173).	None	+3,716	Unincorporated Areas of Avery County, Town of Elk Park.
	At the confluence with Little Elk Creek	None	+2,897	
Tributary 1A	Approximately 140 feet upstream of Brooks Shell Road (State Road 1171).	None	+3,564	Unincorporated Areas of Avery County, Town of Elk Park.
	At the confluence with Little Elk Creek Tributary 1	None	+3,098	
Tributary 2	Approximately 1,420 feet upstream of Brooks Shell Road (State Road 1171).	None	+3,445	Unincorporated Areas of Avery County, Town of Elk Park.
	At the confluence with Little Elk Creek	None	+3,037	
North Toe River	Approximately 260 feet upstream of Cliff Taylor Lane ..	None	+3,146	Unincorporated Areas of Avery County, Town of Newland.
	Approximately 1.3 miles downstream of the confluence of Brushy Creek.	None	+2,605	
Plumtree Creek	At the confluence of Hickorynut Branch	None	+3,770	Unincorporated Areas of Avery County.
	At the confluence with North Toe River	None	+2,865	
Roaring Creek	Approximately 1.0 mile upstream of US-19	None	+2,957	Unincorporated Areas of Avery County.
	At the confluence with North Toe River	None	+2,966	
Shawneehaw Creek	Approximately 2.7 miles upstream of Roaring Creek Road (State Road 1132).	None	+4,240	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 300 feet upstream of the confluence with Elk River.	None	+3,644	
Tributary 1	Approximately 270 feet upstream of Gualtney Road (State Road 1335).	None	+3,962	Unincorporated Areas of Avery County, Town of Banner Elk.
	At the confluence with Shawneehaw Creek	None	+3,813	
Shoemaker Creek	Approximately 880 feet upstream of Balm Highway/US-194.	None	+3,871	Unincorporated Areas of Avery County, Town of Banner Elk.
	At the confluence with Shawneehaw Creek	None	+3,796	
Sugar Creek	Approximately 400 feet upstream of Shoemaker Road	None	+3,882	Unincorporated Areas of Avery County, Town of Banner Elk.
	Approximately 150 feet upstream of the confluence with Elk River.	+3,682	+3,681	
Threemile Creek	Approximately 1,250 feet upstream of Mac Lane	None	+3,727	Unincorporated Areas of Avery County.
	At the confluence with North Toe River	None	+2,756	
Trivett Branch	Approximately 0.8 mile upstream of Greenway Lane	None	+2,853	Unincorporated Areas of Avery County.
	At the North Carolina/Tennessee state boundary	None	+2,644	
Tributary 1	Approximately 700 feet upstream of the confluence with Trivett Branch Tributary 3.	None	+2,995	Unincorporated Areas of Avery County.
	At the North Carolina/Tennessee state boundary	None	+2,633	
Tributary 1A	Approximately 700 feet upstream of the confluence of Trivett Branch Tributary 1A.	None	+2,841	Unincorporated Areas of Avery County.
	At the confluence with Trivett Branch Tributary 1	None	+2,760	
Tributary 2	Approximately 720 feet upstream of the confluence with Trivett Branch Tributary 1.	None	+2,890	Unincorporated Areas of Avery County.
	At the confluence with Trivett Branch	None	+2,650	
	Approximately 1,150 feet upstream of the confluence with Trivett Branch.	None	+2,754	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 3	At the confluence with Trivett Branch	None	+2,968	Unincorporated Areas of Avery County.
	Approximately 370 feet upstream of Dark Ridge Road (State Road 1310).	None	+2,998	
Watauga River	At the North Carolina/Tennessee state boundary	None	+2,142	Unincorporated Areas of Avery County.
Whitehead Creek	At the confluence of Beech Creek	None	+2,446	Unincorporated Areas of Avery County, Town of Banner Elk.
	At the confluence with Elk River	None	+3,404	
	Approximately 100 feet upstream of Tumbling Brook Drive.	None	+3,764	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

Town of Banner Elk

Maps are available for inspection at the Banner Elk Town Hall, 200 Park Avenue, Banner Elk, North Carolina.

Send comments to The Honorable Deka Tate, Mayor of the Town of Banner Elk, P.O. Box 2049, Banner Elk, North Carolina 28604.

Town of Elk Park

Maps are available for inspection at the Elk Park Town Hall, 169 Winters Street, Elk Park, North Carolina.

Send comments to The Honorable Darlene Hicks, Mayor of the Town of Elk Park, P.O. Box 248, Elk Park, North Carolina 28622.

Town of Newland

Maps are available for inspection at the Newland Town Hall, 301 Cranberry Street, Newland, North Carolina.

Send comments to The Honorable Valerie Jaynes, Mayor of the Town of Newland, P.O. Box 429, Newland, North Carolina 28657.

Unincorporated Areas of Avery County

Maps are available for inspection at the Avery County Courthouse, 100 Montezuma Street, Newland, North Carolina.

Send comments to Mr. Kenny Poteat, Chairman of the Avery County Board of Commissioners, P.O. Box 640, Newland, North Carolina 28657.

Henderson County, North Carolina and Incorporated Areas

Allen Branch	At the confluence with Clear Creek	None	+2,081	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 200 feet upstream of Luther Capell Lane.	None	+2,183	
Bat Fork Creek	At the confluence with Mud Creek	+2,084	+2,082	Unincorporated Areas of Henderson County, City of Hendersonville.
Battle Creek	Approximately 200 feet upstream of U.S. 176	None	+2,159	Unincorporated Areas of Henderson County.
	At the downstream side of U.S. 64	None	+2,069	
Big Willow Creek	Approximately 0.4 mile upstream of Battle Creek Road (State Road 1211).	None	+2,082	Unincorporated Areas of Henderson County.
	Approximately 0.4 mile upstream of the confluence with French Broad River.	None	+2,081	
	At the confluence of South Fork Big Willow Creek and North Fork Big Willow Creek.	None	+2,081	
Tributary 1	Approximately 1,200 feet upstream of the confluence with Big Willow Creek.	+2,081	+2,104	Unincorporated Areas of Henderson County.
	Approximately 40 feet upstream of Lakeshore Drive	+2,081	+2,109	
Boylston Creek	Approximately 50 feet downstream of Banner Farm Road.	+2,173	+2,172	Town of Mills River.
	Approximately 230 feet upstream of Turkey Pen Gap Road.	None	+2,190	
Tributary 7	At the confluence with Boylston Creek	None	+2,103	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 1,090 feet upstream of Cross Creek Court.	None	+2,128	
Britton Creek	At the confluence with Mud Creek	+2,082	+2,081	Unincorporated Areas of Henderson County, City of Hendersonville.
Tributary 2	Approximately 90 feet upstream of Mistletoe Trail	None	+2,284	Unincorporated Areas of Henderson County, City of Hendersonville.
	At the confluence with Britton Creek	+2,083	+2,082	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Broad River	Approximately 150 feet upstream of Stonebrook Drive (State Road 2050).	None	+2,154	Unincorporated Areas of Henderson County.
	At the Henderson/Rutherford County boundary	None	+1,411	
Cane Creek	At the Buncombe/Henderson County boundary	None	+1,719	Unincorporated Areas of Henderson County, Town of Fletcher.
	Approximately 100 feet upstream of I-26	+2,061	+2,062	
Clear Creek	Approximately 350 feet downstream of the confluence with Robinson Creek.	+2,095	+2,094	Unincorporated Areas of Henderson County.
	At the confluence with Mud Creek	+2,079	+2,078	
Devils Fork	Approximately 1.0 mile upstream of Apple Valley Road (State Road 1572).	None	+2,171	Unincorporated Areas of Henderson County, City of Hendersonville.
	At the confluence with Bat Fork Creek	+2,086	+2,083	
Dunn Creek	At Old Dana Road (State Road 1738)	+2,136	+2,135	Unincorporated Areas of Henderson County, City of Hendersonville.
	At the confluence with Bat Fork Creek	None	+2,099	
Featherstone Creek	Approximately 570 feet upstream of Howard Gap Road (State Road 1006).	None	+2,144	Unincorporated Areas of Henderson County.
	At the confluence with Mud Creek	+2,071	+2,069	
Finley Creek	Approximately 240 feet upstream of Locust Grove Road (State Road 1138).	None	+2,253	Unincorporated Areas of Henderson County.
	At the confluence with Perry Creek and Shepherd Creek.	None	+2,131	
Gash Creek	Approximately 1,980 feet upstream of Old Kanuga Road (State Road 1138).	None	+2,146	Unincorporated Areas of Henderson County.
	Approximately 400 feet downstream of Etowah School Road (State Road 1205).	None	+2,081	
Green River	Approximately 1,250 feet upstream of U.S. 64	None	+2,101	Unincorporated Areas of Henderson County.
	At the Henderson/Polk County boundary	None	+1,442	
Henderson Creek	Approximately 300 feet upstream of Bear Paw Ridge Road.	None	+2,166	Unincorporated Areas of Henderson County.
	At the confluence with Clear Creek	None	+2,118	
Hickory Creek (near Gerton).	Approximately 1,240 feet upstream of Pace Road (State Road 1762).	None	+2,146	Unincorporated Areas of Henderson County.
	At the confluence with Broad River	None	+1,483	
Higgins Branch	Approximately 320 feet upstream of Boulder Lane	None	+3,652	Town of Fletcher.
	At the confluence with Kimsey Creek	None	+2,062	
Hoopers Creek	Approximately 1,820 feet upstream of Birkshire Way ...	None	+2,178	Unincorporated Areas of Henderson County, Town of Fletcher.
	At the confluence with Cane Creek	+2,075	+2,074	
Kimsey Creek	Approximately 30 feet downstream of Lindsey Loop Road (State Road 1571).	None	+2,181	Unincorporated Areas of Henderson County, Town of Fletcher.
	Approximately 50 feet upstream of U.S. 74	+2,061	+2,062	
King Creek	Approximately 1,880 feet upstream of Kimzey Creek Drive.	None	+2,155	Unincorporated Areas of Henderson County, City of Hendersonville, Village of Flat Rock.
	At the confluence with Bat Fork Creek	None	+2,084	
Tributary 3	Approximately 0.5 mile upstream of West Blue Ridge Road (State Road 1812).	None	+2,178	Unincorporated Areas of Henderson County, City of Hendersonville, Village of Flat Rock.
	At the confluence with King Creek	None	+2,099	
	Approximately 210 feet upstream of Rutledge Drive (State Road 1166).	None	+2,171	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Kyles Creek	At the confluence with Clear Creek	None	+2,118	Unincorporated Areas of Henderson County.
	Approximately 140 feet downstream of Terrys Gap Road (State Road 1565).	None	+2,187	
Lanning Mill Creek	At the confluence with Kyles Creek	None	+2,176	Unincorporated Areas of Henderson County.
	Approximately 800 feet upstream of the confluence with Kyles Creek.	None	+2,187	
Lewis Creek	At the confluence with Clear Creek	None	+2,126	Unincorporated Areas of Henderson County.
	Approximately 80 feet downstream of Pilot Mountain Road (State Road 1783).	None	+2,169	
Little Willow Creek	At Pleasant Grove Road (State Road 1191)	None	+2,083	Unincorporated Areas of Henderson County.
	Approximately 1.6 miles upstream of the confluence with French Broad River.	None	+2,113	
Mill Pond Creek	Approximately 175 feet upstream of Hysong Lane	+2,076	+2,075	Unincorporated Areas of Henderson County.
	Approximately 0.4 mile upstream of Mountain Road (State Road 1381).	None	+2,202	
Mills River	Approximately 0.6 mile upstream of Hooper Lane (State Road 1353).	None	+2,063	Town of Mills River.
	At the confluence of North Fork Mills River and South Fork Mills River.	None	+2,119	
Mud Creek	Approximately 1.4 miles upstream of the confluence with French Broad River.	+2,063	+2,062	Unincorporated Areas of Henderson County, City of Hendersonville, Town of Fletcher, Village of Flat Rock.
	Approximately 300 feet upstream of Walnut Cove Road (State Road 1125).	None	+2,161	
North Fork Big Willow Creek.	At the confluence with Big Willow Creek	None	+2,081	Unincorporated Areas of Henderson County.
	Approximately 0.5 mile upstream of the confluence with Big Willow Creek.	None	+2,099	
North Fork Mills River	At the confluence with Mills River	None	+2,119	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 1.3 miles upstream of Rush Branch Road.	None	+2,259	
Perry Creek	At the confluence with Shepherd Creek	None	+2,131	Unincorporated Areas of Henderson County.
	Approximately 1,530 feet upstream of Price Road (State Road 1137).	None	+2,147	
Piney Branch	At the confluence with South Fork Big Willow Creek	None	+2,082	Unincorporated Areas of Henderson County.
	Approximately 0.8 mile upstream of Big Willow Road (State Road 1191).	None	+2,218	
Reedypatch Creek	At the confluence with Broad River	None	+1,461	Unincorporated Areas of Henderson County.
	Approximately 540 feet upstream of Bald Rock Road (State Road 1710).	None	+2,176	
Rock Creek (into Green River).	At the confluence with Green River	None	+2,067	Unincorporated Areas of Henderson County.
	Approximately 0.5 mile upstream of Green River Road (State Road 1106).	None	+2,103	
Shaw Creek	At the downstream side of U.S. 64	None	+2,069	Unincorporated Areas of Henderson County.
	Approximately 1,400 feet upstream of Turley Falls Road (State Road 1215).	None	+2,122	
Shephard Creek	At South Lakeside Drive (State Road 1148)	None	+2,126	Unincorporated Areas of Henderson County.
	At the confluence of Perry Creek and Finley Creek	None	+2,131	
South Fork Big Willow Creek.	At the confluence with Big Willow Creek	None	+2,081	Unincorporated Areas of Henderson County.
	Approximately 1,810 feet upstream of Patterson Road (State Road 1194).	None	+2,103	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
South Fork Mills River	At the confluence with Mills River	None	+2,119	Unincorporated Areas of Henderson County, Town of Mills River.
	Approximately 3.2 miles upstream of Dalton Road (State Road 1340).	None	+2,258	
South Wash Creek	At the confluence with Wash Creek	None	+2,153	Town of Laurel Park.
	Approximately 50 feet downstream of Lake Drive	None	+2,217	
Tonys Creek	At the confluence with Shepherd Creek	None	+2,126	Unincorporated Areas of Henderson County, Town of Laurel Park.
	Approximately 0.5 mile upstream of Willow Road (State Road 1171).	None	+2,201	
Wash Creek	Approximately 400 feet upstream of the confluence with Mud Creek.	+2,090	+2,091	Unincorporated Areas of Henderson County, City of Hendersonville, Town of Laurel Park.
	Approximately 330 feet upstream of Railroad	None	+2,202	
Wolfpen Creek	Approximately 500 feet upstream of the confluence with Clear Creek.	+2,092	+2,091	Unincorporated Areas of Henderson County, City of Hendersonville.
	Approximately 90 feet upstream of Chestnut Gap Road (State Road 1742).	None	+2,130	

* National Geodetic Vertical Datum.

Depth in feet above ground.

+ North American Vertical Datum.

ADDRESSES

City of Hendersonville

Maps are available for inspection at Hendersonville City Hall, 145 Fifth Avenue East, Hendersonville, North Carolina.

Send comments to The Honorable Greg Newman, Mayor of the City of Hendersonville, P.O. Box 1670, Hendersonville, North Carolina 28793.

Town of Fletcher

Maps are available for inspection at Fletcher Town Hall, 4005 Hendersonville Road, Fletcher, North Carolina.

Send comments to The Honorable Mark Biberdors, Mayor of the Town of Fletcher, 4005 Hendersonville Road, Fletcher, North Carolina 28732.

Town of Laurel Park

Maps are available for inspection at Laurel Park Town Hall, 441 White Pine Drive, Laurel Park, North Carolina.

Send comments to The Honorable Henry T. Johnson, Mayor of the Town of Laurel Park, 441 White Pine Drive, Laurel Park, North Carolina 28739.

Town of Mills River

Maps are available for inspection at Mills River Town Hall, 5046 Boylston Highway, Suite 3, Mills River, North Carolina.

Send comments to The Honorable Roger Snyder, Mayor of the Town of Mills River, 5046 Boylston Highway, Suite 3, Mills River, North Carolina 28759.

Unincorporated Areas of Henderson County

Maps are available for inspection at Henderson County Administration Building, 100 North King Street, Hendersonville, North Carolina.

Send comments to Mr. Steve Wyatt, Henderson County Manager, 100 North King Street, Hendersonville, North Carolina 28792.

Village of Flat Rock

Maps are available for inspection at Flat Rock Village Hall, 110 Village Center Drive, Flat Rock, North Carolina.

Send comments to The Honorable Ray E. Shaw, Jr., Mayor of the Village of Flat Rock, P.O. Box 1288, Flat Rock, North Carolina 28731.

Union County, North Carolina and Incorporated Areas

Adams Branch	At the confluence with Richardson Creek	None	+540	Unincorporated Areas of Union County.
	Approximately 0.5 mile upstream of Richardson Road (SR 2158).	None	+629	
Tributary 1	At the confluence with Adams Branch	None	+569	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Adams Branch.	None	+602	
Austin Branch	At the confluence with Salem Creek	None	+486	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Austin Grove Church Road (SR 1751).	None	+580	
Barkers Branch	At the confluence with Lanes Creek	None	+430	Unincorporated Areas of Union County.
	Approximately 1,990 feet upstream of Tanner Road (SR 1935).	None	+531	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Bearskin Creek	Approximately 1,900 feet upstream of the confluence with Richardson Creek.	+486	+485	Unincorporated Areas of Union County, City of Monroe.
	Approximately 360 feet upstream of Price Short Cut Road (SR 1351).	None	+636	
Beaverdam Creek	At the confluence with Lanes Creek	None	+413	Unincorporated Areas of Union County.
	Approximately 1.2 miles upstream of Russell Pope Road (SR 1948).	None	+571	
Beaverdam Creek (West) ...	At the confluence with Richardson Creek	None	+520	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Parks McCorkle Road (SR 1152).	None	+651	
Beaverdam Creek Tributary 1.	At the confluence with Beaverdam Creek	None	+460	Unincorporated Areas of Union County.
	Approximately 0.8 mile upstream of Doctor Blair Road (SR 1902).	None	+498	
Tributary 1A	At the confluence with Beaverdam Creek Tributary 1 ...	None	+462	Unincorporated Areas of Union County.
	Approximately 0.5 mile upstream of the confluence with Beaverdam Creek Tributary 1.	None	+492	
Tributary 1B	At the confluence with Beaverdam Creek Tributary 1 ...	None	+464	Unincorporated Areas of Union County.
	Approximately 1,570 feet upstream of the confluence of Beaverdam Creek Tributary 1B1.	None	+484	
Tributary 1B1	At the confluence with Beaverdam Creek Tributary 1B	None	+473	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of the confluence with Beaverdam Creek Tributary 1B.	None	+483	
Tributary 2	At the confluence with Beaverdam Creek	None	+467	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of the confluence with Beaverdam Creek.	None	+503	
Becky Branch	At the confluence with Salem Creek	None	+440	Unincorporated Areas of Union County.
	Approximately 0.9 mile upstream of the confluence with Becky Branch Tributary 2.	None	+500	
Tributary 1	At the confluence with Becky Branch	None	+440	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of Old Lawyers Road (SR 1736).	None	+491	
Tributary 2	At the confluence with Becky Branch	None	+465	Unincorporated Areas of Union County.
	Approximately 280 feet upstream of Old Lawyers Road (SR 1736).	None	+510	
Brandon Branch	At the confluence with Gold Branch	None	+439	Unincorporated Areas of Union County.
	Approximately 950 feet upstream of Sugar and Wine Road (SR 1649).	None	+518	
Brown Creek	Approximately 0.5 mile downstream of the Anson/Union County boundary.	None	+326	Unincorporated Areas of Union County, City of Monroe.
	Approximately 1.1 miles upstream of Canal Road (SR 1919).	None	+374	
Tributary 5	At the confluence with Brown Creek	None	+331	Unincorporated Areas of Union County.
	Approximately 640 feet upstream of Zion Church Road	None	+354	
Tributary 6	At the confluence with Brown Creek	None	+337	Unincorporated Areas of Union County.
	Approximately 980 feet upstream of Zion Church Road	None	+379	
Buck Branch	At the confluence with Little Richardson Creek	None	+503	Unincorporated Areas of Union County.
	Approximately 950 feet downstream of Magnum Dairy Road (SR 2108).	None	+599	
Buffalo Creek	At the North Carolina/South Carolina State boundary ...	None	+501	Unincorporated Areas of Union County.
	Approximately 0.9 mile upstream of Jack Davis Road (SR 2125).	None	+631	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 1	At the confluence with Buffalo Creek	None	+502	Unincorporated Areas of Union County.
	Approximately 1,370 feet upstream of Trinity Church Road (SR 2153).	None	+594	
Bull Branch	At the confluence with Richardson Creek	None	+425	Unincorporated Areas of Union County.
	Approximately 1.2 miles upstream of Olive Branch Road (SR 1006).	None	+510	
Camp Branch	At the confluence with Bearskin Creek	+584	+585	Unincorporated Areas of Union County, City of Monroe.
	Approximately 1,500 feet upstream of Weddington Road.	None	+611	
Carolina Creek	At the confluence with Lanes Creek	None	+469	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of Van Sneed Road (SR 1925).	None	+548	
Cedar Branch	At the confluence with Lanes Creek	None	+446	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Lanes Creek.	None	+485	
Chinkapin Creek	At the confluence with Stewarts Creek	None	+492	Unincorporated Areas of Union County, Town of Unionville.
	Approximately 820 feet upstream of Tom Helms Road	None	+551	
Tributary 1	At the confluence with Chinkapin Creek	None	+505	Town of Unionville.
	Approximately 0.8 mile upstream of the confluence with Chinkapin Creek.	None	+550	
Tributary 2	At the confluence with Chinkapin Creek	None	+515	Town of Unionville.
	Approximately 900 feet upstream of Skies Mill Road	None	+570	
Tributary 2A	At the confluence with Chinkapin Creek Tributary 2	None	+523	Town of Unionville.
	Approximately 0.5 mile upstream of Unionville Road	None	+568	
Clear Creek	At the confluence with Rocky River	None	+469	Town of Fairview.
	Approximately 1,400 feet upstream of the confluence of Long Branch.	None	+486	
Cool Spring Branch	At the confluence with Lanes Creek	None	+437	Unincorporated Areas of Union County.
	Approximately 1.4 miles upstream of White Store Road (SR 1003).	None	+476	
Cowpens Branch	At the confluence with Wicker Branch	None	+539	Unincorporated Areas of Union County.
	Approximately 0.9 mile upstream of Medlin Road (SR 2102).	None	+608	
Crisco Branch	At the confluence with Rocky River	None	+348	Unincorporated Areas of Union County.
	Approximately 1.5 miles upstream of the confluence with Rocky River.	None	+436	
Crooked Creek	At the confluence with Rocky River	None	+426	Unincorporated Areas of Union County, Town of Fairview.
	At the confluence of North Fork Crooked Creek and South Fork Crooked Creek.	+569	+570	
Tributary 1	At the confluence with Crooked Creek	+562	+565	Town of Fairview, Town of Unionville.
	Approximately 0.4 mile upstream of Clontz Long Road	None	+592	
Dry Fork	At the confluence with Bearskin Creek	+582	+581	City of Monroe.
	Approximately 1,300 feet upstream of North Rocky Road (SR 1007).	None	+638	
Duck Creek	At the confluence with Goose Creek	None	+468	Unincorporated Areas of Union County, Town of Fairview.
	Approximately 0.8 mile upstream of the confluence with Duck Creek Tributary 3.	None	+575	
Tributary 1	At the confluence with Duck Creek	None	+483	Town of Fairview.
	Approximately 0.4 mile upstream of the confluence with Duck Creek.	None	+496	
Tributary 2	At the confluence with Duck Creek	None	+509	Town of Fairview.
	Approximately 60 feet downstream of Crowell Dairy Road.	None	+560	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 3	At the confluence with Duck Creek	None	+537	Unincorporated Areas of Union County.
East Fork Stewarts Creek ..	Approximately 0.7 mile upstream of Rock Hill Church Road (SR 1539).	None	+614	Unincorporated Areas of Union County, Town of Unionville.
	Approximately 110 feet upstream of the confluence with Stewarts Creek.	+536	+537	
	Approximately 1.2 miles upstream of the confluence of East Fork Stewarts Creek Tributary 1.	None	+597	
Tributary 1	At the confluence with East Fork Stewarts Creek	None	+572	Unincorporated Areas of Union County, Town of Unionville.
Tributary 1A	Approximately 1,840 feet upstream of the confluence of East Fork Stewarts Creek Tributary 1A.	None	+586	Unincorporated Areas of Union County.
	At the confluence with East Fork Stewarts Creek Tributary 1.	None	+578	
	Approximately 68 feet upstream of the confluence with East Fork Stewarts Creek Tributary 1.	None	+590	
East Fork Twelvemile Creek.	Approximately 0.4 mile upstream of the confluence with Twelvemile Creek and West Fork Twelvemile Creek.	+511	+510	Unincorporated Areas of Union County, Town of Indian Trail, Town of Mineral Springs, Town of Waxhaw, Village of Wesley Chapel.
Flag Branch	Approximately 1,710 feet upstream of Grayson Parkway.	None	+621	Unincorporated Areas of Union County, Town of Unionville.
	At the confluence with Chinkapin Creek	None	+494	
Gibbs Branch	Approximately 180 feet upstream of Morgan Mill Road	None	+524	Unincorporated Areas of Union County.
	At the confluence with Mill Creek (South)	None	+519	
Gold Branch	Approximately 230 feet upstream of Arant Road (SR 2117).	None	+555	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+396	
Gold Branch (East)	Approximately 0.9 mile upstream of New Salem Road (SR 1627).	None	+506	Unincorporated Areas of Union County.
	At the confluence with Grapevine Creek	None	+449	
Goose Creek	Approximately 0.5 mile upstream of Marshville Olive Branch Road (SR 1719).	None	+503	Unincorporated Areas of Union County, Town of Fairview, Town of Indian Trail, Town of Stallings.
	At the confluence with Rocky River	None	+466	
Tributary 1	At the Mecklenburg/Union County boundary	None	+627	Town of Fairview.
	At the confluence with Goose Creek	None	+468	
	Approximately 50 feet downstream of Roy Kindley Road.	None	+524	
Tributary 2	At the confluence with Goose Creek	+521	+520	Town of Fairview.
	Approximately 0.6 mile upstream of the confluence with Goose Creek.	None	+536	
Tributary 3	Approximately 800 feet upstream of the confluence with Goose Creek.	+539	+540	Unincorporated Areas of Union County, Town of Indian Trail.
Tributary 4	Approximately 0.7 mile upstream of the confluence with Goose Creek.	None	+556	Town of Indian Trail, Town of Stallings.
	Approximately 350 feet upstream of the confluence with Goose Creek.	+592	+593	
	Approximately 1.4 miles upstream of the confluence with Goose Creek.	None	+660	
Grapevine Creek	At the confluence with Richardson Creek	None	+360	Unincorporated Areas of Union County.
Tributary 1	Approximately 1.3 miles upstream of the confluence of Gold Branch (East).	None	+495	Unincorporated Areas of Union County.
	At the confluence with Grapevine Creek	None	+418	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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	Approximately 530 feet upstream of Lucy Short Cut Road (SR 1745).	None	+459	
Tributary 2	At the confluence with Grapevine Creek	None	+434	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Grapevine Creek.	None	+479	
Grassy Branch	At the confluence with Crooked Creek	None	+518	Unincorporated Areas of Union County, Town of Fairview, Town of Unionville.
	Approximately 390 feet upstream of West Lawyers Road (SR 1675).	None	+614	
Tributary 1	At the confluence with Grassy Branch	None	+549	Town of Unionville.
	Approximately 1,520 feet upstream of Unionville Road	None	+569	
Grassy Creek	At the confluence with Rocky River	None	+374	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of Braswell-Rushing Road.	None	+566	
Tributary 1	At the confluence with Rocky River	None	+459	Unincorporated Areas of Union County.
	Approximately 550 feet upstream of Morgan Mill Road	None	+502	
Tributary 2	At the confluence with Grassy Creek	None	+498	Unincorporated Areas of Union County.
	Approximately 0.5 mile upstream of the confluence with Grassy Creek.	None	+516	
Gum Log Branch	At the confluence with Lanes Creek	None	+522	Unincorporated Areas of Union County.
	Approximately 0.8 mile upstream of Jack Davis Road (SR 2125).	None	+586	
Half Way Branch	At the confluence with Meadow Branch	None	+506	Unincorporated Areas of Union County, Town of Wingate.
	Approximately 160 feet upstream of West Elm Street ..	None	+563	
Haney Branch	At the confluence with Beaverdam Creek	None	+483	Unincorporated Areas of Union County.
	Approximately 630 feet upstream of Old Pageland Marshville Road (SR 1937).	None	+520	
Jacks Branch	At the confluence with Salem Creek	None	+412	Unincorporated Areas of Union County.
	Approximately 0.4 mile downstream of Henry Ellis Drive.	None	+531	
Tributary 1	At the confluence with Jacks Branch	None	+481	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of the confluence with Jacks Branch.	None	+492	
Lacey Branch	At the Union/Anson County boundary	None	+445	Unincorporated Areas of Union County.
	Approximately 0.8 mile upstream of the confluence of Lacey Branch Tributary 2.	None	+506	
Tributary 1	At the confluence with Lacey Branch	None	+479	Unincorporated Areas of Union County.
	Approximately 1,610 feet upstream of the confluence with Lacey Branch.	None	+496	
Tributary 2	At the confluence with Lacey Branch	None	+481	Unincorporated Areas of Union County.
	Approximately 650 feet upstream of Brice Griffin Road (SR 1727).	None	+502	
Lanes Creek	Approximately 0.7 mile upstream of Hasty Road (SR 1901).	None	+412	Unincorporated Areas of Union County.
	Approximately 1,310 feet upstream of Jack Davis Road (SR 2125).	None	+624	
Tributary 6	At the confluence with Lanes Creek	None	+438	Unincorporated Areas of Union County.
	Approximately 1,770 feet upstream of the confluence with Lanes Creek.	None	+442	
Tributary 7	At the confluence with Lanes Creek	None	+444	Unincorporated Areas of Union County.
	Approximately 0.6 mile upstream of the confluence with Lanes Creek.	None	+482	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 8	At the confluence with Lanes Creek	None	+455	Unincorporated Areas of Union County.
	Approximately 1.1 miles upstream of the confluence with Lanes Creek.	None	+514	
Tributary 9	At the confluence with Lanes Creek	None	+461	Unincorporated Areas of Union County.
	Approximately 0.4 mile upstream of Smith Town Road (SR 1915).	None	+483	
Lee Branch	At the confluence with Bates Branch	None	+541	Unincorporated Areas of Union County, Town of Mineral Springs.
	Approximately 375 feet downstream of Waxhaw-Monroe Road (State Route 1111).	None	+618	
Lick Branch (East)	At the confluence with Lanes Creek	None	+413	Unincorporated Areas of Union County, Town of Marshville.
	Approximately 410 feet upstream of West Main Street	None	+557	
Tributary 1	At the confluence with Lick Branch (East)	None	+493	Unincorporated Areas of Union County, Town of Marshville.
	Approximately 1.0 mile upstream of the confluence with Lick Branch (East).	None	+517	
Lick Branch (East) Tributary 1A.	At the confluence with Lick Branch (East) Tributary 1 ..	None	+496	Unincorporated Areas of Union County, Town of Marshville.
	Approximately 0.3 mile upstream of Traywick Road	None	+517	
Lick Branch (West)	Approximately 230 feet upstream of the confluence with Stewarts Creek.	None	+535	City of Monroe.
	Approximately 170 feet upstream of US Highway 74	None	+586	
Tributary 1	At the confluence with Lick Branch (West)	None	+576	City of Monroe.
	Approximately 710 feet upstream of the confluence with Lick Branch (West).	None	+582	
Little Brown Creek	At the confluence with Brown Creek	None	+351	Unincorporated Areas of Union County.
	Approximately 190 feet upstream of the confluence with Wallace Branch.	None	+396	
Little Mill Creek	At the confluence with Mill Creek	None	+466	Unincorporated Areas of Union County, Town of Unionville.
	Approximately 120 feet upstream of Lark Trail	None	+551	
Little Richardson Creek	At the confluence with Richardson Creek	None	+495	Unincorporated Areas of Union County, City of Monroe.
	Approximately 1,980 feet upstream of Bruce Thomas Road (SR 2132).	None	+604	
Tributary 1	At the confluence with Little Richardson Creek	None	+495	Unincorporated Areas of Union County, City of Monroe.
	Approximately 0.8 mile upstream of the confluence with Little Richardson Creek.	None	+533	
Tributary 2	At the confluence with Little Richardson Creek	None	+556	Unincorporated Areas of Union County.
	Approximately 620 feet upstream of Troy Medlin Road (SR 2131).	None	+606	
Tributary 3	At the confluence with Little Richardson Creek	None	+581	Unincorporated Areas of Union County.
	Approximately 1.6 miles upstream of the confluence with Richardson Creek.	None	+624	
Little Twelvemile Creek	At the confluence with East Fork Twelvemile Creek	+526	+527	Unincorporated Areas of Union County, Town of Mineral Springs.
	Approximately 0.9 mile upstream of Crow Road	None	+635	
Little Watson Branch	At the confluence with Water Branch	None	+314	Unincorporated Areas of Union County.
	Approximately 250 feet downstream of NC 218 Highway.	None	+437	
Tributary 1	At the confluence with Little Watson Branch	None	+341	Unincorporated Areas of Union County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 360 feet upstream of Burnsville Road (SR 1714).	None	+418	
Long Branch	At the confluence with Clear Creek	None	+483	Town of Fairview.
	Approximately 0.9 mile upstream of the confluence with Clear Creek.	None	+533	
Lynches Creek	At the confluence with Rays Fork	None	+492	Unincorporated areas of Union County, City of Monroe.
	Approximately 1.1 miles upstream of Old Pageland-Monroe Road (SR 1941).	None	+603	
Lynches River	At the North Carolina/South Carolina State boundary ...	None	+483	Unincorporated areas of Union County.
	Approximately 0.7 mile upstream of Circle Ranch Road (SR 2161).	None	+641	
Tributary 1	At the confluence with Lynches River	None	+546	Unincorporated areas of Union County.
	Approximately 1,640 feet upstream of Trinity Church Road (SR 2166).	None	+583	
Tributary 2	At the confluence with Lynches River	None	+609	Unincorporated areas of Union County.
	Approximately 0.5 mile upstream of the confluence with Lynches River.	None	+619	
Maness Branch	Approximately 400 feet downstream of the Union/Anson County boundary.	None	+436	Unincorporated areas of Union County.
	Approximately 1,020 feet upstream of Nance Tarlton Road (SR 1724).	None	+493	
Maple Springs Branch	At the confluence with Beaverdam Creek	None	+490	Unincorporated areas of Union County.
	Approximately 0.9 mile upstream of Faulks Church Road (SR 1947).	None	+518	
Meadow Branch	At the confluence with Richardson Creek	None	+433	Unincorporated areas of Union County, Town of Wingate.
	Approximately 970 feet downstream of Old Highway Road (SR 1740).	None	+553	
Tributary 1	At the confluence with Meadow Branch	None	+490	Unincorporated areas of Union County.
	Approximately 0.7 mile upstream of McIntyre Road (SR 1631).	None	+550	
Tributary 2	At the confluence with Meadow Branch	None	+503	Unincorporated areas of Union County.
	Approximately 180 feet downstream of Austin Chaney Road (SR 1758).	None	+565	
Tributary 3	At the confluence with Meadow Branch	None	+505	Unincorporated areas of Union County.
	Approximately 240 feet downstream of Wade Rorie Road (SR 1788).	None	+549	
Middle Fork	At the confluence with Rays Fork	None	+492	Unincorporated areas of Union County, City of Monroe.
	Approximately 450 feet upstream of Old Monroe Marshville Road (SR 1957).	None	+560	
Mill Creek	At the confluence with Richardson Creek	None	+443	Unincorporated areas of Union County, Town of Unionville.
	Approximately 300 feet upstream of Supreme Drive	None	+516	
Mill Creek (South)	At the confluence with Lanes Creek	None	+495	Unincorporated areas of Union County.
	Approximately 700 feet upstream of Budyler Road (SR 2116).	None	+545	
Mountain Springs Branch ...	At the confluence with Wicker Branch	None	+561	Unincorporated areas of Union County.
	Approximately 0.4 mile upstream of Joe Griffin Road (SR 1945).	None	+593	
Mundys Run	At the confluence with Mundys Run	None	+562	Town of Weddington.
Tributary 1	Approximately 1,130 feet upstream of Skytop Road	None	+613	
Norkett Branch	At the confluence with Lanes Creek	None	+439	Unincorporated areas of Union County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
North Fork Crooked Creek	Approximately 1,510 feet downstream of Lansford Road (SR 1005).	None	+482	Unincorporated areas of Union County, Town of Fairview, Town of Hemby Bridge, Town of Indian Trail, Town of Stallings.
	At the confluence with Crooked Creek	+569	+570	
Tributary	Approximately 850 feet upstream of Stevens Mill Road	None	+676	Unincorporated areas of Union County, Town of Hemby Bridge, Town of Stallings.
	At the confluence with North Fork Crooked Creek	+630	+632	
Tributary 1	Approximately 0.7 mile upstream of Stevens Mill Road (SR 1524).	+659	+658	Unincorporated areas of Union County, Town of Indian Trail.
	Approximately 0.4 mile upstream of the confluence with North Fork Crooked Creek.	+589	+590	
Tributary 3	Approximately 0.5 mile upstream of Poplin Road (SR 1508).	None	+617	Unincorporated areas of Union County, Town of Hemby Bridge, Town of Indian Trail.
	At the confluence with North Fork Crooked Creek	+624	+622	
Tributary 4	Approximately 1.0 mile upstream of Stinson Hartis Road.	None	+657	Unincorporated areas of Union County, Town of Indian Trail, Town of Stallings.
	At the confluence with North Fork Crooked Creek	None	+650	
Tributary 5	Approximately 210 feet downstream of Union West Boulevard.	None	+667	Town of Stallings.
	At the confluence with North Fork Crooked Creek	None	+664	
Tributary 6	Approximately 1,740 feet upstream of the confluence with North Fork Crooked Creek.	None	+674	Unincorporated areas of Union County, Town of Stallings.
	At the confluence with North Fork Crooked Creek	None	+643	
Tributary A	Approximately 1,850 feet upstream of Stallings Road ..	None	+720	Unincorporated areas of Union County, Town of Indian Trail.
	At the confluence with North Fork Crooked Creek	+595	+598	
Tributary B	At the downstream side of Secrest Short Cut Road (State Road 1501).	+623	+622	Unincorporated areas of Union County, Town of Indian Trail.
	At the confluence with North Fork Crooked Creek Tributary A.	+604	+602	
Paddle Branch	Approximately 850 feet upstream of Secrest Short Cut Road.	None	+619	Unincorporated areas of Union County, Town of Indian Trail, Town of Stallings.
	Approximately 800 feet upstream of the confluence with Goose Creek.	None	+526	
Polecat Creek	Approximately 0.6 mile upstream of Flagstick Drive	None	+635	Unincorporated areas of Union County.
	At the North Carolina/South Carolina State boundary ...	None	+534	
Tributary 1	Approximately 360 feet upstream of Irby Road (SR 2170).	None	+630	Unincorporated areas of Union County.
	At the confluence with Polecat Creek	None	+588	
Price Mill Creek	Approximately 0.6 mile upstream of Carl Belk Road (SR 2168).	None	+610	Unincorporated Areas of Union County, Town of Indian Trail, Village of Wesley Chapel.
	At the confluence with East Fork Twelvemile Creek	+545	+548	
Raccoon Branch	Approximately 650 feet upstream of Kennerly Drive	None	+650	Unincorporated Areas of Union County.
	At the confluence with Buffalo Creek	None	+573	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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Rays Fork	Approximately 1.4 miles upstream of Trinity Church Road (SR 2166).	None	+623	Unincorporated Areas of Union County, City of Monroe, Town of Wingate.
	At the confluence with Richardson Creek	None	+461	
Reason Branch	Approximately 1,680 feet upstream of White Store Road (SR 1003).	None	+607	Unincorporated Areas of Union County.
	At the confluence with Rocky River	None	+362	
Reedy Branch	Approximately 1.3 miles upstream of Morgan Academy Road (SR 1661).	None	+461	Unincorporated Areas of Union County.
	At the confluence with Beaverdam Creek	None	+515	
Richardson Creek	Approximately 0.6 mile upstream of Camden Road (SR 1934).	None	+554	Unincorporated Areas of Union County, City of Monroe.
	Approximately 450 feet downstream of the Anson/Union County boundary.	None	+294	
Tributary 1	Approximately 2.0 miles upstream of Griffith Road (SR 2139).	None	+635	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+377	
Tributary 2	Approximately 180 feet upstream of Dusty Lane (SR 1718).	None	+394	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+377	
Tributary 3	Approximately 1,390 feet upstream of the confluence with Richardson Creek.	None	+399	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+382	
Tributary 4	Approximately 0.4 mile upstream of the confluence with Richardson Creek.	None	+397	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+384	
Tributary 5	Approximately 1,050 feet upstream of the confluence with Richardson Creek.	None	+395	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+403	
Tributary 6	Approximately 830 feet upstream of New Salem Road (SR 1627).	None	+506	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+407	
Tributary 7	Approximately 0.7 mile upstream of Tarlton Mill Road (SR 1649).	None	+441	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+416	
Tributary A	Approximately 1.2 miles upstream of the confluence with Richardson Creek.	None	+495	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+298	
Rocky River	Approximately 850 feet upstream of Fish Road (SR 1706).	None	+335	Unincorporated Areas of Union County, Town of Fairview.
	At the Anson/Stanly/Union County boundary	None	+302	
Tributary 5	At the confluence with Clear Creek	None	+469	Unincorporated Areas of Union County.
	At the confluence with Rocky River	None	+306	
Tributary 6	Approximately 1.5 miles upstream of the confluence with Rocky River.	None	+364	Unincorporated Areas of Union County.
	At the confluence with Rocky River	None	+329	
Tributary 7	Approximately 1,180 feet upstream of Old Kennedy Ford Road.	None	+400	Unincorporated Areas of Union County.
	At the confluence with Rocky River	None	+343	
	Approximately 500 feet downstream of Old Kennedy Ford Road (SR 1711).	None	+429	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
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Rone Branch Tributary 1	At the confluence with Rone Branch	None	+515	Unincorporated Areas of Union County.
	Approximately 0.7 mile upstream of the confluence with Rone Branch.	None	+560	
Salem Creek	At the confluence with Richardson Creek	None	+387	Unincorporated Areas of Union County
	Approximately 880 feet upstream of US Highway 74	None	+519	
Tributary 1	At the confluence with Salem Creek	None	+465	Unincorporated Areas of Union County.
	Approximately 840 feet upstream of Angel Desse Road	None	+516	
Tributary 2	At the confluence with Salem Creek	None	+472	Unincorporated Areas of Union County, Town of Marshville.
	Approximately 900 feet downstream of Austin Grove Church Road.	None	+510	
Sixmile Creek Tributary 2 ...	At the confluence with Sixmile Creek	+593	+597	Unincorporated Areas of Union County.
	Approximately 1.2 miles upstream of the confluence with Sixmile Creek.	None	+633	
Small Branch	At the confluence with South Fork Crooked Creek	+637	+639	Town of Indian Trail.
	Approximately 270 feet upstream of Waxhaw-Indian Road.	None	+668	
Small Drain	At the confluence with Small Branch	None	+657	Town of Indian Trail.
	Approximately 50 feet upstream of Unionville-Indian Trail Road.	None	+669	
Smith Branch	At the confluence with Grapevine Creek	None	+415	Unincorporated Areas of Union County.
	Approximately 930 feet upstream of Marshville Olive Branch Road (SR 1719).	None	+466	
South Fork Crooked Creek	At the confluence with Crooked Creek	+569	+570	Unincorporated Areas of Union County, City of Monroe, Town of Fairview, Town of Indian Trail, Town of Stallings, Town of Unionville.
	Approximately 1,900 feet upstream of Kelly Drive	None	+759	
Tributary 1	At the confluence with South Fork Crooked Creek	+573	+574	Town of Unionville.
	Approximately 930 feet upstream of Unionville-Indian Trail Road.	None	+602	
Tributary 2	At the confluence with South Fork Crooked Creek	+588	+589	Unincorporated Areas of Union County.
	Approximately 900 feet upstream of Unionville-Indian Trail Road.	None	+603	
Tributary 3	At the confluence with South Fork Crooked Creek	+612	+614	Unincorporated Areas of Union County, Town of Indian Trail.
	Approximately 610 feet upstream of the railroad	None	+640	
Tributary 4	Approximately 750 feet upstream of the confluence with South Fork Crooked Creek.	+622	+623	Unincorporated Areas of Union County, Town of Indian Trail.
	Approximately 190 feet upstream of Sun Valley Drive ..	None	+629	
Tributary 5	At the confluence with South Fork Crooked Creek	+627	+629	Town of Indian Trail, Village of Lake Park.
	Approximately 700 feet upstream of Brooktree Lane	None	+638	
Tributary 5A	At the confluence with South Fork Crooked Creek Tributary 5.	None	+631	Town of Indian Trail, Village of Lake Park.
	Approximately 1,050 feet upstream of Lake Park Road	None	+643	
Tributary 6	At the confluence with South Fork Crooked Creek	+629	+631	Town of Indian Trail.
	Approximately 0.4 mile upstream of Unionville-Indian Trail Road.	None	+640	
Stegall Branch	At the confluence with Richardson Creek	None	+357	Unincorporated Areas of Union County.
	Approximately 1.1 miles upstream of the confluence with Richardson Creek.	None	+416	
Stewarts Creek	At the confluence with Richardson Creek	None	+454	Unincorporated Areas of Union County, City of Monroe.
	Approximately 280 feet downstream of Myers Road	None	+625	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 1	Approximately 1,000 feet upstream of the confluence with Stewarts Creek.	None	+526	City of Monroe.
Tributary 2	Approximately 650 feet upstream of Sunnybrook Drive	None	+567	Unincorporated Areas of Union County, City of Monroe.
	Approximately 650 feet upstream of the confluence with Stewarts Creek.	None	+545	
Tributary 3	Approximately 480 feet upstream of Rolling Hills Drive	None	+561	City of Monroe.
	Approximately 550 feet upstream of the confluence with Stewarts Creek.	None	+549	
Tributary 4	Approximately 230 feet downstream of Fox Hunt Drive	None	+572	City of Monroe.
	Approximately 600 feet upstream of the confluence with Stewarts Creek.	None	+606	
Still Branch	Approximately 0.5 mile upstream of the confluence with Stewarts Creek.	None	+619	City of Monroe.
	At the confluence with Richardson Creek	None	+514	
Stumplick Branch	Approximately 0.5 mile upstream of the confluence with Richardson Creek.	None	+521	Unincorporated Areas of Union County, Town of Unionville.
	Approximately 250 feet upstream of the confluence with Stewarts Creek.	None	+507	
Tributary 1	Approximately 560 feet downstream of C. J. Thomas Road.	None	+596	Town of Unionville.
	At the confluence with Stumplick Branch	None	+573	
Wallace Branch	Approximately 0.5 mile upstream of Hillcrest Church Road.	None	+600	Unincorporated Areas of Union County.
	At the confluence with Little Brown Creek	None	+393	
Water Branch	Approximately 1.2 miles upstream of Cheraw Road (SR 1929).	None	+496	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+310	
Tributary 1	Approximately 0.8 mile upstream of NC Highway 218 ..	None	+462	Unincorporated Areas of Union County.
	At the confluence with Water Branch	None	+372	
Watson Creek	Approximately 0.5 mile upstream of the confluence with Water Branch.	None	+395	Unincorporated Areas of Union County.
	At the confluence with Richardson Creek	None	+412	
Waxhaw Branch	Approximately 1,410 feet upstream of Baucom Road ...	None	+516	Unincorporated Areas of Union County.
	At the confluence with Lanes Creek	None	+456	
Tributary 1	Approximately 0.9 mile upstream of Synder Store Road (SR 1945).	None	+593	Unincorporated Areas of Union County.
	At the confluence with Waxhaw Branch	None	+505	
Wicker Branch	Approximately 0.5 mile upstream of Edwards Road (SR 1943).	None	+534	Unincorporated Areas of Union County.
	At the confluence with Lanes Creek	None	+475	
Wide Mouth Branch	Approximately 0.7 mile upstream of US Highway 601 ..	None	+597	Unincorporated Areas of Union County.
	At the Anson/Union County boundary	None	+406	
	Approximately 510 feet upstream of Old Peachland Street (SR 1735).	None	+493	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES**City of Monroe**

Maps are available for inspection at City of Monroe Planning Department, 300 West Crowell Street, Monroe, North Carolina.

Send comments to The Honorable Bobby Kilgore, Mayor of the City of Monroe, 300 West Crowell Street, Monroe, North Carolina 28112.

Town of Fairview

Maps are available for inspection at Fairview Town Hall, 7608 Concord Highway, Monroe, North Carolina.

Send comments to The Honorable Richard Williams, Mayor of the Town of Fairview, 1519 Highway 218 East, Monroe, North Carolina 28110.

Town of Hemby Bridge

Maps are available for inspection at Hemby Bridge Town Hall, 5811 Fairview-Indian Trail Road, Hemby Bridge, North Carolina.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to The Honorable James Simpson, Jr., Mayor of the Town of Hemby Bridge, 7310 Secrest Shortcut Road, Indian Trail, North Carolina 28079.

Town of Indian Trail

Maps are available for inspection at Indian Trail Planning Department, 109 Navejo Trail Road, Indian Trail, North Carolina.

Send comments to The Honorable Sandy Moore, Mayor of the Town of Indian Trail, 4900 Pioneer Lane, Indian Trail, North Carolina 28079.

Town of Marshville

Maps are available for inspection at Marshville Town Hall, 201 West Main Street, Marshville, North Carolina.

Send comments to The Honorable Frank Deese, Mayor of the Town of Marshville, 201 West Main Street, Marshville, North Carolina 28103.

Town of Mineral Springs

Maps are available for inspection at Town of Mineral Springs Volunteer Fire and Rescue Department, 5804 Waxhaw Highway, Mineral Springs, North Carolina.

Send comments to The Honorable Rick Becker, Mayor of the Town of Mineral Springs, 6603 Sadler Road, Waxhaw, North Carolina 28173.

Town of Stallings

Maps are available for inspection at Stallings Town Hall, 315 Stallings Road, Stallings, North Carolina.

Send comments to The Honorable Lynda Paxton, Mayor of the Town of Stallings, 112 Eaglecrest Drive, Stallings, North Carolina 28104.

Town of Unionville

Maps are available for inspection at Unionville Town Hall, 1102 Unionville Church Road, Monroe, North Carolina.

Send comments to The Honorable Larry Simpson, Mayor of the Town of Unionville, 4108 Briarcliff Drive, Monroe, North Carolina 28110.

Town of Waxhaw

Maps are available for inspection at Waxhaw Town Hall, 317 North Broome Street, Waxhaw, North Carolina.

Send comments to The Honorable Gary Underwood, Mayor of the Town of Waxhaw, P.O. Box 6, Waxhaw, North Carolina 28173.

Town of Weddington

Maps are available for inspection at Weddington Town Hall, 1924 Weddington Road, Weddington, North Carolina.

Send comments to the Honorable Nancy Anderson, Mayor of the Town of Weddington, 1924 Weddington Road, Weddington, North Carolina 28104.

Town of Wingate

Maps are available for inspection at Wingate Town Hall, 3918 Highway 74 East, Wingate, North Carolina.

Send comments to The Honorable Tony E. Maye, Mayor of the Town of Wingate, P.O. Box 234, Wingate, North Carolina 28174.

Unincorporated Areas of Union County

Maps are available for inspection at Union County Planning Department, 407 North Main Street, Room 149, Monroe, North Carolina.

Send comments to Mr. Richard Black, Union County Manager, 500 North Main Street, Room 925, Monroe, North Carolina 28112.

Watauga County, North Carolina and Incorporated Areas

Beech Creek	At the confluence with Watauga River	None	+2,446	Unincorporated Areas of Watauga County.
	Approximately 1,080 feet upstream of the confluence of Buckeye Creek.	None	+2,776	
Brushy Fork	Approximately 100 feet downstream of U.S. 421 Highway N.	+2,723	+2,724	Unincorporated Areas of Watauga County.
	Approximately 700 feet upstream of Adams Cemetery Road (State Road 1375).	None	+2,893	
Buckeye Creek	At the confluence with Beech Creek	None	+2,731	Unincorporated Areas of Watauga County.
	Approximately 0.7 mile upstream of Blevins Road	None	+2,940	
Cove Creek	At the confluence with Watauga River	+2,633	+2,637	Unincorporated Areas of Watauga County.
	Approximately 620 feet upstream of Hill Road	None	+3,083	
Laurel Fork	At the confluence with Watauga River	+2,740	+2,739	Unincorporated Areas of Watauga County, Town of Boone.
	Approximately 1,400 feet upstream of George Wilson Road.	None	+3,357	
Watauga River	At the Watauga County boundary	None	+2,142	Unincorporated Areas of Watauga County.
	Approximately 30 feet upstream of The Glens Boulevard.	+3,598	+3,596	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

Town of Boone

Maps are available for inspection at the Town of Boone Planning and Inspections Office, 1500 Blowing Rock Road, Boone, North Carolina.

Send comments to The Honorable Loretta Clawson, Mayor of the Town of Boone, P.O. Drawer 192, Boone, North Carolina 28607.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Unincorporated Areas of Watauga County

Maps are available for inspection at the Watauga County Planning & Inspections Department, 331 Queen Street, Suite 8, Boone, North Carolina.

Send comments to Mr. Jim Deal, Chairman of the Watauga County Board of Commissioners, 814 West King Street, Suite 204, Boone, North Carolina 28607.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 16, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 07-3615 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-B-7726]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a

newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT:

William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically

excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Jefferson County, Arkansas, and Incorporated Areas

Harding Drain	Approx. 400' downstream of US Highway 65	+205	+208	City of Pine Bluff.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Outlet Canal	At confluence of Outlet Canal	+205	+208	City of Pine Bluff.
	Approx. 500' upstream of the confluence of Outlet Canal Tributary A.	+203	+208	
Pitts Drain	At confluence with Harding Drain	+205	+208	City of Pine Bluff.
	At confluence with Outlet Canal	+204	+208	
	At S Ohio Street	+208	+208	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Pine Bluff

Maps are available for inspection at 200 East 8th Avenue, Pine Bluff, AR 71601.

Send comments to The Honorable Carl Redus, Jr., Mayor, 200 East 8th Avenue, Suite 201, Pine Bluff, AR 71601.

Sebastian County, Arkansas, and Incorporated Areas

Adamson Creek	Intersection with S Coker St	+492	+494	City of Greenwood, Sebastian County (Unincorporated Areas).
Heartsill Creek	Approximately 2000 feet upstream of Highway 71	None	+533	City of Greenwood, Sebastian County (Unincorporated Areas).
	Intersection with W Denver Street	+506	+510	
Tributary 1	Approximately 180 feet downstream of Hester Cut Rd. Intersection.	None	+575	City of Greenwood.
	Confluence with Heartsill Creek	None	+525	
	Approximately 700 feet upstream of Meadow Bridge Dr. intersection.	None	+547	
Hester Creek	Approximately 280 feet upstream of W Center St. Intersection.	+505	+510	City of Greenwood, Sebastian County (Unincorporated Areas).
Vache Grasse Creek	Approximately 600 feet upstream of Hester Cut Rd	None	+547	City of Greenwood, Sebastian County (Unincorporated Areas).
	Approximately 5200 feet downstream of AR 10	None	+484	
	Approximately 1800 feet upstream of Steward Ct Intersection.	None	+541	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Greenwood

Maps are available for inspection at 35 South 6th St., Fort Smith, AR 72901.

Send comments to The Honorable Kenneth Edward Jr., Mayor, P.O. Box 1450, Greenwood, AR 72936.

Sebastian County (Unincorporated Areas)

Maps are available for inspection at 35 South 6th Street, Fort Smith, AR 72901.

Send comments to The Honorable David Hudson, County Judge, 35 South 6th, Ste. 106, Fort Smith, AR 72901.

Breckinridge County, Kentucky, and Incorporated Areas

Ohio River	Hancock County Boundary (Approximately 6,900 feet downstream of Confluence with Clover Creek).	None	+407	City of Cloverport, Breckinridge County (Unincorporated Areas).
	Meade County Boundary (Approximately 7,400 feet upstream of Confluence with Ohio River Tributary 1).	None	+418	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Cloverport

Maps are available for inspection at 212 West Main Street, Cloverport, KY 40111.

Send comments to The Honorable Dan Allen, Mayor, City of Cloverport, 212 West Main Street, Cloverport, KY 40111.

Breckinridge County (Unincorporated Areas)

Maps are available for inspection at 111 West Second Street, Hardinsburg, KY 40143.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to The Honorable Joseph Powers, Jr., Breckinridge County Judge Executive, 111 West Second Street, Hardinsburg, KY 40143.

Christian County, Kentucky, and Incorporated Areas

Little River	Approximately 250 feet upstream of Huffman Mill Road	None	+495	Christian County (Unincorporated Areas).
	At confluence with North Fork Little River and South Fork Little River.	None	+505	
Montgomery Branch	Approximately 1,000 feet upstream of Louisville and Nashville Railroad.	None	+559	City of Hopkinsville, Pembroke, Christian County (Unincorporated Areas).
	Approximately 1,500 feet downstream of Frank Yost Lane.	None	+592	
North Fork Little River	At confluence with Little River and South Fork Little River.	None	+505	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Edward T. Breathitt Parkway.	None	+535	
Rock Bridge Branch	At confluence with South Fork Little River	None	+507	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 3,600 feet upstream of Bradshaw Road	None	+572	
Sanderson Creek	At confluence with North Fork Little River	+523	+525	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 2,200 feet upstream of KY-1682	None	+553	
Sinkhole 1	Flooding Due to Sinkhole	None	+552	City of Oak Grove.
Sinkhole 10	Flooding Due to Sinkhole	None	+548	
Sinkhole 10A	Flooding Due to Sinkhole	None	+545	City of Hopkinsville.
Sinkhole 11	Flooding Due to Sinkhole	None	+548	
Sinkhole 11A	Flooding Due to Sinkhole	None	+548	City of Hopkinsville.
Sinkhole 12	Flooding Due to Sinkhole	None	+545	
	Flooding Due to Sinkhole	None	+545	City of Hopkinsville.
Sinkhole 12A	Flooding Due to Sinkhole	None	+540	
Sinkhole 13	Flooding Due to Sinkhole	None	+544	City of Oak Grove.
Sinkhole 13A	Flooding Due to Sinkhole	None	+535	
Sinkhole 14	Flooding Due to Sinkhole	None	+546	City of Oak Grove.
Sinkhole 14A	Flooding Due to Sinkhole	None	+539	
Sinkhole 15	Flooding Due to Sinkhole	None	+546	City of Oak Grove.
Sinkhole 15A	Flooding Due to Sinkhole	None	+544	
Sinkhole 16	Flooding Due to Sinkhole	None	+544	City of Oak Grove.
Sinkhole 16A	Flooding Due to Sinkhole	None	+555	
Sinkhole 17	Flooding Due to Sinkhole	None	+542	City of Oak Grove.
Sinkhole 18	Flooding Due to Sinkhole	None	+540	
Sinkhole 18A	Flooding Due to Sinkhole	None	+523	City of Hopkinsville.
Sinkhole 19	Flooding Due to Sinkhole	None	+535	
Sinkhole 19A	Flooding Due to Sinkhole	None	+519	City of Hopkinsville.
Sinkhole 1A	Flooding Due to Sinkhole	None	+568	
				Christian County (Unincorporated Areas).
Sinkhole 2	Flooding Due to Sinkhole	None	+546	City of Oak Grove.
Sinkhole 20	Flooding Due to Sinkhole	None	+539	
Sinkhole 20A	Flooding Due to Sinkhole	None	+522	City of Hopkinsville.
Sinkhole 21	Flooding Due to Sinkhole	None	+534	
Sinkhole 21A	Flooding Due to Sinkhole	None	+537	Christian County (Unincorporated Areas).
Sinkhole 22	Flooding Due to Sinkhole	None	+533	City of Oak Grove.
Sinkhole 22A	Flooding Due to Sinkhole	None	+534	
				Christian County (Unincorporated Areas).
Sinkhole 23	Flooding Due to Sinkhole	None	+540	City of Oak Grove.
Sinkhole 24	Flooding Due to Sinkhole	None	+558	
Sinkhole 25	Flooding Due to Sinkhole	None	+549	City of Oak Grove.
Sinkhole 26	Flooding Due to Sinkhole	None	+561	
		None	+561	City of Oak Grove.
Sinkhole 27	Flooding Due to Sinkhole	None	+552	
Sinkhole 28	Flooding Due to Sinkhole	None	+552	City of Oak Grove.
Sinkhole 29	Flooding Due to Sinkhole	None	+552	
Sinkhole 2A	Flooding Due to Sinkhole	None	+556	Christian County (Unincorporated Areas).
Sinkhole 3	Flooding Due to Sinkhole	None	+543	City of Oak Grove.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Sinkhole 30	Flooding Due to Sinkhole	None	+551	City of Oak Grove.
Sinkhole 31	Flooding Due to Sinkhole	None	+550	City of Oak Grove.
Sinkhole 32	Flooding Due to Sinkhole	None	+553	City of Oak Grove.
Sinkhole 33	Flooding Due to Sinkhole	None	+554	City of Oak Grove.
Sinkhole 34	Flooding Due to Sinkhole	None	+557	City of Oak Grove.
Sinkhole 35	Flooding Due to Sinkhole	None	+554	City of Oak Grove.
Sinkhole 36	Flooding Due to Sinkhole	None	+547	City of Oak Grove.
Sinkhole 37	Flooding Due to Sinkhole	None	+542	City of Oak Grove.
Sinkhole 38	Flooding Due to Sinkhole	None	+552	City of Oak Grove.
Sinkhole 39	Flooding Due to Sinkhole	None	+542	City of Oak Grove.
Sinkhole 3A	Flooding Due to Sinkhole	None	+530	Christian County (Unincorporated Areas).
Sinkhole 4	Flooding Due to Sinkhole	None	+548	City of Oak Grove.
Sinkhole 40	Flooding Due to Sinkhole	None	+542	City of Oak Grove.
Sinkhole 41	Flooding Due to Sinkhole	None	+552	City of Oak Grove.
Sinkhole 42	Flooding Due to Sinkhole	None	+549	City of Oak Grove.
Sinkhole 43	Flooding Due to Sinkhole	None	+546	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 44	Flooding Due to Sinkhole	None	+560	City of Oak Grove.
Sinkhole 45	Flooding Due to Sinkhole	None	+564	City of Oak Grove.
Sinkhole 46	Flooding Due to Sinkhole	None	+563	City of Oak Grove.
Sinkhole 47	Flooding Due to Sinkhole	None	+541	City of Oak Grove.
Sinkhole 48	Flooding Due to Sinkhole	None	+556	City of Oak Grove.
Sinkhole 49	Flooding Due to Sinkhole	None	+560	City of Oak Grove.
Sinkhole 4A	Flooding Due to Sinkhole	None	+537	Christian County (Unincorporated Areas).
Sinkhole 5	Flooding Due to Sinkhole	None	+543	City of Oak Grove.
Sinkhole 50	Flooding Due to Sinkhole	None	+558	City of Oak Grove.
Sinkhole 51	Flooding Due to Sinkhole	None	+560	City of Oak Grove.
Sinkhole 52	Flooding Due to Sinkhole	None	+567	City of Oak Grove.
Sinkhole 53	Flooding Due to Sinkhole	None	+569	City of Oak Grove.
Sinkhole 54	Flooding Due to Sinkhole	None	+569	City of Oak Grove.
Sinkhole 55	Flooding Due to Sinkhole	None	+568	City of Oak Grove.
Sinkhole 56	Flooding Due to Sinkhole	None	+530	City of Oak Grove.
Sinkhole 57	Flooding Due to Sinkhole	None	+532	City of Oak Grove.
Sinkhole 58	Flooding Due to Sinkhole	None	+549	City of Oak Grove.
Sinkhole 59	Flooding Due to Sinkhole	None	+567	City of Oak Grove.
Sinkhole 5A	Flooding Due to Sinkhole	None	+542	Christian County (Unincorporated Areas).
Sinkhole 6	Flooding Due to Sinkhole	None	+549	City of Oak Grove.
Sinkhole 60	Flooding Due to Sinkhole	None	+558	City of Oak Grove.
Sinkhole 61	Flooding Due to Sinkhole	None	+584	City of Oak Grove.
Sinkhole 62	Flooding Due to Sinkhole	None	+590	City of Oak Grove.
Sinkhole 66	Flooding Due to Sinkhole	None	+501	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 67	Flooding Due to Sinkhole	None	+507	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 68	Flooding Due to Sinkhole	None	+504	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 69	Flooding Due to Sinkhole	None	+509	City of Oak Grove.
Sinkhole 6A	Flooding Due to Sinkhole	None	+557	Christian County (Unincorporated Areas), City of Hopkinsville.
Sinkhole 7	Flooding Due to Sinkhole	None	+554	City of Oak Grove.
Sinkhole 70	Flooding Due to Sinkhole	None	+554	City of Oak Grove.
Sinkhole 73	Flooding Due to Sinkhole	None	+512	City of Oak Grove.
Sinkhole 74	Flooding Due to Sinkhole	None	+568	City of Oak Grove.
Sinkhole 75	Flooding Due to Sinkhole	None	+580	City of Oak Grove.
Sinkhole 76	Flooding Due to Sinkhole	None	+577	City of Oak Grove.
Sinkhole 77	Flooding Due to Sinkhole	None	+544	City of Oak Grove.
Sinkhole 78	Flooding Due to Sinkhole	None	+537	City of Oak Grove.
Sinkhole 79	Flooding Due to Sinkhole	None	+560	Christian County (Unincorporated Areas).
Sinkhole 79	Flooding Due to Sinkhole	None	+577	Christian County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Sinkhole 7A	Flooding Due to Sinkhole	None	+563	Christian County (Unincorporated Areas).
Sinkhole 8	Flooding Due to Sinkhole	None	+553	City of Oak Grove.
Sinkhole 80	Flooding Due to Sinkhole	None	+555	City of Oak Grove.
Sinkhole 81	Flooding Due to Sinkhole	None	+526	Christian County (Unincorporated Areas).
Sinkhole 82	Flooding Due to Sinkhole	None	+474	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole 83	Flooding Due to Sinkhole	None	+533	City of Oak Grove.
Sinkhole 84	Flooding Due to Sinkhole	None	+536	City of Oak Grove.
Sinkhole 85	Flooding Due to Sinkhole	None	+537	City of Oak Grove.
Sinkhole 86	Flooding Due to Sinkhole	None	+538	City of Oak Grove.
Sinkhole 87	Flooding Due to Sinkhole	None	+534	City of Oak Grove.
Sinkhole 88	Flooding Due to Sinkhole	None	+543	City of Oak Grove.
Sinkhole 89	Flooding Due to Sinkhole	None	+541	City of Oak Grove.
Sinkhole 8A	Flooding Due to Sinkhole	None	+563	City of Oak Grove.
Sinkhole 9	Flooding Due to Sinkhole	None	+547	City of Oak Grove.
Sinkhole 90	Flooding Due to Sinkhole	None	+539	City of Oak Grove.
Sinkhole 91	Flooding Due to Sinkhole	None	+543	City of Oak Grove.
Sinkhole 92	Flooding Due to Sinkhole	None	+544	City of Oak Grove.
Sinkhole 93	Flooding Due to Sinkhole	None	+541	City of Oak Grove.
Sinkhole 94	Flooding Due to Sinkhole	None	+547	City of Oak Grove.
Sinkhole 95	Flooding Due to Sinkhole	None	+541	City of Oak Grove.
Sinkhole 96	Flooding Due to Sinkhole	None	+550	City of Oak Grove.
Sinkhole 9A	Flooding Due to Sinkhole	None	+537	City of Hopkinsville.
Sinkhole I-24	Flooding Due to Sinkhole	None	+561	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole Main Sink	Flooding Due to Sinkhole	None	+529	City of Oak Grove, Christian County (Unincorporated Areas).
Sinkhole NF	Flooding Due to Sinkhole	None	+522	City of Hopkinsville.
Sinkhole North West	Flooding Due to Sinkhole	None	+569	City of Oak Grove.
Sinkhole South West	Flooding Due to Sinkhole	None	+530	City of Oak Grove, Christian County (Unincorporated Areas).
South Fork Little River	At confluence with Little River and North Fork Little River.	None	+505	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 680 feet downstream of Dr. Martin Luther King Jr. Way.	None	+541	
South Fork Little River Tributary.	Approximately 150 feet downstream of Dr. Martin Luther King Jr. Way.	None	+537	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 780 feet upstream of Harry Berry Lane	None	+557	
White Creek	At confluence with Little River and North Fork Little River.	None	+533	City of Hopkinsville, Christian County (Unincorporated Areas).
	Approximately 170 feet upstream of Madisonville Road	None	+540	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES**City of Hopkinsville**

Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.

Send comments to The Honorable J. Daniel Kemp, Mayor, City of Hopkinsville, 101 North Main Street, Hopkinsville, KY 42240.

City of Oak Grove

Maps are available for inspection at 8505 Pembroke Oak Grove Road, Oak Grove, KY 42262.

Send comments to The Honorable Daniel Potter, Mayor, City of Oak Grove, 8505 Pembroke Oak Grove Road, Oak Grove, KY 42262.

Pembroke

Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.

Send comments to The Honorable Fred Shelton, Mayor, City of Pembroke, 222 South Main Street, Pembroke, KY 42266.

Christian County (Unincorporated Areas)

Maps are available for inspection at 101 North Main Street, Hopkinsville, KY 42240.

Send comments to The Honorable Steve Tribble, Christian County Judge Executive, 515 Weber Street, Hopkinsville, KY 42240.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Lincoln Parish, Louisiana, and Incorporated Areas				
Choudrant Creek	Confluence with Choudrant Creek Trib. 3	None	+136	Lincoln Parish (Unincorporated Areas).
	Approximately 1550 Feet from upstream of confluence with Choudrant creek trib. 6.	None	+185	
Tributary 6	Confluence with Choudrant Creek	None	+185	Lincoln Parish (Unincorporated Areas).
	Approximately 1250 feet upstream of confluence with Choudrant Creek trib.6.1.	None	+215	
Colvin Creek	Confluence with Cypress Creek	None	+120	Lincoln Parish (Unincorporated Areas), Town of Vienna.
	Approximately 2,080 feet upstream of confluence with Colvin Creek Tributary 3.	None	+182	
Tributary 2	Confluence with Colvin Creek	None	+167	Lincoln Parish (Unincorporated Areas).
	Approximately 905 feet upstream of Frazier Road	None	+188	
Cypress Creek	Confluence with Cypress Creek tributary 8	None	+161	Lincoln Parish (Unincorporated Areas), Town of Vienna.
	Confluence with Cypress Creek Tributary 15	None	+206	
Madden Creek Tributary 5	Approximately 320 feet Upstream of 2nd street	None	+286	Village of Simsboro.
	Confluence with Madden Creek	None	+301	
Redwine Creek	Approximately 4410 feet upstream of Facilities/agriculture drive.	None	+231	Village of Grambling, Lincoln Parish (Unincorporated Areas).
	Confluence with Redwine Creek Tributary 6	None	+286	
Tributary 6	Confluence with Redwine Creek	None	+286	Village of Grambling.
	Approximately 1100 feet upstream of Cornwell Dr	None	+311	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES**Town of Vienna**

Maps are available for inspection at 5168 Highway 167, Ruston, LA 71270.

Send comments to The Honorable Randy Graham, Mayor, P.O. Box 980, Ruston, LA 71273.

Lincoln Parish (Unincorporated Areas)

Maps are available for inspection at 100 West Texas Avenue, Ruston, LA 71270.

Send comments to Dennis Woodward, Parish Administrator and FPA, P.O. Box 979, Ruston, LA 71273.

Village of Grambling

Maps are available for inspection at 2045 Martin Luther King Jr. Ave., Grambling, LA 71245.

Send comments to The Honorable Martha Andrus, Mayor, PO Box 108, Grambling, LA 71245.

Village of Simsboro

Maps are available for inspection at 2742 Martha St., Simsboro, LA 71275.

Send comments to The Honorable Willie Hendricks, Mayor, PO Box 40, Simsboro, LA 71275.

Livingston County, Michigan, and Incorporated Areas

Bogue Creek	Approximately 1,200 feet upstream of confluence of South Branch Shiawassee River.	None	+842	Township of Cohoctah, Township of Howell, Township of Oceola.
Conway Drain No. 1	Approximately 2 miles upstream of Curdy Road	None	+885	Township of Conway.
	Downstream side of W Allen Road	None	+880	
	Upstream side of Sherwood Road	None	+885	
Fonda Lake	Entire shoreline of Fonda Lake	None	+898	Township of Brighton.
Halfmoon Lake	Entire shoreline of Halfmoon Lake	None	+885	Township of Unadilla.
Handy Drain No. 5	Approximately 1,600 feet upstream of Converse Road	None	+880	Township of Handy.
	Approximately 90 feet downstream side of I-96 (East Bound).	None	+893	
Handy losco Drain No. 1	Approximately 1,100 feet downstream of Layton Road	None	+888	Township of Handy, Township of Howell, Township of losco.
Island Lake	Upstream side of Mason Road	None	+907	Township of Brighton.
	Entire shoreline of Island Lake	None	+889	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Marion and Genoa Drain	Approximately 525 feet upstream of confluence of South Branch Shiawassee River.	None	+882	Township of Marion, City of Howell, Township of Genoa.
Middle Branch Red Cedar River.	Approximately 80 feet upstream of Beck Road	None	+913	Township of Handy, Township of Iosco
	Approximately 1,200 feet upstream of the confluence of Red Cedar River.	None	+886	
Mirror Lake	Upstream side of W Coon Lake Road.	None	+894	Township of Green Oak.
Patterson Lake	Entire Shoreline of Mirror Lake	None	+901	Township of Unadilla.
Portage Lake	Entire shoreline of Patterson Lake	None	+886	Township of Hamburg.
Red Cedar River	Entire shoreline of Portage Lake	None	+852	Township of Conway,
	Approximately 150 feet downstream of N Nicholson Road.	None	+880	Township of Handy, Township of Howell, Township of Marion, Village of Fowlerville.
South Branch Shiawassee River.	Approximately 90 feet upstream of W Coon Lake Road	None	+934	Township of Cohoctah, Township of Howell.
	Approximately 280 feet downstream of Oak Grove Road.	None	+850	
Thompson Lake	Approximately 0.7 mile downstream of Bowen Road	None	+864	Township of Oceola.
Tributary to North Ore Creek.	Entire shoreline of Thompson Lake	None	+907	Township of Hartland,
	Approximately 1,400 feet upstream of Clyde Road	None	+911	Township of Oceola.
Tributary to Red Cedar River.	Upstream side of N Hacker Road	None	+1002	Village of Fowlerville, Township of Handy.
	Confluence of Red Cedar River and Tributary to Red Cedar River.	+884	+883	
West Branch Red Cedar River.	Approximately 1,650 feet upstream of Pinewood Drive	None	+899	Township of Conway, Township of Handy.
	Approximately 1,100 feet downstream of Renee Court	None	+878	
	Approximately 400 feet downstream of I-96 West-bound.	None	+881	
Woodland Lake	Entire shoreline of Woodland Lake	None	+936	Township of Brighton.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Brighton

Maps are available for inspection at 200 N. First Street, Brighton, MI 48116.

Send comments to The Honorable Steve Monet, City of Brighton, 200 N. First Street, Brighton, MI 48116.

Township of Cohoctah

Maps are available for inspection at 10518 Antcliff Road, Fowlerville, MI 48836.

Send comments to Mark Fosdick, Supervisor, Township of Cohoctah, 9989 N. Fleming Road, Fowlerville, MI 48836.

Township of Conway

Maps are available for inspection at 8015 N. Fowlerville Road, Fowlerville, MI 48836.

Send comments to Michael B. Rife, Supervisor, Township of Conway, PO Box 1157, 8015 N. Fowlerville Road, Fowlerville, MI 48836.

Township of Deerfield

Maps are available for inspection at 4492 Center Road, Linden, MI 48451.

Send comments to Thomas Green, Supervisor, Township of Deerfield, 4492 Center Road, Linden, MI 48451.

Township of Genoa

Maps are available for inspection at 2911 Dorr Road, Brighton, MI 48116.

Send comments to Gary McCrie, Supervisor, Township of Genoa, 2911 Dorr Road, Brighton, MI 48116.

Township of Green Oak

Maps are available for inspection at 1001 Silver Lake Road, Brighton, MI 48116-8361.

Send comments to Mark St. Charles, Supervisor, Township of Green Oak, 1001 Silver Lake Road, Brighton, MI 48116-8361.

Township of Hamburg

Maps are available for inspection at 10405 Merrill Road, Whitmore Lake, MI 48189.

Send comments to Cindy Pine, Supervisor, Township of Hamburg, 10405 Merrill Road, Whitmore Lake, MI 48189.

Township of Handy

Maps are available for inspection at 136 N. Grand Avenue, Fowlerville, MI 48836.

Send comments to Cynthia Denby, Supervisor, Township of Handy, PO Box 189, 135 N. Grand Avenue, Fowlerville, MI 48836.

Township of Hartland

Maps are available for inspection at 3191 Hartland Road, Hartland, MI 48353.

Send comments to Don Rhodes, Supervisor, Township of Hartland, 3191 Hartland Road, Hartland, MI 48353.

Township of Howell

Maps are available for inspection at 3525 Byron Road, Howell, MI 48855.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to Maureen Heikkinen, Supervisor, Township of Howell, 3525 Byron Road, Howell, MI 48855.

Township of Iosco

Maps are available for inspection at 2050 Bradley Road, Webberville, MI 48892.

Send comments to William C. Miller, Supervisor, Township of Iosco, P.O. Box 1079, Webberville, MI 48892.

Township of Marion

Maps are available for inspection at 2877 W. Coon Lake Road, Howell, MI 48843.

Send comments to Robert Hanvey, Supervisor, Township of Marion, 2877 W. Coon Lake Road, Howell, MI 48843.

Township of Oceola

Maps are available for inspection at 1577 N. Latson Road, Howell, MI 48843.

Send comments to William Bamber, Supervisor, Township of Oceola, 1577 N. Latson Road, Howell, MI 48843.

Township of Putnam

Maps are available for inspection at 131 S. Howell Street, Pinckney, MI 48169.

Send comments to Ron Rau, Supervisor, Township of Putnam, P.O. Box 439, 131 S. Howell Street, Pinckney, MI 48169.

Township of Tyrone

Maps are available for inspection at 10408 Center Road, Fenton, MI 48430.

Send comments to Andrew Schmidt, Supervisor, Township of Tyrone, 10408 Center Road, Fenton, MI 48430.

Township of Unadilla

Maps are available for inspection at 126 Webb Street, Gregory, MI 48137.

Send comments to James Peterson, Supervisor, Township of Unadilla, P.O. Box 120, 126 Webb Street, Gregory, MI 48137.

Village of Fowlerville

Maps are available for inspection at 213 S. Grand Avenue, Fowlerville, MI 48836.

Send comments to Mr. Wayne Copeland, President, Village of Fowlerville, P.O. Box 677, 213 S. Grand Avenue, Fowlerville, MI 48836.

Village of Pinckney

Maps are available for inspection at 220 S. Howell Street, Pinckney, MI 48169.

Send comments to Ms. Rebecca Foster, President, Village of Pinckney, 220 S. Howell Street, Pinckney, MI 48169.

Eau Claire County, Wisconsin, and Incorporated Areas

Chippewa River	Approximately 1,800 feet upstream of county boundary	+761	+762	Eau Claire County (Unincorporated Areas).
	Approximately 800 feet downstream of Interstate Highway 94.	+773	+772	
Sherman Creek	Approximately 1,500 feet upstream of the confluence with the Chippewa River.	+778	+777	City of Eau Claire, Eau Claire County (Unincorporated Areas).
	Approximately 1,800 feet downstream of U.S. Highway 12.	+889	+888	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

ADDRESSES

City of Eau Claire

Maps are available for inspection at City of Eau Claire, City Hall, 203 South Farwell Street, Eau Claire, WI 54702-5148.

Send comments to Michael Huggins, City Manager, City of Eau Claire, 203 South Farwell Street, City Hall, Third Floor, Eau Claire, WI 54702.

Eau Claire County (Unincorporated Areas)

Maps are available for inspection at Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, WI 54703-5481.

Send comments to Bruce Willett, Chairperson, Eau Claire County Board of Supervisors, 721 Oxford Avenue, Eau Claire, WI 54703.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 16, 2007.

David I. Maurstad,

*Federal Insurance Administrator of the
National Flood Insurance Program,
Department of Homeland Security, Federal
Emergency Management Agency.*

[FR Doc. 07-3614 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 07-06]

RIN 3072-AC33

Filing of Proof of Financial Responsibility

July 20, 2007.

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the filing of proof of financial responsibility for ocean transportation intermediaries by reducing the amount of time an applicant may have to file the requisite proof of financial responsibility upon approval of applicant's license application from two (2) years to 120 days.

DATES: Submit original and 15 copies of comments (paper), or e-mail comments

as an attachment in WordPerfect 8, Microsoft Word 2003, or earlier versions of these applications, no later than August 27, 2007.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Room 1046, Washington, DC 20573-0001, (202) 523-5725, E-mail: secretary@fmc.gov.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Certification and Licensing, 800 N. Capitol Street, NW., Room 970, Washington, DC 20573-0001, (202) 523-5787, E-mail: skusumoto@fmc.gov.

SUPPLEMENTARY INFORMATION: The Commission's regulations at 46 CFR 515.25(a) currently state that, upon approval for an ocean transportation intermediary ("OTI") license, an applicant must provide valid proof of financial responsibility prior to the issuance of the license by the Commission's Bureau of Certification and Licensing ("BCL"). The regulation currently allows an applicant two (2) years in which to furnish such proof of financial responsibility, failing which the application will be considered invalid by the Commission.

An extended time period of two (2) years between approval of an OTI application and an applicant's procurement of financial responsibility has created significant areas of concern for the Commission. First, this may be viewed as an opportunity by applicants who have been deemed approved but who have gone two (2) years without procuring a surety bond to, nonetheless, commence providing OTI services. This result would frustrate the statutory goal of protecting the shipping public. Second, an applicant's inability or unwillingness to procure a surety bond over the course of two (2) years may be an indication of questionable financial integrity, a key factor in establishing an applicant's continuing fitness to perform OTI services.

Based on a study conducted by BCL staff of new OTI licenses issued in fiscal year 2006, it appears that the greatest majority of qualified applicants did not require two (2) years to procure surety bonds. BCL statistics show that more than half of the qualified applicants obtained surety bonds within 30 days of approval of their applications and 87 percent of the applicants obtained surety bonds in a time period of 120 days or less. The remainder of the applicants, or 13 percent, required between 120 days and two (2) years to obtain surety bonds subsequent to approval of their OTI applications. This

is an indication that reducing the allotment of time for providing proof of valid financial responsibility is unlikely to be burdensome upon either the industry in general or new OTI applicants in particular.

Given the current bonding practices of a significant majority of new OTI applicants, it appears that a time frame in excess of 120 days is unnecessary while creating an opportunity for abuse of the licensing process. Accordingly, the Commission proposes to amend 46 CFR 515.25(a) by reducing the period of time within which an OTI applicant is required to provide the requisite proof of financial responsibility subsequent to approval of the application from two (2) years to 120 days. This would ensure greater efficiency on the part of OTI applicants in complying with financial responsibility requirements following approval of their applications. Upon expiration of the 120-day time period, if valid proof of financial responsibility has not been provided by an applicant, the OTI application would be considered invalid thereby requiring the filing of a new application for an OTI license.

In conjunction with the aforementioned amendment, the Commission further proposes to remove as unnecessary the third sentence of 46 CFR 515.25(a) dealing with supplementary investigations for the determination of an applicant's continued qualification if more than six (6) months elapse between the time of the approval of the application and an applicant's submission of financial responsibility to the Commission. Removal of the option of supplementary investigations from 46 CFR 515.25(a) likewise necessitates removing paragraph (b)(3) of 46 CFR 515.5 inasmuch as the collection of fees for supplementary investigations would no longer be appropriate.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule directly applies to the licensing requirements of OTIs, which are regulated persons (or businesses) under the Commission's jurisdiction that qualify as small entities under the guidelines of the Small Business Administration. The rule will modify the financial responsibility requirements that must be met by persons applying for a license to operate as an OTI. The modifications in the rule will simplify the OTI licensing application process, and increase administrative efficiencies, while

further serving to safeguard the shipping public from unlicensed operators. The rule imposes no new or additional cost burden on persons applying for an OTI license, nor will it have a harmful effect on the general public, the U.S. economy, or any of the regulated entities under the jurisdiction of the Commission.

List of Subjects in 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reports and recordkeeping requirements, Surety bonds.

Accordingly, the Federal Maritime Commission proposes to amend 46 CFR part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation for part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501-40503, 40901-40904, 41101-41106, 41107, 41108, 41109, 41301-41302, 41305-41307, 42101, 42301-42306, and 42307); Pub. L. 105-383, 112 Stat. 3411, 21 U.S.C. 862.

§ 515.5 [Amended]

2. In § 515.5, remove paragraph (b)(3).

3. Amend § 515.25(a) by removing the fourth sentence and revising the last sentence to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) * * * Should the applicant not file the requisite proof of financial responsibility within 120 days of notification, the Commission will consider the application to be invalid.

* * * * *

By the Commission.

Bryant L. VanBrakle,
Secretary.

[FR Doc. E7-14396 Filed 7-24-07; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 61 and 69

[WC Docket No. 05-25; RM-10593; FCC 07-123]

Parties Asked To Refresh Record in the Special Access Notice of Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Special Access Notice of Proposed Rulemaking (NPRM), the Commission commenced a broad examination of the regulatory framework to apply to interstate special access services provided by price cap local exchange carriers (LECs), including whether the special access pricing flexibility rules that the Commission adopted in 1999 have worked as intended. This document invites interested parties to update the record in light of industry developments.

DATES: Comments are due on or before August 8, 2007 and reply comments are due on or before August 15, 2007.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–25 and RM–10593, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
 - *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
 - *E-mail:* ecfs@fcc.gov, and include the following words in the body of the message: "Get form." A sample form and directions will be sent in response.
 - *First-class or overnight U.S. Postal Service mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- Detailed instructions for submitting comments, including how to submit comments by hand, messenger delivery or by commercial overnight courier, and additional information on the rulemaking process are contained in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Margaret Dailey, Wireline Competition Bureau, Pricing Policy Division (202) 418–1520, margaret.dailey@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, FCC 07–12, released on July 9, 2007. The full text of this document is available for public inspection during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Washington, DC 20554 and may be viewed on the Commission's Web site at <http://www.fcc.gov/>.

Pursuant to the Commission's rules governing notices of proposed rulemakings, 47 CFR 1.415, 1.419, the Commission invites interested parties to update the record in this proceeding. In the Special Access NPRM, 70 FR 19381, April 13, 2005, the Commission

commenced a broad examination of the regulatory framework to apply to interstate special access services provided by price LECs, including whether the special access pricing flexibility rules that the Commission adopted in 1999 have worked as intended. 47 CFR 69.701 *et seq.*; Pricing Flexibility Order, 64 FR 51258, Sept. 22, 1999. On June 8, 2005, a Protective Order was entered to enable parties to submit documents that contain proprietary or confidential information and to ensure adequate protection for such documents. In response to the Special Access NPRM, the Commission received comments on June 13, 2005 and reply comments on July 29, 2005.

Since these comments were filed, a number of developments in the industry may have affected parties' positions on the issues raised in the Special Access NPRM. These developments include a number of significant mergers and other industry consolidations, the continued expansion of intermodal competition in the market for telecommunications services, which affects the uses of, and competition to provide, a variety of special access services or alternatives; and GAO's November 2006 release of Report 07–80 (GAO Report), which summarizes its review of certain aspects of the market for special access services. Accordingly, the Commission requests that parties refresh the record in this proceeding to reflect the effects of these developments. Parties should include any new information or arguments that may be relevant to the Commission's consideration of what action, if any, may be appropriate in this proceeding. We also ask parties to address the specific questions below, which were not raised in the Special Access NPRM. First, parties should comment on the effect of the post Special Access NPRM mergers and other industry consolidation on the availability of competitive special access facilities and providers. Parties should also comment on the effect these mergers may have had on scale economies or the profitability of special access services. In addition, since the release of the Special Access NPRM, demand for wireless voice and wireless broadband services has increased, and special access has been an important input for these services. We seek comment on how special access pricing affects the price and availability of wireless services and the investment in and deployment of wireless networks. In the Special Access NPRM, the Commission sought comment on both the price and cost of special access services, and on how costs for special access facilities

should be estimated. We seek comment here on methods that may be used to estimate the costs of special access facilities, including whether models may appropriately be used to estimate such costs. For example, cost and engineering models have been used to estimate the cost of Unbundled Network Elements. Could they also be used to estimate costs of special access facilities? We note that a number of carriers have embarked on significant upgrades to their networks to provide high capacity services to their customers. We seek information on projected costs per customer to deploy these facilities. To assist in the assessment of the reasonableness of rates for special access services, we ask parties to supplement the record with information on vendor prices for high capacity transmission equipment, outside plant, fiber, and fiber installation, and on prices for nonregulated services that provide similar or equivalent capabilities to special access services, such as Ethernet and packet-based services.

In the Special Access NPRM, the Commission noted that an examination of the current state of competition in the marketplace is critical to a determination of whether our pricing flexibility rules have worked as intended. We asked parties to comment and provide data on whether DS–1 special access channel terminations between the LEC end office and the customer premises are in the same product market as DS–3 and OCn channel terminations. In light of rapid changes in fiber technologies, we now ask parties to comment on whether we should further subdivide optical fiber services into low capacity OCn services (such as OC–3) and higher capacity OCn services. We particularly seek information as to how much capacity competitors believe is necessary to justify building new facilities to serve customers.

This inquiry is also relevant to the Commission's analysis of demand responsiveness. In the Special Access NPRM, the Commission stated that parties may demonstrate that the market for a particular special access service is not competitive by showing that a significant number of an incumbent price cap LEC's customers cannot purchase a comparable special access service from an entity other than the LEC. Parties are invited to comment on whether any changes in the market have affected the availability of comparable alternatives. To the extent that parties contend that continued regulation of special access services is warranted, we request that they provide specific

proposals for an appropriate regulatory scheme to assure reasonable rates and conditions for special access services. Finally, we ask parties to comment on the analysis and findings in the GAO Report summarizing GAO's review of competition in the market for special access services.

Procedural Matters

Ex Parte Requirements

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth at 47 CFR 1.1206(b).

Comment Filing Procedures

Pursuant to Commission rules governing notices of proposed rulemakings, interested parties may file comments on or before August 8, 2007 and reply comments on or before August 15, 2007. 47 CFR 1.415, 1.419. All pleadings must reference WC Docket No. 05-25 and RM-10593. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments may be filed electronically using the Internet by accessing the ECFS at <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web sites for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body

of the message: "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

Parties should also send a copy of their filings to Margaret Dailey, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A232, 445 12th Street, SW., Washington, DC 20554, or by e-mail to margaret.dailey@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in WC Docket No. 05-25 and RM-10593 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. These documents may also be viewed on the Commission's Web site at <http://www.fcc.gov/>. People with Disabilities: To request materials in accessible formats for people with disabilities

(braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14272 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[WC Docket No. 03-109; DA 07-1241]

Wireline Competition Bureau Seeks To Refresh the Record on Lifeline and Link-Up

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, comments requested.

SUMMARY: By this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on issues raised in the *Further Notice of Proposed Rulemaking*, 69 FR 34629, June 22, 2004, in the Lifeline and Link-Up docket. In that docket, the Commission sought comment on whether the income-based criterion in the federal default eligibility criteria should be increased to 150% of the Federal Poverty Guidelines (FPG) to make phone service affordable to more low-income individuals and families. The Commission also sought to explore whether adoption of rules governing the advertisement of the Lifeline/Link-Up program, as opposed to guidelines, would strengthen the operation of these programs.

DATES: Comments are due on or before August 24, 2007. Reply comments are due on or before September 10, 2007.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of

the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC. Comments may be submitted, identified by WC Docket No. 03–109, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Agency Web Site:* <http://www.fcc.gov>. Follow the instructions for submitting comments on the Electronic Comment Filing System (ECFS) <http://www.fcc.gov/cgb/ecfs/>.

- *E-mail:* To Dana.Walton-Bradford@fcc.gov. Include WC Docket No. 03–109 in the subject line of the message.

- *Fax:* To the attention of Dana Walton-Bradford at 202–418–1932. Include WC Docket No. 03–109 on the cover page.

- *Mail:* All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should send a copy of their filings to Dana Walton-Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–A321, 445 12th Street, SW., Washington, DC 20554.

- *Public inspection, purchase, or download:* The full text of the document summarized here is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 225 12th Street, SW., Room CY–A257, Washington, DC 20504. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, and may also be downloaded at: <http://www.fcc.gov>.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). *Instructions:* All submissions received must include the agency name and docket number. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comment Filing Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gina Spade, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, or Dana Walton-Bradford, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WC Docket No. 03–109, released March 12, 2007 (DA 07–1241). The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. By this document, the Bureau seeks to refresh the record on issues in the *Further Notice of Proposed Rulemaking*, in the Lifeline and Link-Up docket, WC Docket No. 03–109. Currently, federal default criteria specify that a consumer is eligible for Lifeline or Link-Up support when the consumer's income is at or below 135% of the Federal Poverty Guidelines (FPG), or if the consumer participates in one of several federal assistance programs, such as Temporary Assistance for Needy Families (TANF) or the National School Lunch's free lunch program (NSL). In the *Further Notice of Proposed Rulemaking* issued on April 24, 2004, the Commission sought comment on whether the income-based criterion in the federal default eligibility criteria should be increased to 150% of the FPG to make phone service affordable to more low-income individuals and families. The Commission also sought to explore whether adoption of rules governing the advertisement of the Lifeline/Link-Up program, as opposed to guidelines, would strengthen the operation of these programs. For example, should an Eligible Telecommunications Carrier (ETC) be required to distribute materials in a second language if a certain percentage of the population in a given area speaks a language other than English, and if so, what percentage would trigger the requirement? The Commission now seeks to refresh the record on these and all other issues raised in the *Further Notice of Proposed Rulemaking*. The Bureau requests that parties refresh the record with any new information or arguments they believe to be relevant to deciding the issues still pending. The refreshed record will enable the

Commission to undertake appropriate consideration of the issue of how best to provide support through the Lifeline and Link-Up programs to more low-income individuals and families.

Comment Filing Procedures

2. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before August 24, 2007 and reply comments are due on or before September 10, 2007. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, WC Docket No. 03–109. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

3. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

4. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal

Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

5. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Dana Walton-Bradford, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A321, 445 12th Street, SW., Washington, DC 20554, or by e-mail to Dana.Walton-Bradford@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

6. Documents in WC Docket No. 03-109 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

7. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

8. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Kirk S. Burgee,

Chief of Staff, Wireline Competition Bureau.
[FR Doc. E7-14105 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07-3246, MB Docket No. 04-265, RM-10439]

Digital Television Broadcast Service; Seattle, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, denial.

SUMMARY: The Commission, by this document, denies a petition for rule making filed by KCTS Television, requesting the substitution of DTV channel *53 for channel *62 on the basis that the proposal to add DTV channel *53 at Seattle failed to protect DTV channel 53 at Chilliwack, British Columbia. See 69 FR 46128, August 2, 2004. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04-265, adopted July 13, 2007, and released July 18, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because this proposed rule is denied.)

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. E7-14378 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 97-80; PP Docket No. 00-67; FCC 07-120]

Commercial Availability of Bidirectional Navigation Devices ("Two-Way Plug-and-Play")

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission takes steps to ensure that equipment used to access video programming and other services offered by cable television systems are available to consumers at retail. Specifically, the Commission seeks comment on proposed standards for this bidirectional capability, the absence of which may discourage some consumers from investing in new digital equipment. The Commission also seeks comment on whether any rules adopted in this proceeding should apply to non-cable Multichannel Video Programming Distributors ("MVPDs").

DATES: Comments for this proceeding are due on or before August 24, 2007; reply comments are due on or before September 10, 2007.

ADDRESSES: You may submit comments, identified by CS Docket No. 97-80, by any of the following methods:

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, Brendan.Murray@fcc.gov of the Media Bureau, Policy Division, (202) 418-1573.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 07-120, adopted on June 27, 2007, and released on June 29, 2007. The full text of this

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

Initial Paperwork Reduction Act of 1995 Analysis

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

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. CableCARD-ready devices available at retail today are unable to access the two-way features available on cable systems, including electronic programming guides ("EPGs"), video-on-demand ("VOD"), pay-per-view ("PPV"), and other interactive television ("ITV") capabilities. In this Third Further Notice of Proposed Rulemaking, we solicit comment on proposed standards to ensure bidirectional compatibility of cable television systems and consumer electronics equipment. We also seek comment on whether any rules we adopt in this proceeding should apply to non-cable Multichannel Video Programming Distributor ("MVPDs") and whether there are technological solutions that are network agnostic and deployable across all MVPD platforms (e.g., cable, Direct Broadcast Satellite ("DBS"), Internet Protocol ("IP") or hybrid Quadrature Amplitude Modulation/IP ("QAM/IP")).

II. Background

2. Section 629 of the Act directs the Commission to:

Adopt regulations to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.

Through section 629, Congress sought to provide consumers with the opportunity to purchase competitive navigation devices from sources other than their MVPD. Congress emphasized the importance of such competition, stating that "[c]ompetition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality." At the same time, Congress recognized that MVPDs have "a valid interest, which the Commission should continue to protect, in system or signal security and in preventing theft of service."

3. To carry out the directives of section 629, the Commission in 1998 required cable operators to make available by July 1, 2000 a security element separate from the basic navigation device (the "host device"). Cable operators were permitted to continue providing equipment with integrated security until January 1, 2005, so long as modular security components, known as point-of-deployment modules ("PODs" or "CableCARDS"), were also made available for use with host devices obtained through retail outlets. This requirement is generally referred to as "common reliance," or the "integration ban," is designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing cable operators to retain control over their system security.

4. In April 2003, in response to a request from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006. Then, in 2005, again at the urging of cable operators, the Commission further extended that date until July 1, 2007. As of late 2003, "non-integrated navigation devices [had] yet to gain adoption in the marketplace, thereby directly affecting subscriber demand for" separated security elements. This was due to the lack of a technical standard for how the POD and host device would interface. In

the *Plug and Play Order*, the Commission adopted an interface standard that the National Cable and Telecommunications Association and the Consumer Electronics Association had agreed upon in a Memorandum of Understanding ("MOU"), with certain modifications. And less than a year later, consumer electronics manufacturers brought CableCARD-compatible devices to market. Devices made pursuant to this standard have the ability to receive encrypted digital cable programming, but do not have any upstream, or bidirectional, capabilities (*i.e.*, consumer electronics manufacturers can only make unidirectional devices under the technical standard adopted in the *Plug and Play Order*). For example, such devices cannot support two-way services such as EPGs, VOD, PPV, and other ITV capabilities.

5. It is apparent that consumers have not shown significant interest in one-way devices, which cannot access features such as EPGs, VOD, PPV, and other ITV capabilities provided by cable operators. Indeed, while over five million digital cable ready devices have been sold, cable operators have deployed fewer than 300,000 CableCARDS. The cable and consumer electronics industries have attempted to negotiate an agreement on how to achieve bidirectional compatibility, and since 2003 the Commission has required National Cable and Telecommunications Association ("NCTA") and Consumer Electronics Association ("CEA") to file status reports regarding the status of those negotiations. In March 2005, the Commission described the progress of these negotiations as "disappointing." Shortly before the Commission made that statement, senior executives from Microsoft, Time Warner, and Comcast committed to "personally" work together "to supervise the efforts to reach an agreement amongst the cable, CE, IT, and other industries to ensure the availability of two-way cable products during calendar year 2006." Despite this commitment, the industries appear to have made little progress and it does not appear that an agreement is imminent.

6. On November 30, 2005, the cable industry filed a report that supported the OpenCable Application Platform ("OCAP") as the foundation for two-way plug and play products. OCAP is a middleware software layer (based on the Java Execution Engine), which allows software developers to write applications and programs that would run on any OCAP-enabled device. While the cable and consumer electronics

industries agree that OCAP should be part of the solution for two-way plug and play compatibility, the industries appear to disagree on how an OCAP solution should be implemented.

7. When the Commission last addressed these issues in *2005 Deferral Order*, the scheduled conclusion of the Digital Television ("DTV") transition (*i.e.*, December 31, 2006) could be extended in any given market if certain conditions were not met. Most relevant to this discussion, section 309(j)(14)(B)(iii) at the time stated that if more than 15 percent of the television households in a given market did not (1) subscribe to an MVPD carrying the digital signals of the local television stations in that market, and (2) have at least one television capable of viewing the digital signals of broadcasters in that market (either directly or through the use of a digital-to-analog converter), then the Commission was to grant an extension of that deadline upon request. Since the *2005 Deferral Order* was adopted, however, the 85-percent test has been repealed, and the December 31, 2006 soft deadline for the end of the DTV transition has been replaced with a hard deadline of February 17, 2009. We believe that the lack of two-way functionality on digital cable ready devices is deterring consumers from purchasing digital televisions, which are an essential part of an effective digital transition. Therefore, we believe that the impending hard deadline increases the urgency of examining proposed bidirectional standards at this time.

III. Discussion

8. On November 7, 2006, the CEA, along with twelve consumer electronics and information technology companies, proposed a two-way plug and play solution. That proposal, attached to this item as Appendix B, recommends that the Commission take the following steps:

- (1) Adopt an enhanced CableCARD approach for basic interactive services, based largely on existing standards;
- (2) Provide oversight with respect to OCAP development, or allow consumer electronics companies and information technology companies to participate fully in the OCAP development process;
- (3) Direct CableLabs to approve all output technologies that the Digital Living Network Alliance ("DLNA") approves, and require cable providers to provide digital set-top boxes that are fully compatible with DLNA networks;
- (4) Adopt testing requirements for two-way devices that are similar to the existing testing requirements for one-way devices (*i.e.*, initial device testing and certification with subsequent self-

certification), and require that the cable industry provide consumer electronics manufacturers any new OCAP applications for testing at least sixty days before widespread deployment; and

- (5) Permit consumer electronics devices to use a cable path for software upgrades equal to the path that cable operators use for their software upgrades.

9. We hereby seek comment on the CEA proposal. We seek comment on the impact that the proposed solution would have on consumers, content providers, consumer electronics manufacturers, large and small cable operators, other MVPDs, and on the transition to digital television. We seek comment on whether the CEA proposal offers a reasonable and quickly implementable approach, and what specific rule changes would be necessary.

10. As noted above, in November 2005, NCTA proposed a two-way solution based on the use of OCAP as a standardized middleware layer. The proposal, attached to this item as Appendix C, recommends that the Commission adopt a regulatory regime that includes:

- (1) Technical requirements for cable systems;
- (2) "Limited but necessary" content protection requirements for navigation devices;
- (3) Testing and certification/verification procedures to prevent harm to the cable network and services; and
- (4) Consumer education mandates.

NCTA asserts that if combined with voluntary commitments and marketplace agreements, its proposal would bring consumers the benefits of two-way digital cable-ready products as quickly as possible.

11. We hereby seek comment on NCTA's proposal. We seek comment on the impact that the proposed solution would have on consumers, content providers, consumer electronics manufacturers, large and small cable operators, other MVPDs, and on the transition to digital television. We seek comment on whether the NCTA proposal offers a reasonable and quickly implementable approach, and what specific rule changes would be necessary.

12. We also seek comment on any other proposals or rule changes that we should consider in order to permit the development of two-way digital cable-ready devices.

13. In addition, we seek comment on whether all MVPDs—including DBS and wireline video providers—should be subject to any rules that we adopt to

promote bidirectional compatibility between cable television systems and consumer electronics equipment. Could non-traditional cable operators and other MVPDs conform to the proposed solutions above, or would technical limitations preclude compliance? If technical limitations would preclude compliance, we seek comment on other approaches by which non-traditional cable operators and other MVPDs could achieve bidirectional compatibility between their systems and consumer electronics equipment. For example, NCTA notes that there has been exploration of an enhanced security device for all MVPDs that would permit a retail device to interoperate with all MVPD networks, whether traditional cable, satellite or telephone. We seek comment on such a solution, including whether such a device should be required to comply with specific attachment principles such as outputting the signal in conformance with certain open standards in order to permit home networking.

14. As the digital television transition approaches, we do not want to lose the potential opportunity for consumers to purchase competitive devices before the last major holiday season prior to the transition. We seek comment on whether a competitive market would offer further incentive for consumers to transition from analog to digital devices. Ideally, we would like consumers to be able to purchase two-way digital cable ready devices at retail by Q4 2008, in time for the final holiday season before the February 17, 2009 over-the-air digital television transition. We seek comment on whether that goal is feasible and the steps we must adopt in order to achieve that goal. We also solicit comment on any specific rules we should adopt to ensure that we achieve a practical bidirectional solution that furthers the goals of section 629 of the Act.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

15. With respect to the *Third Further Notice of Proposed Rulemaking*, an Initial Regulatory Flexibility Analysis ("IRFA"), *see generally* 5 U.S.C. 603, is contained in Appendix A. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Third Further Notice of Proposed Rulemaking* specified *infra*. The Commission will send a copy of the *Third Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

B. Initial Paperwork Reduction Act of 1995 Analysis

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

C. Ex Parte Rules

17. *Permit-But-Disclose*. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under § 1.1206(b) of the Commission’s rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

D. Filing Requirements

18. *Comments and Replies*. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (“ECFS”), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.

19. *Electronic Filers*. Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or

rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

20. *Paper Filers*. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

21. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

22. *Accessibility Information*. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

23. *Additional Information*. For additional information on this proceeding, contact Brendan Murray, Brendan.Murray@fcc.gov, or, Steven Broeckaert, Steven.Broeckaert@fcc.gov, of the Media Bureau, Policy Division, (202) 418–2120.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”) the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in this Third Further Notice of Proposed Rulemaking and Order on Review (“Further Notice”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above in paragraph 8. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

24. The need for FCC regulation in this area derives from the lack of a two-way plug and play standard for cable television systems and consumer electronics equipment. The absence of such a standard has been identified as a possible impediment to the approaching deadline for the transition to digital television (“DTV”) and to the realization of Congressional goals set out in section 629 of the Communications Act of 1934. Such a standard would allow consumer electronics manufacturers to develop navigation devices (such as televisions and set-top boxes) that could be connected directly to cable systems and make use of bidirectional cable services without the need for a cable-operator provided navigation device. Since almost 86 percent of television households subscribe to a multichannel video programming distributor (“MVPD”) service, the availability of such bidirectional compatibility would encourage more consumers to purchase DTV compatible devices, thereby furthering the transition. Private industry negotiations between the Consumer Electronics Association (“CEA”) and twelve consumer electronics and information technology companies have resulted in a proposal for a two-way plug and play standard.

The proposal requires adherence to certain technical standards outlined in Appendix B. The objectives any rules adopted will be to create a competitive market for navigation devices and to facilitate the DTV transition.

Legal Basis

25. The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 303, 403, 601, and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, 521, and 549.

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

26. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

27. *Television Broadcasting.* The proposed rules and policies could affect television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than \$13 million in annual receipts as a small business. Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments that are primarily engaged in television broadcasting and produce programming in their own studios. Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.

28. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,747 operating

television broadcasting stations in the nation as of June 2005. For 1992, the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments. Thus, the new rules could affect approximately 1,747 television stations; approximately 77%, or 1,345 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

29. *Cable and Other Program Distribution.* The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies generating \$13.5 million or less in revenue annually. This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,191 total cable and other pay television service firms that operate throughout the year of which 1,087 have less than \$10 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

30. *Cable Operators.* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. As of 2006, 7,916 cable operators qualify as small cable companies.

31. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 65,600,000 subscribers in the United States. Therefore, an operator serving fewer than 656,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 656,000 subscribers or less totals approximately 7,917. Although it seems certain that some of these cable system

operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

32. *Direct Broadcast Satellite ("DBS") Service.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

33. *Home Satellite Dish ("HSD") Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. As of June 2005, there were 206,358 households authorized to receive HSD service, a decrease of 38.5 percent from the 335,766 we reported the previous year. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of

other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

34. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

35. *Open Video Systems ("OVS").* Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

36. *Electronics Equipment Manufacturers.* Rules adopted in this proceeding could apply to manufacturers of DTV receiving

equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entities for manufacturers of audio and video equipment, as well as radio and television broadcasting and wireless communications equipment. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 571 U.S. establishments that manufacture audio and visual equipment, and that 560 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 11 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 1,041 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,010 of these establishments have fewer than 500 employees and would be classified as small entities. The remaining 31 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 560 small manufacturers of audio and visual electronics equipment and no

more than 1,010 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

37. *Computer Manufacturers.* The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity. Census Bureau data indicates that there are 485 firms that manufacture electronic computers and of those, 476 have fewer than 1,000 employees and qualify as small entities. The remaining 9 firms have 1,000 or more employees. We conclude that there are approximately 476 small computer manufacturers.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

38. At this time, we do not expect that the proposal would impose any additional reporting or recordkeeping requirements. In the past, however, compliance with plug and play rules required consumer electronics manufacturers to establish a voluntary labeling regime for unidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. While these requirements could have an impact on consumer electronics manufacturers and multichannel video programming distributors, it remains unclear whether there would be a differential impact on small entities. We seek comment on whether the burden of these requirements would fall on large and small entities differently. We also seek comment on any aspect of the proposal or its impact that we may have overlooked.

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

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

coverage of the rule, or any part thereof, for small entities.

40. As indicated above, the Further Notice seeks comment on whether the Commission should adopt or revise rules relating to the proposed creation of a two-way plug and play standard for digital cable television systems and other digital cable television consumer electronics equipment in order to facilitate the DTV transition. Consumer electronics manufacturers may be required to establish a labeling regime for bidirectional digital cable television receivers and related digital cable products that meet certain technical specifications. However, we welcome

comment on modifications of the proposal if based on evidence of potential differential impact on smaller entities. In addition, the Regulatory Flexibility Act requires agencies to seek comment on possible small entity-related alternatives, as noted above. We therefore seek comment on alternatives to the proposed rules that would assist small entities while ensuring bidirectional compatibility between cable operators and consumer electronics manufacturers.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

41. None.

V. Ordering Clauses

42. *It is ordered* that, pursuant to sections 1, 4(i) and (j), 303, 403, 601, and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, 521, 549, comment is hereby sought on the proposals in this *Third Further Notice Of Proposed Rulemaking*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07-3651 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 72, No. 142

Wednesday, July 25, 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 # AMS-FV-2006-0205; FV-06-317]

United States Standards for Grades of Cantaloups

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) is soliciting comments on its proposal to revise the voluntary United States Standards for Grades of Cantaloups. AMS is proposing revisions to the "Application of Tolerances" section in the cantaloup standards. Additionally, AMS is removing the "Unclassified" category from the standards. The proposed revisions will update the cantaloup grade standards and better reflect current marketing practices.

DATES: Comments must be received by September 24, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250-0240; Fax (202) 720-8871. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720-2185. The United States Standards for Grades of Cantaloups are available by accessing the Fresh Products Branch

Web site at: <http://www.ams.usda.gov/standards/stanfrrfv.htm>.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is proposing to revise the United States Standards for Grades of Cantaloups using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1968.

Background

On December 28, 2006, AMS published a notice in the **Federal Register** (71 FR 78128-78129) soliciting comments for possible revisions for the United States Standards for Grades of Cantaloups. In response to the notice, AMS received one comment on the proposed revisions. The comment received was from an agricultural trade association and is available by accessing <http://www.regulations.gov/fdmspublic/component/main> or the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/fv/fpbdoctlist.htm>. Based on the comment received and information gathered, AMS developed revised grade standards for cantaloups.

The agricultural trade association favored changing the wording in section 51.480, "Application of Tolerances" of the United States Standards for Grades of Cantaloups. Accordingly, AMS will make revisions to section 51.480 so that the tolerances may be applied to: Either samples of the entire contents of melons in cartons or to samples consisting of at least twenty five melons for cantaloups

packed in bulk bins or other packaging. Specifically within the section, "The contents of individual packages* * *" will be modified to "Samples* * *" and "(a) A package may contain* * *" will be modified to "(a) Samples may contain* * *". These revisions will make the Application of Tolerances applicable to cantaloups shipped in larger containers, such as bulk bins, which may contain several hundred melons, as well as those shipped in smaller containers.

AMS will also eliminate the unclassified category. This category is being removed from all standards when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

AMS is also seeking comments regarding how this revision will affect the marketing of cantaloups. Additionally, AMS is interested in learning the costs and/or benefits to the industry by revising the United States Standards for Grades of Cantaloups.

The official grades of cantaloups covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (7 CFR 51.1 to 51.62).

This notice provides for a 60-day comment period for interested parties to comment on the proposed revisions to the standards.

Authority: 7 U.S.C. 1621-1627.

Dated: July 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-14337 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS-FV-2006-0199; FV-07-301]

United States Standards for Grades of Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA), Agricultural Marketing Service (AMS) is revising the

voluntary United States Standards for Grades of Mangos. Specifically, AMS is revising the standards to allow for longer, up to an inch, attached stem lengths. The revisions would bring the standards for mangos in line with current marketing practices, thereby improving their usefulness in serving the industry.

EFFECTIVE DATES: August 24, 2007.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch; (202) 720-2185. The United States Standards for Grades of Mangos are available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables that are not requirements of Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is revising the voluntary United States Standards for Mangos using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). The standards were developed February 2006.

Background

AMS received two petitions, one from a packer/shipper and another from an importer, requesting a revision to the United States Standards for Grades of Mangos. The petitioners requested a revision to the definition of "well trimmed." The standards currently define "well trimmed" as: The stem is neatly clipped or broken off at a point not more than 1/2 inch beyond the point of attachment. The petitioners requested an increase to the allowable length of the attached stem to one inch from the point of attachment. The packer/shipper stated a change is warranted because a longer stem, up to one inch in length,

would permit healing of the stem end and reduce the amount of latex that leaks out of the fruit. The petitioner further stated incidences of "sunken stem end" would be reduced significantly by allowing a longer stem.

AMS published a notice in the **Federal Register** (72 FR 5259) on February 5, 2007, soliciting comments on the possible revisions to the United States Standards for Grades of Mangos. No comments were received in response to the notice.

Based on the initial request received and the information gathered, AMS is revising the mango standards to bring the standards in line with current marketing practices. The revision to the definition reads as follows: "Well trimmed" means the stem is neatly clipped or broken off at a point not more than 1 inch beyond the point of attachment.

The official grade of a lot of mangos covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The revisions to the United States Standards for Grades of Mangos will become effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621-1627.

Dated: July 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-14339 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods from July 1, 2007 Through June 30, 2008

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2008 (July 1, 2007 through June 30, 2008) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: The rate in this notice is effective July 1, 2007.

FOR FURTHER INFORMATION CONTACT:

Lillie F. Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1594 or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2007 Through June 30, 2008

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under CACFP (7 CFR part 226) shall be 18.75 cents for the period July 1, 2007 through June 30, 2008.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products;

meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 9.9 percent from 149.56 for March, April and May of 2006 to 164.34 for the same three months in 2007. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2007 through June 30, 2008 will be 18.75 cents per meal. This is an increase of 1.75 cents from the school year 2007 (July 1, 2006 through June 30, 2007) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: July 19, 2007.

Roberto Salazar,
Administrator.

[FR Doc. E7-14377 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Motorized Travel Management Plan, Coconino National Forest; Coconino and Yavapai Counties, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Coconino National Forest will prepare an environmental impact statement (EIS) to disclose the effects of designating a system of roads, trails and areas for motorized vehicle use, thereby developing a motorized travel management plan. Such a plan is needed to meet new National travel management regulations and to improve the management and enforcement of motor vehicle use on National Forest Service lands. This notice describes the components to be included in the motorized travel plan, proposed forest plan amendment, decisions to be made, estimated dates pertaining to the project, information concerning public participation, and the responsible agency official. The project area is defined by the boundaries of the Coconino National Forest, and includes the Peaks, Mormon Lake, Red Rock, and Mogollon Rim Ranger Districts.

DATES: Written comments to be considered in the preparation of the draft environmental impact statement (DEIS) should be submitted within 45 days of the date of publication of this Notice of Intent in the **Federal Register**. The DEIS is expected to be published in the summer of 2008. The final environmental impact statement (FEIS) and record of decision (ROD) is expected to be available by early 2009.

ADDRESSES: Send written comments to Nora Rasure, Forest Supervisor, ATTN: TMR, 1824 S Thompson St, Flagstaff, AZ, 86001, Fax: (928) 527-3620, E-mail: comments-southwestern-coconino@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Jim Beard, Project Leader, 1824 S Thompson St, Flagstaff, AZ, 86001, (928) 527-3600. Additional information about this project can be found at <http://www.fs.fed.us/r3/coconino/tmr.shtml>.

SUPPLEMENTARY INFORMATION: On November 9, 2005, the Forest Service published final travel management regulations governing off-highway vehicles (OHV) and other motor vehicles on national forests and grasslands. The new regulations amended part 212, subpart B of part 251, subpart A of part 261, and removed part 295 of title 36 of the Code of Federal Regulations (CFR). These three regulations are referred to together as the TMR (Travel Management Rule). The TMR was developed in response to the substantial increase in use of OHVs on National Forest System lands and related damage to forest resources caused by unmanaged OHV use over the past 30 years. The regulations implement Executive Order (EO) 11644 and EO 11989 regarding off-road use of motor vehicles on Federal lands.

The regulations provide "for a system of National Forest System (NFS) roads, NFS trails, and areas of NFS lands that are designated for motor vehicle use. Motor vehicle use off designated roads and trails and outside of designated areas is prohibited (36 CFR 212.50)." Designated routes and areas shall be identified on a motor vehicle use map (MVUM) and made available to the public. Currently, the Coconino National Forest does not restrict motor vehicles to designated roads, trails or areas; cross-country motorized travel is generally permitted except in areas that are signed closed or restricted to seasonal use.

In order to comply with the new travel management regulations, the forest initiated a forestwide travel analysis in 2006. The intent of the travel analysis process was to help the forest determine the minimum transportation

system necessary to provide safe and efficient travel and for administration, utilization, and protection of NFS lands (36 CFR 212.5(b)). Key to this process, the forest hosted several open houses in northern and central Arizona during the fall of 2006 and attended additional meetings since then, as requested, in order to collect ideas regarding motorized forest travel from local citizens, forest users, state, county, local and tribal governments, and other Federal agencies. The proposed action represents a synthesis of public comment and Forest Service specialist recommendations gathered during the travel analysis process.

Purpose and Need for Action

The purpose of this project is to designate a socially, economically, and environmentally sustainable forest transportation system that will accommodate motorized access needs on the Coconino National Forest. There is a need for amending Coconino Forest Plan direction to prohibit cross-country motorized travel and remove the road density direction. There is a need for reducing the number of roads across the forest and to close roads that conflict with resource protection goals outlined in the Coconino Forest plan (1987, as amended). There is a need to continue providing limited motorized use off of designated routes to existing dispersed camping sites/areas. This action responds to the new travel regulations at 36 CFR 212.

Proposed Action

For the purposes of this project and notice, "route" is a general term that refers to a road or motorized trail mapped to a location on the ground. The term "road" or "trail" is defined as a National Forest System road or trail that is designated for motor vehicle use pursuant to 36 CFR 212.51. A "user-created" or "unauthorized" route is a road or motorized trail not designated for motor vehicle use pursuant to 36 CFR 212.51. User-created routes have generally developed without agency authorization, environmental analysis, or public involvement and do not have the same status as NFS roads or trails included in the forest transportation system. To meet the project's purpose and need, the following actions are proposed:

Close 1,500 miles of existing open roads. In this case, close means it will be closed to public travel. Some of these roads will be retained for periodic administrative use only (maintenance Level 1) and others will be decommissioned (removed from the forest inventory). The most relevant

aspect of this action is closing the road to public travel. Decisions to obliterate decommissioned roads are outside the scope of this project because they require further site-specific environmental analysis and clearances before being undertaken;

Add 40 miles of user-created routes to the forest transportation system. These routes will be managed as roads and will be open to public travel;

Allow roadside parking within one vehicle length from the edge of the road surface;

Prohibit motorized travel off of designated routes for the purpose of big game retrieval;

Allow motor vehicles to travel 100 feet off designated routes for the purpose of accessing existing dispersed camping sites. User-created routes that access additional existing dispersed camping sites beyond the 100 foot limit will also be designated for motorized use. These routes will be shown as spur roads on the MVUM. Existing dispersed campsites will be displayed on a supplementary map to the MVUM and/or signed on the ground; and

Amend the Coconino National Forest Plan to prohibit off-road driving on the entire forest, remove road density by vegetation type direction, and remove any references to "off-road driving" currently in the plan in order to be consistent with the language and intent in 36 CFR 212.

This action, in conjunction with existing motorized trails and the Cinder Hills OHV area, will result in approximately 3,950 miles of designated NFS routes and one 13,711-acre area generally open to motor vehicles on the Coconino National Forest. Roads within existing seasonal closure areas (Nordic Center, Wing Mountain, Pine Grove, Rattlesnake, Woods, Cottonwood Basin, Anderson Mesa/Antelope, Lower Lake Mary Bald Eagle closure) will continue to only be open seasonally to motor vehicles.

Possible Alternatives

In addition to the Proposed Action, the No Action alternative will be analyzed. The Forest Service is required to analyze the "No Action" alternative under the provisions of NEPA (40 CFR 1502.14). No Action will consider the effects of not making any changes to forest's current road system and not prohibiting motorized cross-country travel. Additional alternatives may be developed in response to significant issues brought up during public scoping.

Responsible Official

The responsible official for this project is the Coconino National Forest Supervisor.

Nature of Decision To Be Made

Items in this decision include: Changes to the existing road system; changes to existing motorized trails and areas open to cross-country motorized travel; the distance motor vehicles may travel off of specific designated routes for the purpose of dispersed camping; and language and content changes to the Coconino Forest Plan via a forest plan amendment. The decision will be based on a consideration of the environmental effects of implementing the proposed action or alternatives developed in response to significant issues. The Forest Supervisor may select the proposed action, an alternative analyzed in detail, or a modified proposed action or alternative within the project's range of alternatives.

Scoping Process

Scoping is an ongoing procedure used to identify important issues and determine the extent of analysis necessary for an informed decision on a proposed action. This Notice of Intent serves as formal initiation of the scoping process. The Forest Service is seeking comments from individuals, organizations, and local, state and Federal agencies that may be interested in or affected by the proposed action. Comments may pertain to the nature and scope of the environmental, social, and economic issues, and possible alternatives related to the development of the motorized travel plan and EIS. A copy of the proposed action has been sent to potentially affected persons and those that have expressed an interest in this project during the travel analysis process. Others may have their names added to the project mailing list at any time by submitting a request to: Jim Beard, Project Leader, 1824 S Thompson St., Flagstaff, AZ, 86001, E-mail: coment-southwestern-coconino@fs.fed.us.

A series of open houses are scheduled to further explain the proposed action and to provide an opportunity for public input. Open houses are planned at the following locations and dates:

July 31, Flagstaff, AZ, Sinagua High School, 5–8 p.m.

August 1, Happy Jack, AZ, Happy Jack Lodge, 5–8 p.m.

August 2, Camp Verde, AZ, Cliff Castle Casino, 5–8 p.m.

August 4, Flagstaff, AZ, Sinagua High School, 12–5 p.m.

Preliminary Issues

During the public collaboration phase of the travel analysis process, an issue was brought forward about the lack of motorized trails in the forest, especially after the forest prohibits cross-country motorized travel. The Coconino National Forest can consider alternatives to designate additional motorized trails to the forest transportation system. More specific route location information will be required in order to fully develop and analyze this alternative. New routes will be assessed using both 36 CFR 212.55(b) criteria for motorized trails, as well as consistency with Coconino Forest Plan management direction.

Other issues brought forward during the travel analysis process included off-road access for firewood gathering and grazing allotment management. As per the TMR, motor vehicle use authorized under a permit is exempted from the route and area designations. The necessity of using motor vehicles off of designated routes should be articulated in the permit and where necessary, would be analyzed and authorized under a separate NEPA decision (it is outside the scope of this project).

Additional issues during travel analysis included off-road access for big game retrieval and dispersed camping. The forest is not proposing to allow motor vehicles off of designated routes for big game retrieval because our preliminary analysis found that the proposed transportation system will provide adequate and reasonable access to hunters within all game management units across the forest; 79 percent of the forest will remain within 0.5 miles of a designated open road. The proposed action includes limited use of motor vehicles off of designated routes for the purpose of dispersed camping and addresses issues related to dispersed camping access.

An issue regarding motorized access to non-motorized areas by people with disabilities is addressed by existing Federal laws, regulations, and policies, which do not require areas that prohibit motor vehicle use to make exceptions because a person has a disability. Any wheelchair or mobility device, as defined by the American with Disabilities Act (ADA), may continue to be used wherever foot travel is permitted.

Comment Requested

This notice of intent initiates the scoping process which will guide the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a

submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 18, 2007.

Nora B. Rasure,

Forest Supervisor, Coconino National Forest.
[FR Doc. 07-3618 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Beartooth Ranger District Travel Management Plan, Custer National Forest; Sweet Grass, Park, Stillwater, and Carbon Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the effects of designating National Forest System roads, trails, and areas available for public motorized use and changing pack and saddle stock use on certain non-motorized trails on the Beartooth Ranger District, Custer National Forest. The decision will be to determine whether to include routes that are not currently National Forest System roads, trails, and areas for public motorized use on the Beartooth Ranger District, establish a season of use and/or type of vehicle use for roads, trails, and areas designated for public motorized use, change dispersed vehicle camping designations, and restrict pack and saddle stock use on select non-motorized trails. A National Environmental Policy Act (NEPA) decision is not required to designate roads, trails, and areas for public motorized use that are currently part of the National Forest System of roads, trails and areas.

Once a decision is made, a Motor Vehicle Use Map (MVUM) will be

prepared, in compliance with the 2005 Forest Service Travel Management Rule (36 CFR Part 212). The MVUM will show all the routes that are designated for public motorized use on the Beartooth Ranger District. The MVUM will be the primary tool used to determine compliance and enforcement with motorized vehicle use designations on the ground. Those existing routes and other non-system routes not designated open on the MVUM will be legally closed to motorized travel. The decisions on motorized travel may include motorized over-the-snow travel.

DATES: The draft environmental impact statement is planned to be released in October 2007 and the final environmental impact statement is planned for release in June 2008. The project was initially released for public scoping January 30, 2004 through May 1, 2004. However, the scoping period was extended to September 1, 2004 due to great public interest and the many requests asking for an extension of the scoping period through the field season.

ADDRESSES: Send written comments to Beartooth Ranger District Travel Management Plan, Custer National Forest, 1310 Main Street, Billings, MT 59105 or call (406) 657-6205 extension 225.

If you prefer, you can submit comments on the internet at comments-northern-custer-beartooth@fs.fed.us by typing on the subject line "Beartooth RD Travel Management Plan."

FOR FURTHER INFORMATION CONTACT: Doug Epperly, Project Coordinator, at (406) 657-6205 ext. 225.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the proposal is to designate a system of roads, trails, and areas for motor vehicle use, including over-the-snow travel and existing recreation use, on the Beartooth Ranger District, Custer National Forest. The system of roads, trails, and areas to be designated will be consistent with the laws, regulations, and policies governing the management of National Forest System lands. Specifically, this includes the Forest Service 2005 Travel Management Rule (36 CFR part 212), the January 2001 Off-Highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota, and Portions of South Dakota (hereafter Tri-state OHV Plan), the subsequent Forest Plan Amendment Number 39, the 1987 Beartooth Travel Plan, and the Custer National Forest and National Grasslands Land and Resource Management Plan (hereafter referred to

as the Forest Plan, 1986) (Forest Plan Record of Decision, 1987)).

There is a compelling need to address travel management on the Beartooth Ranger District as a result of the Forest Service 2005 Travel Management Rule, the Tri-state OHV decision, and confusion generated in trying to implement the 1987 Beartooth Travel Plan. Both the Travel Management Rule and the Tri-State OHV decision set timeframes within which to complete, and/or start (as in the case of the Tri-State decision), specific route designation decisions, as necessary. It is important to note, that identifying existing National Forest System Roads and Trails on a MVUM does not constitute a decision pursuant to the National Environment Policy Act.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands, to promote the safety of users, minimize conflicts among the various uses of the federal lands, and to provide for public use of roads and trails designated as open.

Proposed Action

The proposed action is to designate selected roads, trails, and areas open to public motorized travel, designate dispersed vehicle camping, and implement changes in pack and saddle stock use on non-motorized trails on the Beartooth Ranger District, Custer National Forest (NFS lands). The designations will also set specific seasons of use, where appropriate, and specify the type of use (e.g., highway legal vehicle, ATV's, motorcycles) for roads, trails, and areas. The Forest Service will produce a Motor Vehicle Use Map (MVUM) depicting those routes which are open to the general public for wheeled motorized use. This alternative, as well as any other action alternative, will require a Forest Plan amendment to remove specific road management contained in the Forest Plan and provide for management of those roads in the travel plan decision.

No Action Alternative

The No Action alternative would be to designate the current Beartooth Ranger District system motorized roads and trails for public motorized use, but would not address existing routes that are identified as unauthorized (i.e. non-system) routes by the Forest Service. The existing condition would be to designate all of the system and non-system motorized routes identified during the 1999–2000 Custer National

Forest inventory of existing roads and trails. Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized travel.

A consequence of designating routes open for public motorized travel is that those existing routes not designated as open would be not be available for public motorized travel. Decommissioning or obliterating these routes, which may involve ground disturbing activities, would not be a part of the Proposed Action or alternatives, and would generally require separate and distinct site-specific NEPA decisions regarding the implementation aspects of road closures. The environmental consequences of having routes closed to motorized travel will be evaluated in this environmental analysis.

Identification of new routes that would meet the goals and objectives for a motorized transportation system on NFS lands will be, as appropriate, a part of this travel management planning and identified as an opportunity, but would require separate, site-specific NEPA decisions to implement ground disturbing activities associated with new route construction.

Responsible Official

The Responsible Official is Steve E. Williams, Forest Supervisor, Custer National Forest, 1310 Main Street, Billings, MT 59105.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Forest Supervisor will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific National Forest System lands:

- Determine those non-system roads, trails, and areas that should be converted to system roads, trails and areas, and designate as open to the public for motorized travel; and,
- Determine the allowed season and/or type of use for those routes open to motorized travel
- Determine if any changes in the extent and nature of dispersed vehicle camping are warranted.
- Determined those non-motorized trails where pack and saddle stock use would be changed to day use or prohibited.

• Site-specifically amend the Forest Plan by removing standards and guidelines for specific roads and trails from the Forest Plan (for example, see Forest Plan pages 51, 89, and 91). Travel management direction for routes that will not have a change in travel management direction will be shown on

the Motor Vehicle Use Map (pursuant to 36 CFR 212). Routes, for which travel management direction is being changed, will be analyzed in the EIS for the Beartooth Ranger District Travel Management Plan.

Scoping Process

Public scoping was initiated January 30, 2004 and was planned to close by May 1, 2004. Several public meetings were conducted in local communities that could be affected by the decision. The scoping period was extended to September 1, 2004 due to high public interest. The Forest Service received over 5000 letters, postcards or other forms of commenting (i.e. electronically submitted comments). The project was delayed due to some key personnel changes, acts of nature (slides on Beartooth Highway and the Derby fire), and release of the 2005 Travel Management Rule. Hence, additional public meetings were conducted in July 2006 to update the public on the process and brief those involved in the process on the 2005 Travel Management Rule, and from January through March 2007 collaborative public meetings were conducted in an effort to find common ground.

The Forest Service will consider all public scoping comments and concerns that have been submitted, as well as resource related input from the interdisciplinary team and other agency resource specialists. This input will be used to identify issues to consider in the environmental analysis. A comprehensive list of issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Persons and organizations commenting during the initial scoping will be maintained on the mailing list for future information about Beartooth Ranger District Travel Management Planning.

The Responsible Official has determined, at this time that it is in the best interest of the Forest Service to prepare an environmental impact statement.

Comments Requested

Given that scoping has been conducted and that numerous public meetings have been conducted, comments are not being requested at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for public comment. The comment period on the

draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register**.

Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc. v. Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 18, 2007.

Nancy J. Rusho,

Acting Deputy Forest Supervisor.

[FR Doc. 07-3616 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

South Project; Hell Canyon Ranger District, Black Hills National Forest Custer, SD

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Hell Canyon Ranger District of the Black Hills National Forest intends to prepare an Environmental Impact Statement (EIS) for a proposal to implement multiple resource management actions within the South project area as directed by the Black Hills National Forest Land and Resource Management Plan. The South project area is approximately 52,082 acres in size, with 43,045 acres of National Forest lands, 1,197 acres of state land and 7,840 acres of private land. The project proposes to reduce the risk of large-scale wildfire effects on the At-Risks Communities (ARC) of Custer, Pringle and Argyle, South Dakota, provide for wildlife habitat needs, reduce risks of mountain pine beetle infestation, provide a sustainable supply of commercial timber, and provide management and public access.

DATES: Comments related to this project will be most useful to the planning team if received within 30 days after publication of this notice in the **Federal Register**. The draft environmental impact statement is expected to be available January 2008 and the final environmental impact statement is expected to be completed by June 2008.

ADDRESSES: Send written comments to Michael D. Lloyd, District Ranger, Black Hills National Forest, Hell Canyon Ranger District, 330 Mount Rushmore Road, Custer, South Dakota 57730. Telephone number: (605) 673-4853. Fax number: (605) 673-5461. Electronic comments must be readable in Word, RichText or pdf format and must contain "South" in the subject line. Electronic comments may be e-mailed to: comments-rocky-mountain-black-hills-hell-canyon@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Betsy Koncerak, Project Leader, at the address listed above or by phone at (605) 673-4853.

SUPPLEMENTARY INFORMATION: The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan, as amended (Forest Plan). The Project Area is located approximately four miles west of Custer, South Dakota and is within

Custer County. The northernmost point of the project area lies approximately four miles north of US Highway 16 along Lightning Creek road. The southernmost point of the project area is approximately 12 miles south of US Highway 16 along Pleasant Valley Road.

Purpose and Need for Action

The purpose and need for action in the South project area is to reduce the risk of large-scale wildfire on the At-Risk Communities (ARCs) of Custer, Pringle and Argyle, South Dakota (66 FR 43384), provide for wildlife habitat needs, enhance vegetative diversity, reduce the risk of mountain pine beetle infestation, and provide a sustainable supply of commercial timber consistent with direction in the Revised Forest Plan for the Black Hills National Forest, as amended (Forest Plan), while providing for management and public access needs. This project is focused on implementing management actions that move toward achieving desired conditions and objectives embodied in Goals 10 (establish and maintain a mosaic of vegetation conditions to reduce occurrences of large-scale fire, insect, and disease events), 2 (provide for biologically diverse ecosystems), and 3 (provide for sustained commodity uses) of the Forest Plan.

Proposed Action

The proposed action includes the following management actions:

- Commercial thinning to 40 basal area on approximately 9,621 acres to reduce fuels around private lands to reduce the risk of large-scale wildfire. In addition, approximately 9,400 acres of prescribed burning is proposed to reduce fuels in other portions of the project area to create fuel breaks for community protection.
- Commercial thinning to 60 basal area on approximately 2,628 acres to increase tree growth and vigor, reduce the potential for mountain pine beetle infestation and reduce the potential for spreading crown fires.
- Releasing approximately 11,428 acres of regenerated pine stands through overstory removal prescriptions.
- Restoration and maintenance of meadows by removing conifers from approximately 2,847 acres of these habitats.
- Reducing the density of the managed road system, which is currently 5.4 miles per square mile, by closing unneeded roads and by converting needed, unauthorized roads to system roads.

Responsible Official

Michael D. Lloyd, District Ranger,
Black Hills National Forest, Hell Canyon
Ranger District, 330 Mount Rushmore
Road, Custer, South Dakota 57730.

Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or an alternative to the proposed action at this time.

Scoping Process

The Hell Canyon Ranger District has mailed letters with comprehensive scoping documents to landowners, local and tribal government representatives, permittees, and other interested or potentially affected parties and organizations. The scoping document with attached maps will be posted on the Black Hills National Forest Web site in July 2007. Comments submitted in response to this NOI will be most useful to the project planning team if received within 30 days from the date of this notice.

Comment Requested

This notice of intent is part of the scoping process which will guide the development of the EIS. Comments received will assist the planning team with identification of key issues to refine the proposal, create alternative proposals, and identify necessary project design features. Comments on the Draft EIS will be requested during the 45 day comment period following publication of the Notice of Availability in the **Federal Register** which is expected in January 2008.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft EIS will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service planning team would like to take this opportunity to give reviewers advanced notice of several court rulings related to public participation in the environmental review process: (1) Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alters an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978); (2) Environmental objections that could be raised at the draft environmental impact statement stage

but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, parties interested in this proposed action must submit comments by the close of the 45 day comment period to assure that the Forest Service planning team can meaningfully consider and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. Please refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed within the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Comments received on this proposal, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 18, 2007.

Craig Bobzien

Forest Supervisor, Black Hills National Forest.

[FR Doc. 07-3621 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of Southwest Idaho Resource Advisory Committee Meeting**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106-393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting, which is open to the public.

DATES: Wednesday, August 8, 2007, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Doug Gochnour, Designated Federal Officer, at 208-392-6681 or e-mail dgochnour@fs.fed.us.

Dated: July 17, 2007.

Richard A. Smith,

Forest Supervisor, Boise National Forest.

[FR Doc. 07-3617 Filed 7-24-07; 8:45 am]

BILLING CODE: 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Sierra County, CA, Resource Advisory Committee**

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on August 9, 2007, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) as extended by Public Law 110-28 and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held Thursday, August 9, 2007 at 10 a.m. (If there is a need to cancel this meeting, a back-up is scheduled for Monday, August 13, 2007 at the same time/location.)

ADDRESSES: The meeting will be held at the Downieville Community Hall, Downieville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478-6205, e-mail: awestling@fs.fed.us.

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and announcements; (2) status of previously approved projects; and (3) review of and decisions on new projects proposals for current year. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: July 18, 2007.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 07-3619 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice Inviting Applications for Biomass Research and Development; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Agriculture (USDA) published a document in the **Federal Register** of Monday, June 11, 2007, concerning the joint solicitation of applications for USDA and the Department of Energy (DOE) for financial assistance addressing research and development of biomass based products, bioenergy, biofuels, and related products. This document contained information regarding the grant amount in USDA funding.

FOR FURTHER INFORMATION CONTACT: Lisa Siesennop, Business Programs, Loan and Grant Analyst, USDA Rural Development, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250-3225. Telephone: (202) 690-3810, Fax: (202) 720-6561.

Correction

In the **Federal Register** of June 11, 2007, FR Doc. 07-2865, on page 32060, in the first column, under Grant Amounts, correct the first sentence to read: Up to \$4 million in DOE funding and up to \$14 million in USDA funding is available for new awards under this Solicitation.

Dated: July 16, 2007.

Ben Anderson,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E7-14383 Filed 7-24-07; 8:45 am]

BILLING CODE 3410-XY-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Thursday, August 2, 2007; 6 p.m.

PLACE: Via Teleconference.

PUBLIC CALL IN NUMBER: 1-800-597-7623.

Meeting Agenda

- I. Approval of Agenda.
- II. Approval of Minutes of July 13, Meeting.
- III. Announcements.
- IV. Staff Director's Report.
- V. Program Planning.
 - FY 2007 Statutory Report.
- VI. Future Agenda Items.
- VII. Adjourn.

CONTACT PERSON FOR FURTHER

INFORMATION: Manuel Alba, Press and Communications, (202) 376-8582.

Dated: July 23, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07-3663 Filed 7-23-07; 3:21 pm]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24-2007]

Foreign-Trade Zone 26—Atlanta, GA; Request for Manufacturing Authority; Perkins Shibaura Engines LLC (Diesel Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, pursuant to Section 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Perkins Shibaura Engines LLC (Perkins Shibaura) to manufacture diesel engines under FTZ procedures within FTZ 26. It was formally filed on July 19, 2007.

The Perkins Shibaura facility (150 employees) is located at 325 Green Valley Road within the Green Valley Industrial Park (Site 6) in Griffin, Georgia. Under FTZ procedures, Perkins Shibaura would assemble up to 50,000 compact diesel engines (HTSUS 8408.90; 10-60 horsepower) for the U.S. market and export. Foreign components that would be used in the FTZ assembly activity include: Fuel/water pumps, injectors, crankshafts, camshafts, flywheels, pulleys, filters, motors, glowplugs, seals and o-rings, bearings and housings, tubes/pipes/hoses of rubber, belts, flanges, spring/lock washers, fasteners, fittings, cylinder heads, pumps, actuator motors, compressors, cooling fans, holders, air filters, gears, gearboxes, speed changers, torque converters, ball/roller screws, generators, ignition parts, electrical switches and connectors, process control instruments, paints, gaskets, sealants, stoppers/lids, labels, decals, articles of graphite or carbon, adaptors,

tubes, pipes, plugs, heat exchangers, brake rotors, governors, brackets, solenoids and actuators, electrical converters/transformers/inductors, printed circuit boards, sensors, senders, meters and gauges, instruments; and signaling equipment (duty rates: free—9.0%).

FTZ procedures would exempt Perkins Shibaura from Customs duty payments on the foreign components used in export production. On shipments to the U.S. market, Perkins Shibaura could elect the finished engine duty rate (free) for the foreign components used in production when the finished engines are entered for U.S. consumption from the zone. The application indicates that the company would also realize duty deferral and certain logistical/supply chain savings.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002. The closing period for receipt of comments is August 24, 2007.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre_duy@ita.doc.gov, or (202) 482-1378.

Dated: July 19, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7-14369 Filed 7-24-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-916

Laminated Woven Sacks from the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 25, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207.

SUPPLEMENTARY INFORMATION:**INITIATION OF INVESTIGATION:****The Petition**

On June 28, 2007, the Department of Commerce ("Department") received a petition concerning imports of laminated woven sacks ("LWS") from the People's Republic of China ("PRC") filed in proper form by the Laminated Woven Sacks Committee and its individual members, Bancroft Bags, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytext Fibers Corporation (collectively, ("Petitioners"). See Petition on Laminated Woven Sacks from the People's Republic of China filed on June 28, 2007 ("Petition"). On July 2, and 11, 2007, the Department issued requests for additional information and clarification of certain areas of the Petition. Based on the Department's requests, the Petitioners filed additional information on July 9, and 12, 2007. The period of investigation ("POI") is October 1, 2006, through March 31, 2007. See 19 CFR 351.204(b).

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the Petitioners allege that imports of LWS from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially retarding the establishment of an industry in the United States, or that such an industry is materially injured or threatened with material injury by reason of such imports.

The Department finds that the Petitioners filed this Petition on behalf of the domestic industry because the Petitioners are interested parties as defined in section 771(9)(C), (E) and (F) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation (see "Determination of Industry Support for the Petitions" section below).

Scope of Investigation

The merchandise covered by this investigation is laminated woven sacks. See Attachment I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties;*

Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 7, 2007. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Catherine Bertrand, room 4003. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of laminated woven sacks to be reported in response to the Department's antidumping questionnaire. For example, we are considering whether certain physical characteristics such as width, gusset, length, fabric thickness, coating thickness, film thickness, and total bag weight are relevant. This information will be used to identify the key physical characteristics of the subject merchandise in order for respondents to more accurately report the relevant factors of production.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use 1) as general product characteristics and 2) as the product reporting criteria. We note that it is not always appropriate to use all product characteristics as product reporting criteria. In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive non-proprietary comments at the above-referenced address by August 8, 2007, and rebuttal comments must be received within 10 calendar days of the receipt of timely filed comments.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the

petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (*CIT* 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of

the information submitted on the record, we have determined that laminated woven sacks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Antidumping Investigation Initiation Checklist: Laminated Woven Sacks from the People's Republic of China (PRC)*, Industry Support at Attachment II (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 732(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 732(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See *Initiation Checklist* at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See *Initiation Checklist* at Attachment II (Industry Support).

Allegations and Evidence of Material Retardation and of Material Injury and Causation

Section 733(a)(1)(B) of the Act states that the ITC “shall determine . . .

whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The Petitioners allege that imports of subject merchandise from the PRC have materially retarded the establishment of the domestic industry producing LWS. The Petitioners argue that U.S. producers of LWS have not stabilized their operations and, therefore, a U.S. industry producing LWS has not been established. To support their argument, the Petitioners examine the five factors considered by the ITC to determine if an industry is established, as set forth in the ITC’s *Antidumping and Countervailing Duty Handbook*. See *Antidumping and Countervailing Duty Handbook* (12th Ed.), USITC Pub. 3916 (April 2007). Furthermore, the Petitioners contend that their efforts to establish a domestic LWS industry have been thwarted by dumped imports of LWS from the PRC.

The Petitioners also allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (“NV”). The Petitioners contend that the industry’s injured condition is illustrated by lost sales, lost revenue, underselling and price depression or suppression, poor financial performance, capacity and depressed capacity utilization rate, and increased import penetration.

We have assessed the allegations and supporting evidence regarding material retardation and material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See *Initiation Checklist* at Attachment III (Injury).

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation on imports of LWS from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the checklist. See *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we will reexamine the information and revise the margin calculations, if appropriate.

Export Price

The Petitioners relied on two U.S. offers for LWS manufactured in the PRC and offered for sale in the United States. The two price offers were for a certain type of laminated woven sack falling within the scope of the Petition, for sale to the U.S. customer within the POI. The Petitioners deducted from the prices the costs associated with exporting and delivering the product, foreign inland freight costs, and foreign brokerage and handling. See *Initiation Checklist*. The Petitioners adjusted the U.S. price for foreign inland freight charges based on the methodology used by the Department in *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007) (“*Hand Trucks*”) See Petition at page 29. The Petitioners adjusted the U.S. price for foreign brokerage and handling based on Indian surrogate value data applied in *Hand Trucks*. See Petition at page 29.

Normal Value

The Petitioners stated that the PRC remains a non-market economy (“NME”) country and no determination to the contrary has yet been made by the Department. Recently, the Department examined the PRC’s market status and determined that NME status should continue for the PRC. See *Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, Regarding The People's Republic of China Status as a Non-Market Economy*, dated May 15, 2006. (This document is available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>.) In addition, in two recent investigations, the Department also determined that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a

surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The Petitioners selected India as the surrogate country arguing that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a level of economic development comparable to that of the PRC and is a significant producer and exporter of LWS. *See* Petition at page 23. Based on the information provided by the Petitioners, we believe that the use of India as a surrogate country is appropriate for purposes of initiation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection.

The Petitioners provided dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. However, because information regarding the factors of production consumed by Chinese producers is not available to the Petitioners, the Petitioners calculated NVs for each U.S. price discussed above based on consumption rates for producing LWS as experienced by U.S. producers. *See* Petition at page 22. The Petitioners use a U.S. producer's consumption figures, as actual factors of production for a Chinese company were not reasonably available. The Petitioners provide affidavits to support their NV calculation. *See* July 9, 2007, response at Exhibits B and C. Accordingly, we found the Petitioners' use of the production data to be reasonable.

For the NV calculations, the Petitioners were unable to obtain surrogate value figures contemporaneous with the POI for all material inputs, and accordingly relied upon the most recent information available. The sources of these data include the World Trade Atlas compilation of Indian import statistics, which provided data through November 2006 at the time the Petition was filed. *See* Petition at page 24. Where an input price reflected a period preceding the POI, the Petitioners adjusted it for inflation using the wholesale price index for India reported by the Reserve Bank of India. *See id.* To value the cost of electricity, the Petitioners used the identical methodology recently used by the Department in *Hand Trucks*. *See* Petition at page 15 and Exhibit 15. The Petitioners excluded those values from countries previously determined by the

Department to be NME countries; imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies, as well as imports from unspecified countries. *See Hand Trucks* accompanying Issues and Decision Memorandum at Comment 23. The surrogate values used by the Petitioners for the material and packing inputs consist of information reasonably available to the Petitioners and are, therefore, acceptable for purposes of initiation.

With respect to the surrogate financial expenses, the Petitioners relied on the factory overhead, SG&A expenses and profitability of two Indian LWS producers, KG Petrochem, Ltd. and Dhoot Compac, Ltd., taken from the companies' most recently available annual reports that are closest to the POI. *See* Petition at page 28 and Exhibit 18. We find that the Petitioners' use of these two companies' information as the source for the surrogate financial expenses is appropriate for purposes of initiation.

Fair Value Comparisons

Based on the data provided by the Petitioners, there is reason to believe that imports of LWS from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for laminated woven sacks are 74.70 percent and 91.73 percent.

Initiation of Antidumping Investigations

Based upon the examination of the Petition on LWS from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of laminated woven sacks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. *See* Policy Bulletin 05.1: Separate-Rates Practice

and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (*Separate Rates and Combination Rates Bulletin*), available on the Department's Web site at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate-rate applications in the following antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products From India, Indonesia, and the People's Republic of China*, 70 FR 58374, 58379 (October 6, 2005); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005); and *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625, 35629 (June 21, 2005). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application is due no later than September 17, 2007.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the PRC Petition. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline. Therefore, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies that manufacture and export subject merchandise to the United States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the POI. The quantity and value data received from

NME exporters is used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Attachment II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than August 8, 2007. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA Web site: <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those companies identified in Exhibit 4 of Volume I of the Petition and those identified by the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in the PRC investigation. The *Separate Rates and Combination Rates Bulletin*, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm

that supplied the exporter during the period of investigation.

See Separate Rates and Combination Rates Bulletin, at 6.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than August 13, 2007, whether there is a reasonable indication that imports of laminated woven sacks from the PRC are materially retarding the establishment of a U.S. industry, or whether such an industry is materially injured or threatened with material injury by reason of such imports. A negative ITC determination with respect to the investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 18, 2007.

Joseph A. Spetrini,
Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Antidumping Duty Investigation

Laminated Woven Sacks from the People's Republic of China

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of

the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics;¹ printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird Seed. Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Attachment II

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (*See* scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2006, through March 31, 2007.

Market	Total Quantity in Pieces	Terms of Sale	Total Value
United States.			
1. Export Price Sales.			

¹ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO

brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an

example of a paper suitable for high quality print graphics.

Market	Total Quantity in Pieces	Terms of Sale	Total Value
2.. a. Exporter Name. b. Address. c. Contact. d. Phone No.. e. Fax No.. 3. Constructed Export Price Sales. 4. Further Manufactured. Total Sales.			

Total Quantity:

- Please report quantity on a piece basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

- Please report all sales on the same terms (e.g., free on board).

Total Value:

- All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States;
- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported

by your company directly to the United States;

- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E7-14370 Filed 7-24-07; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-806]

Silicon Metal from the People's Republic of China: Notice of Extension of Time Limit for Final Results of 2005/2006 New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 25, 2007.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Michael Quigley, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;

telephone: (202) 482-1386 or (202) 482-4047, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On May 21, 2007, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of these new shipper reviews. *See Silicon Metal from the People's Republic of China: Preliminary Results of the 2005/2006 New Shipper Reviews*, 72 FR 28467 (May 21, 2007). The final results of these reviews are currently due by August 9, 2007.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

The Department has determined that these new shipper reviews are extremely complicated because of the numerous and complex issues raised by interested parties in their case briefs concerning surrogate country and surrogate value selection. Therefore, the Department finds that it is not practicable to complete these new shipper reviews within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until October 8, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). However, because October 8, 2007, is a federal holiday, the final results will be due on October 9, 2007, the next business day.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 18, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-14371 Filed 7-24-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-917]

Laminated Woven Sacks from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 25, 2007.

FOR FURTHER INFORMATION CONTACT:

Mark Hoadley or Joshua Reitze, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3128 and (202) 482-0666, respectively.

Initiation of Investigation

SUPPLEMENTARY INFORMATION:

The Petition

On June 28, 2007, the Department of Commerce (Department) received a Petition filed in proper form by the Laminated Woven Sacks Committee and its individual members, Bancroft Bag, Inc., Coating Excellence International, LLC, Hood Packaging Corporation, Mid-America Packaging, LLC, and Polytex Fibers Corporation (collectively, the Petitioners). See Petition for the Imposition of Antidumping and Countervailing Duties Against Laminated Woven Sacks from the People's Republic of China (June 28, 2007) (Petition). On July 2, July 6, July 11, and July 12, 2007, the Department issued requests for additional information and clarification of certain areas of the Petition involving general issues concerning the countervailing duty (CVD) allegations. Based on the Department's requests, the Petitioners filed additional information concerning the Petition on July 11 and July 13, 2007.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the Petitioners allege that manufacturers, producers, or exporters of laminated woven sacks (LWS) in the

People's Republic of China (the PRC) receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially retarding the establishment of an industry in the United States, or that such an industry is materially injured or threatened with material injury by reason of such imports.

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(E) and (F) of the Act and the Petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (see "Determination of Industry Support for the Petition" section below).

Scope of Investigation

The merchandise covered by this investigation is laminated woven sacks. See Attachment to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments by August 7, 2007. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, attention Mark Hoadley, room 7866. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on June 29, 2007, the Department invited representatives of the Government of the People's Republic of China (herein after the GOC) for consultations with respect to the countervailing duty Petition. The Department held these consultations in Beijing, China, with representatives of the GOC on July 16, 2007. See Memorandum to the File,

"Consultations with Officials from the Government of the People's Republic of China" (July 16, 2007) (on file in the Central Records Unit (CRU) of the Department of Commerce building, Room B-099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product

which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation,” (i.e., the class or kind of merchandise to be investigated, covered by the scope as defined in the Petition).

With regard to the domestic like product, the Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that LWS constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Countervailing Duty Investigation Initiation Checklist: Laminated Woven Sacks from the People's Republic of China (PRC)*, Industry Support at Attachment II (*CVD Initiation Checklist*), on file in the CRU.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (e.g., polling). See Section 702(c)(4)(D) of the Act. Second, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(i) because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. Finally, the domestic producers have met the statutory criteria for industry support under 702(c)(4)(A)(ii) because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. See *CVD Initiation Checklist* at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and

they have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. See *CVD Initiation Checklist* at Attachment II (Industry Support).

Allegations and Evidence of Material Retardation and of Material Injury and Causation

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry, or whether the establishment of an industry in the United States is materially retarded.

Section 703(a)(1)(B) of the Act states that the ITC “shall determine . . . whether there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports of the subject merchandise.” The Petitioners allege that imports of subject merchandise from the PRC have materially retarded the establishment of the domestic industry producing LWS. The Petitioners argue that U.S. producers of LWS have not stabilized their operations and, therefore, a U.S. industry producing LWS has not been established. To support their argument, the Petitioners examine the five factors considered by the ITC to determine if an industry is established, as set forth in the ITC’s *Antidumping and Countervailing Duty Handbook*. See *Antidumping and Countervailing Duty Handbook* (12th Ed.), USITC Pub. 3916 (April 2007). Furthermore, the Petitioners contend that their efforts to establish a domestic LWS industry have been thwarted by dumped and subsidized imports of LWS from the PRC.

The Petitioners also allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the subsidized imports of the subject merchandise. The Petitioners contend that the industry’s injured condition is illustrated by lost sales, lost revenue, underselling and price depression or suppression, poor financial performance, capacity and depressed capacity utilization rate, and increased import penetration.

We have assessed the allegations and supporting evidence regarding material retardation and material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the

statutory requirements for initiation. See *CVD Initiation Checklist* at Attachment III (Injury).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act and (2) is accompanied by information reasonably available to the Petitioners supporting the allegations.

The Department has examined the countervailing duty Petition on LWS from the PRC and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of LWS in the PRC receive countervailable subsidies.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

GOC Loan Programs

1. Policy Loans to LWS Producers from Government-Owned Banks
2. Loan Forgiveness for LWS Producers by the GOC
- GOC Provision of Goods or Services for Less Than Adequate Remuneration*

3. Provision of Electricity for Less than Adequate Remuneration
4. Provision of Land for Less than Adequate Remuneration
- GOC Grant Programs*
5. The State Key Technologies Renovation Project Fund
6. Grants and Other Funding for High Technology Equipment for the Textile Industry
7. Grants to Loss-Making State-Owned Enterprises
- GOC Income Tax Programs*
8. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

9. Preferential Tax Policies for Export-Oriented Foreign Invested Enterprises (FIEs)
10. Corporate Income Tax Refund Program for Reinvestment of FIE Profits in Export-Oriented Enterprises

11. Tax Benefits for FIEs in Encouraged Industries that

Purchase Domestic Origin Machinery

12. Tax Program for FIEs Recognized as High or New Technology Enterprises
13. Preferential Tax Policies for Research and Development
14. Tax Subsidies to FIEs in Specially Designated Geographic Areas

15. Preferential Tax Policies for Township Enterprises by FIEs
GOC Indirect Tax Programs and Import Tariff Programs
16. Value Added Tax (VAT) Rebate for FIE Purchases of Domestically Produced Equipment
17. VAT and Tariff Exemptions for FIEs Using Imported Technology and Equipment in Encouraged Industries

18. VAT and Tariff Exemptions on Imported Equipment (Domestic Enterprises)

19. Exemption from Payment of Staff and Worker Benefit Taxes for Export-Oriented Enterprises
Provincial Grant Programs
20. Export Interest Subsidy Funds for Enterprises Located in Zhejiang and Guangdong Provinces
21. Technological Innovation Funds Provided by Zhejiang Province
22. Programs to Rebate Antidumping Legal Fees
Provincial and Local Tax Programs for FIEs
23. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs

For further information explaining the basis for the Department's determination to investigate these programs, see *CVD Initiation Checklist*.

Application of the Countervailing Duty Law to the PRC

The Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–1 (February 14, 2003), unchanged in *TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review*, 68 FR 70488, 70488–89 (December 18, 2003).

In the amended preliminary determination in the investigation of coated free sheet paper from the PRC, the Department preliminarily determined that the current nature of the PRC economy does not create obstacles to applying the necessary criteria in the CVD law. See *Coated Free Sheet Paper from the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484, 17486 (April 9, 2007) (*CFS Preliminary Determination*), and Memorandum for David M. Spooner, Assistant Secretary for Import Administration, "Countervailing Duty Investigation of Coated Free Sheet Paper from The People's Republic of China Whether the Analytic Elements of the *Georgetown Steel* Opinion are Applicable to China's Present-day Economy," (March 29, 2007), on file in the CRU. Therefore, because the Petitioners have provided sufficient allegations and support of their allegations to meet the statutory criteria for initiating a countervailing duty investigation of LWS from the PRC, initiation of a CVD investigation is warranted in this case.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the Petition has been provided to the GOC. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than August 13, 2007, whether there is a reasonable indication that imports of LWS from the PRC are materially retarding the establishment of a U.S. industry, or whether such an industry is materially injured or threatened with material injury by reason of such imports. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: July 18, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

Attachment

Scope of the Countervailing Duty Investigation

Laminated Woven Sacks from the People's Republic of China

The merchandise covered by this investigation is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric;¹ laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene ("BOPP") or to an exterior ply of paper that is suitable for high quality print graphics; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form; with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven bags are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polypropylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form, laminated woven sacks may be classifiable under HTSUS subheading 5903.90.2500 and 3921.19.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. E7–14375 Filed 7–24–07; 8:45 am]

BILLING CODE 3510–DS–S

¹ "Paper suitable for high quality print graphics," as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

DEPARTMENT OF COMMERCE**International Trade Administration****Surrogate Country Selection in Proceedings Involving Non-Market Economy Countries; Request for Comment**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") is seeking a second round of public comment on an aspect of its non-market economy ("NME") methodology in antidumping proceedings. The Department is requesting comment on certain aspects of the methodology by which it selects an economically comparable market economy country to serve as a surrogate for the NME country under investigation or review.

DATES: Comments must be submitted within thirty days from the publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Economist, Office of Policy, Import Administration, U.S. Department of Commerce, Room 2837, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: 202-482-1579 or 202-482-1843, respectively.

Background

The Department previously requested in the **Federal Register** (72 FR 13246, March 21, 2007) comment on its selection of a "surrogate country" in NME antidumping proceedings, particularly on the issue of economic comparability. This refers to the practice in antidumping proceedings involving NME countries in which the Department calculates normal value by valuing the NME producer's factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. As is discussed in the Department's previous request for comment, the Tariff Act of 1930, as amended ("the Act"), provides broad discretion in the selection of surrogate market economy countries to value NME factors of production. Section 773(c)(4) of the Act further directs the

Department to base its selection of an appropriate surrogate country, to the extent possible, on its having "a level of economic development comparable to that of the nonmarket economy country."

Although the Act does not provide a definition of "comparable level of economic development," the Department's regulations at 19 CFR 351.408(b) direct the Department to "place primary emphasis on *per capita* GDP as the measure of economic comparability." In the Import Administration Policy Bulletin 04.1,¹ the Department provided guidance on economic comparability and established a sequential procedure for selecting a surrogate country, with economic comparability being the first factor considered.

The Department's most recent notice in the **Federal Register** on this issue requested public comment on what range of per capita income should be considered comparable to a given NME country. The Department also requested comment on whether and on what basis the Department should generally disregard certain economically comparable countries as lacking data suitable for valuing the factors of production. In other words, the Department was interested in public comment on whether and how the Department can limit its initial analysis of countries that are economically comparable to a sub-group of countries more likely to have the data necessary to conduct an antidumping duty proceeding (72 FR 13246, March 21, 2007). As discussed in the previous **Federal Register** notice requesting comment and as described in Policy Bulletin 04.1, the Department currently formulates a non-exhaustive list in each proceeding of about five countries economically comparable to the NME country that, in the Department's experience, are most likely to offer data necessary to conduct the proceeding. In its subsequent analysis of potential surrogate countries, the Department then examines the production of comparable merchandise, whether production is significant, and the availability of data in the countries on this initial list. If parties suggest the consideration of another economically comparable country that did not appear on this initial list, the Department will also consider the appropriateness of using that country in its analysis.

The Department received eleven submissions in response to its May 21, 2007 request for comment (all of the

comments the Department received are available at the Import Administration Web site at <http://www.trade.gov/ia>). While no commenter addressed directly how the Department should precisely define "economically comparable," several commenters suggested that the Department not interpret this requirement so narrowly as to prevent the Department from using the best available information in its dumping analysis. Certain commenters also suggested that the initial, non-exclusive "list" of economically comparable potential surrogate countries contain a balance of countries both above and below the per capita income level of the NME country.

The Department also received suggestions that it involve interested parties on the issue of surrogate country selection earlier and more frequently in the process, including in the formulation of the initial list, and that it broaden the number of countries in the initial list. One commenter suggested expanding the initial list to ten economically comparable countries, and another suggested that the Department put out a complete list of the world's economies and request comment on what countries should be considered comparable to the NME in question. Some commenters argued that the Department consider other factors besides per capita income, such as the nature of a country's economy, level of urbanization, integration into world markets, or the "comparability" of the industry in the potential surrogate to the industry in the NME.

Request for Comment

The Department would like to receive additional comments to those it received in response to its March 21, 2007 request for comment. In particular, the Department would like to receive comments focusing on the statutory concept of "economically comparable." The Department is required by its statute and regulations to consider economic comparability in its selection of a surrogate country and to base "comparability" on per capita income, but as stated above, the term is not defined specifically. Therefore, the Department is particularly interested in comments and suggestions on specific guidelines the Department should follow in determining the economic comparability of countries in a given case. Under the Department's established sequential process for selecting a surrogate country (as described in Policy Bulletin 04.1), the Department first determines a list of countries that are economically comparable and then analyzes each of

¹ The full text of the policy bulletin can be found at <http://ia.ita.doc.gov/policy/bull04-1.html>.

these countries for production of comparable merchandise, whether there is significant production, and availability of data. The Department invites comments on this process. In particular, it welcomes suggestions on how it should construct the initial list of economically comparable countries, how this set of countries should be balanced, and how many countries it should contain.

As a second matter, the Department is also interested in inviting comment on whether certain comparable countries should be excluded, at least initially, from the Department's analysis of which country is the best possible surrogate in a given proceeding on the basis of a general lack of country specific data. With regard to this issue, if the Department were able to determine that a group of countries does not generally offer the data necessary to conduct an antidumping proceeding, both the Department and parties would be relieved of the burden of examining those countries as potential surrogates in every proceeding. Please note, however, that parties would retain the ability to advocate the consideration of a country that would otherwise not be considered if they determined that there were case-specific arguments for doing so.

Finally, the Department requests comment on how it should evaluate and weigh the production experiences and data availability of countries in cases where there may be more than one potential surrogate country with reliable data and significant production of comparable merchandise. *See e.g., Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Reviews and Notice of Partial Rescission*, 72 FR 6201, 6208 (February 9, 2007).

Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received by the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the

development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address:

<http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

Dated: July 22, 2007.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7-14448 Filed 7-24-07; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 25, 2007.

ADDRESSES: Written comments should be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]".

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress 2008-2010 Operational and Pilot Surveys System Clearance—Wave 2.

Frequency: One time.

Affected Public: Individuals or household; State, Local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 46,597.

Burden Hours: 12,450.

Abstract: These materials are questionnaires to be used in 2008 for the NAEP, including a science pilot assessment, 12th grade motivational study materials, reading study and materials to be completed by school administrators, teachers and students. They are covered under the 2008-2010 NAEP assessments three-year system clearance. This is Wave 2 to be submitted under the system clearance.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3407. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to

ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E7-14391 Filed 7-24-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 24, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will

this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance—LaRS.

Frequency: Quarterly; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 12,800.

Burden Hours: 31,200

Abstract: The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,546 lenders participating in the Title IV, PART B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3416. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E7-14392 Filed 7-24-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-523-000]

Dominion Transmission, Inc.; Notice of Report of Overrun Charge/Penalty Revenue Distribution

July 17, 2007.

Take notice that on July 11, 2007, Dominion Transmission, Inc. (DTI) filed its annual report of overrun charge/penalty revenue distributions. Section 41 of the General Terms and Conditions of DTI's FERC Gas Tariff, Crediting of Unauthorized Overrun Charge and Penalty Revenues, requires distribution of such charges and revenues to non-offending customers on June 30 of each year, and filing of the related report within 30 days of the distribution. DTI distributed the penalty revenues to customers on June 29, 2007. Included in the distribution was overrun penalty revenue DTI received from offending customers for the twelve-month period ending March 31, 2007, with interest calculated through June 30, 2007.

DTI states that copies of the transmittal letter and summary workpapers are being mailed to DTI's customers and to all interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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.

Intervention and Protest Date: 5 p.m. Eastern Time July 24, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–14300 Filed 7–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–525–000]

Energy West Development, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 2007.

Take notice that on July 11, 2007, Energy West Development, Inc. (Energy West) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached to the filing, with an effective date of September 1, 2007.

Energy West states that the purpose of the filing is to make certain changes to Energy West’s FERC Gas Tariff in compliance with Order No. 587–S and to request extensions of time to implement certain NESB standards.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission’s regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–14299 Filed 7–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–522–000]

Energy West Development, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 2007.

Take notice that on July 11, 2007, Energy West Development, Inc., (Energy West) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached to the filing, with an effective date of August 10, 2007.

Energy West states that the purpose of the filing is to make certain minor housekeeping changes and to update various tariff provisions in Energy West’s FERC Gas Tariff, Original Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance

with the provisions of Section 154.210 of the Commission’s regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7–14301 Filed 7–24–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–965–000]

EnergyCo Marketing and Trading, LLC; Notice of Issuance of Order

July 17, 2007.

EnergyCo Marketing and Trading, LLC (EnergyCo) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. EnergyCo also requested waivers of various Commission regulations. In particular, EnergyCo requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EnergyCo.

On July 16, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the

requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests.

Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by EnergyCo should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is August 15, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, EnergyCo is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EnergyCo, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of EnergyCo's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14305 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-480-001]

Hardy Storage Company, LLC; Notice of Filing

July 17, 2007.

Take notice that on July 11, 2007, Hardy Storage Company, LLC (Hardy) tendered for filing as part of its FERC Gas Tariff, Original Revised Volume No. 1, as part of its FERC Gas Tariff, First Revised Sheet No. 93B and First Revised Sheet No. 93C, bearing a proposed and effective date of July 6, 2007.

Hardy is filing the subject revised tariff sheets for the purpose of correcting certain typographical errors that were discovered after the issuance of the Commission's June 29, 2007 Letter Order accepting Hardy's proposed changes to the creditworthiness provisions of its Tariff.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14302 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06-407-002]

Missouri Interstate Gas, LLC; Notice of Compliance Filing

July 17, 2007.

Take notice that on July 5, 2007, Missouri Interstate Gas, LLC, (Missouri) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of October 1, 2007.

Missouri states that the filing is being made in compliance with the Commission's April 20, 2007 order in the above referenced proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14308 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-526-000]

Saltville Gas Storage Company L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 2007.

Take notice that on July 13, 2007, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A of the filing, to become effective August 15, 2007.

Saltville states that copies of its filing have been served upon all affected customers of Saltville and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14298 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07-44-001]

Southeast Supply Header, LLC; Notice of Compliance Filing

July 16, 2007.

Take notice that on July 10, 2007, Southeast Supply Header, LLC (SESH) tendered for filing certain revised original tariff sheets from the Pro Forma FERC Gas Tariff as part of its application for certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in the above-referenced proceeding.

SESH states that the filing is being made in compliance with the Commission's order issued on May 17, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll-free). For TTY, call (202) 502-8659.

Protest Date: 5 p.m. Eastern Time on July 23, 2007.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14307 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07-1010-000]

Sumas Cogeneration Company, L.P.; Notice of Issuance of Order

July 17, 2007.

Sumas Cogeneration Company, L.P. (Sumas) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Sumas also requested waivers of various Commission regulations. In particular, Sumas requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Sumas.

On July 16, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Sumas should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is August 15, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Sumas is authorized to issue securities and assume obligations or liabilities as a guarantor,

indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Sumas, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Sumas' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14306 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07-339-001]

Texas Gas Transmission, LLC; Notice of Compliance Filing

July 17, 2007.

Take notice that, on July 13, 2007, Texas Gas Transmission, LLC submitted a compliance filing pursuant to Order After Technical Conference, 120 FERC ¶ 61,008, issued July 3, 2007, in Docket No. RP07-339-000.

Texas Gas states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of

Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14303 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 16, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07-115-000

Applicants: Iberdrola Energias Renovables S.A.U.

Description: Iberdrola Energias Renovables SAU submits an Application for order under Section 203(a)(1) of the FPA authorizing disposition of Jurisdictional Facilities resulting from an initial public offering & request for waivers.

Filed Date: 07/13/2007.

Accession Number: 20070716-0188.

Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-2801-018.

Applicants: PacifiCorp.

Description: Change in Status of PacifiCorp.

Filed Date: 07/13/2007.

Accession Number: 20070713-5022.

Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER00-2706-005; ER06-754-002; ER01-2760-004; ER01-2066-005; ER02-963-007; ER98-4515-009; ER06-744-003; ER03-28-003; ER03-398-010; ER01-1418-009; ER02-1238-009; ER99-3450-007; ER99-2769-008; ER01-390-004; ER06-733-004.

Applicants: Foote Creek IV, LLC; Auburndale Power Partners LP; Ridge Crest Wind Partners, LLC; Allegheny Energy Supply Lincoln Generation; Crete Energy Venture, LLC; Cadillac Renewable Energy LLC; Sabine Cogen, LP; Walton County Power, LLC; Washington County Power, LLC; Effingham County Power, LLC; MPC Generating, LLC; Foote Creek II, LLC; Foote Creek III, LLC; Chandler Wind Partners, LLC; Midland Cogeneration Venture Limited Partnership.

Description: ArcLight Capital Partners, LLC et al. submits this notification of a change-in-status for Entities with Market-Based Rate Authority.

Filed Date: 07/11/2007.

Accession Number: 20070713-0050.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER02-1330-008; ER03-358-003.

Applicants: Pacific Gas and Electric Company; Calpine Corporation.

Description: Pacific Gas and Electric Co. and Calpine Corporation submit a Settlement Agreement re the Generator Special Facilities Agreements and Generator Interconnection Agreements for Los Medanos Energy Center, LLC.

Filed Date: 07/05/2007.

Accession Number: 20070712-0162.

Comment Date: 5 p.m. Eastern Time on Thursday, July 26, 2007.

Docket Numbers: ER07-591-002.

Applicants: Exel Power Sources, LLC.

Description: Exel Power Sources, LLC submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority etc.

Filed Date: 07/11/2007.

Accession Number: 20070713-0053.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07-911-001.

Applicants: RPL Holdings, LLC.

Description: RPL Holdings, Inc submits this report on refunds with respect to the delivery of test power from RPL Holdings 65 MW Facility to the PJM Interconnection, LLC electricity market.

Filed Date: 07/11/2007.

Accession Number: 20070713-0055.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07-939-001.

Applicants: Columbia Utilities Power, LLC.

Description: Columbia Utilities Power, LLC submits an amendment to its petition for acceptance of initial rate filing.

Filed Date: 07/12/2007.

Accession Number: 20070716-0184.

Comment Date: 5 p.m. Eastern Time on Thursday, August 02, 2007.

Docket Numbers: ER07-959-001.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Cooperative, Inc. amends its May 30, 2007 Filing by submitting First Revised Sheet 1 to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 07/10/2007.

Accession Number: 20070712-0174.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 31, 2007.

Docket Numbers: ER07-960-001.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Wolverine Power Supply Cooperative, Inc. amends its May 30, 2007 Filing of the Wholesale Distribution Service Agreement with Tower Kleber Limited Partnership.

Filed Date: 07/10/2007.

Accession Number: 20070712-0175.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 31, 2007.

Docket Numbers: ER07-1031-001.

Applicants: KeyTex Energy LLC.

Description: KeyTex Energy LLC submits an amendment to its June 13, 2007, Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 07/11/2007.

Accession Number: 20070713-0054.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07-1090-001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits a corrected version of its Wholesale Market Participation Agreement.

Filed Date: 07/10/2007.

Accession Number: 20070711-0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 31, 2007.

Docket Numbers: ER07-1142-000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits revisions to their Open Access Transmission Tariff.

Filed Date: 07/10/2007.

Accession Number: 20070712-0179.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 31, 2007.

Docket Numbers: ER07-1143-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the Expedited Service and Interconnection Agreement with Wintec Energy LTD designated as Service Agreement 28.

Filed Date: 07/13/2007.

Accession Number: 20070716-0186.

Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Docket Numbers: ER07-1144-000.

Applicants: American Transmission Company LLC and Midwest Independent Transmission System Operator, Inc.

Description: American Transmission Co. LLC et al. submits the proposed Attachment FF-ATCLLC to its Open Access Transmission and Energy Market Tariff.

Filed Date: 07/11/2007.

Accession Number: 20070713-0056.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07-1145-000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc., agent for Entergy Arkansas, Inc. et al., submits revisions to the Interconnection and Operating Agreement with Mississippi Delta Energy Agency.

Filed Date: 07/11/2007.

Accession Number: 20070713-0057.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Docket Numbers: ER07-1147-000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation, agent for Indiana Michigan Power Company, submits an executed Letter Agreement 2 w/ Michigan Electric Transmission Company dated 7/2/07.

Filed Date: 07/13/2007.

Accession Number: 20070716-0185.

Comment Date: 5 p.m. Eastern Time on Friday, August 03, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07-53-000.

Applicants: Transportista Elctrica Centroamericana.

Description: Foreign Utility Company Notice of Self-Certification.

Filed Date: 07/11/2007.

Accession Number: 20070711-5041.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 01, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern

time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7-14309 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 12778-000]****Fall Creek Hydro, LLC; Notice of Scoping Meetings, Site Visit, and Soliciting Scoping Comments**

July 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and are available for public inspection:

- a. *Type of Application:* New Major License.
- b. *Project No.:* 12778-000.
- c. *Date filed:* February 16, 2007.
- d. *Applicant:* Fall Creek Hydro, LLC.
- e. *Name of Project:* Fall Creek Dam Hydroelectric Project.
- f. *Location:* On Fall Creek, near the towns of Springfield and Eugene, Lane County, Oregon. The project is located in the Willamette National Forest.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442; telephone (208) 745-0834 or by e-mail at bsmith@nwpwrservices.com.
- i. *FERC Contact:* Kim A. Nguyen, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; telephone (202) 502-6105 or by e-mail at kim.nguyen@ferc.gov.
- j. *Deadline for filing scoping comments:* September 17, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

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 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.

Scoping comments 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 is not ready for environmental analysis at this time.

l. The Fall Creek Dam Hydroelectric Project will consist of a powerhouse

with three turbine generator units of approximately 10 megawatt capacity. Fall Creek Hydro proposes to: (1) Bifurcate the existing south rectangular conduits, about 50 feet upstream of the outlet, with a steel penstock; (2) construct a new valve house with hydraulically operated vertical gates; (3) trifurcate the steel penstock at the entrance to the powerhouse into three penstocks feeding the three turbines; (4) construct a new powerhouse located on the west bank of the existing stilling basin, immediately downstream of the toe of the dam; and (5) construct a 12.5-kilovolt single-circuit transmission line running from the powerhouse to the existing line at the base of the dam. Fall River Hydro will use the head from the Corps of Engineer's (Corps) Fall Creek Dam and will operate the project in coordination with the Corps' authority to operate the dam for flood control, irrigation, navigation, improved downstream water quality, and water-based recreation.

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. *Scoping Process:* The Commission intends to prepare an Environmental assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one daytime scoping meeting and one evening meeting. The daytime scoping meeting will focus on resource agency and non-governmental organization concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings and to assist the

staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Scoping Meeting*Date:* Thursday, August 16, 2007.*Time:* 9 a.m.*Place:* Lane Community College—Center for Meeting and Learning.*Address:* 4000 East 30th Avenue, Eugene, Oregon.**Evening Scoping Meeting***Date:* Thursday, August 16, 2007.*Time:* 7 p.m.*Place:* Lane Community College—Center for Meeting and Learning.*Address:* 4000 East 30th Avenue, Eugene, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link (see item m above).

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 9 a.m. on August 17, 2007. All interested individuals, organizations, and agencies are invited to attend. All participants planning to attend should call Kim Nguyen of FERC at (202) 502-6105 or Erik Steimle of Fall River Hydro at (503) 219-3750 no later than August 9, 2007. We will be meeting at the base of Fall Creek Dam. All participants are responsible for their own transportation to the site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,
Secretary.

[FR Doc. E7-14304 Filed 7-24-07; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2003-0013, FRL-8445-4]

Agency Information Collection Activities; Proposed Collection; Comment Request: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act); EPA ICR No. 2103.03; OMB No. 2040-0253

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on September 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 24, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2003-0013, by one of the following methods:

- *www.regulations.gov*: Follow the online instructions for submitting comments.

- *E-mail*: OW-Docket@epa.gov.

- *Mail*: EPA Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2003-0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 www.regulations.gov or e-mail. The 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Tara Johnson, Water Security Division, Office of Ground Water and Drinking Water, Mailcode: 4608T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-564-6186; fax number: 202-566-0055; e-mail address: Johnson.tara@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OW-2003-0013A, which is available for online viewing at www.regulations.gov, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone for the Water Docket is 202-566-2426.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in

the system, select "search," then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Affected entities: Entities potentially affected by this action are community water systems serving more than 3,300 persons.

Title: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act).

ICR numbers: EPA ICR No. 2103.03; OMB Control No. 2040-0253.

ICR status: This ICR is currently scheduled to expire on September 30, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Bioterrorism Act requires each community water system serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. These requirements are mandatory under the statute. EPA will use the information collected under this ICR to determine whether community water systems have conducted vulnerability assessments and prepared or revised emergency response plans in compliance with that Act. EPA is required to protect all vulnerability assessments and all information derived from them from disclosure to unauthorized parties and has established an Information Protection Protocol describing how that will be accomplished.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 117.9 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 80.

Frequency of response: once.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 5000.

Estimated total annual costs: \$98,000. This includes an estimated burden cost of \$1225/respondent and an estimated cost of \$765.25/respondent for capital investment or maintenance and operational costs.

Are There Changes in the Estimates from the Last Approval?

There is a decrease of 2,908,929 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's need to collect documents that were included in the original estimate, but still have not been submitted to the Agency.

What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 18, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7-14363 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[UST-2007-0001, FRL-8444-6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures, EPA ICR Number 1360.07, OMB Control Number 2050-0068

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection which is scheduled to expire on January 31, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 30, 2007.

ADDRESSES: Submit your comments, referencing docket ID number EPA-HQ-UST-2007-0494 to EPA online using EDOCKET (our preferred method), by e-mail to rcra-docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Underground Storage Tank (UST) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hal White, Office of Underground Storage Tanks, Mail Code 5403P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603-7177; fax number: (703) 603-0175; e-mail address: white.hal@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number EPA-HQ-UST-2007-0494 which is available for public viewing at the UST Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the UST Docket is (202) 566-0270. An electronic version of the public docket is available

through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI or whose disclosure is otherwise restricted by statute is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to <http://www.epa.gov/edocket>.

Affected entities: Entities potentially affected by this action are those facilities that own and operate underground storage tanks (USTs) and those states that implement the UST programs.

Title: "Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures."

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for UST systems, as may be necessary, to protect human health and the environment, and procedures for approving state programs in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280, and state program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected for new and existing UST system operations and financial requirements are used by

owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operation of UST systems, as well as to demonstrate compliance with regulations. EPA believes strongly that if the minimum requirements specified under the regulations are not met, neither the facilities nor EPA can ensure that UST systems are being managed in a manner protective of human health and the environment.

EPA uses state program applications to determine whether to approve a state program. Before granting approval, EPA must determine that programs will be no less stringent than the federal program and contain adequate enforcement mechanisms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: EPA estimates the total annual respondent burden for all activities covered in this proposed ICR to be 6,132,237 hours. The total annual respondent cost burden is estimated to be \$674,448,929 (\$330,941,882 in labor costs; \$263,256,390 in operation and maintenance costs; and \$80,250,656 in capital/startup costs). The Agency estimates the average total annual number of respondents will be 254,668 (i.e., 254,612 UST facilities and 56 states) and the frequency of their response will depend upon the individual reporting and recordkeeping requirements.

Based on this analysis, the public reporting burden for UST facilities is estimated to average 12 hours per

respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. The recordkeeping burden for UST facilities is estimated to average 12 hours per respondent per year. This estimate includes time for gathering information and for developing and maintaining records.

For states applying for program approval, the reporting burden is estimated to average 13 hours per respondent per year. This estimate includes time for preparing and submitting an application and associated information. The recordkeeping burden is estimated to average 15 hours per respondent per year. This estimate includes time for maintaining application files.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 13, 2007.

Cliff Rothenstein,

Director, Office of Underground Storage Tanks.

[FR Doc. E7-14376 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0612; FRL-8141-9]

Pesticide Program Dialogue Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs is inviting nominations of qualified candidates to be considered for appointment to the Pesticide Program Dialogue Committee (PPDC).

EPA's current Charter for the PPDC will expire in November 2007. EPA intends to seek renewal of the PPDC Charter for another 2-year term, November 2007 to November 2009, in accordance with the Federal Advisory Committee Act.

DATES: Nominations must be e-mailed or postmarked no later than August 17, 2007.

ADDRESSES: Nominations should be e-mailed or submitted in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-4775; fax number: (703) 308-4776; e-mail address: fehnenbach.margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, and especially to persons who work in agricultural settings or urban settings and who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially interested entities may include but are not limited to: Environmental, consumer and farmworker groups; agricultural workers and farmers; pesticide industry and trade associations; pesticide users and growers, pest consultants, public health organizations; food processors; State, local and Tribal governments; academia; and the public. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0612. Publicly accessible docket materials are available either in

the electronic docket at <http://www.regulations.gov>, or, available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. Background

The Office of Pesticide Programs is entrusted with the responsibility to help ensure the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92-463, in September 1995 for a 2-year term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA is seeking to renew the current PPDC Charter, which expires in November 2007, for another 2-year term. EPA intends to appoint members to 2-year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: Pesticide industry and trade associations; environmental/public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal/State/local and Tribal governments; academia; and public health organizations; individuals who work on urban pest management issues; and the general public.

Copies of the PPDC charter are filed with appropriate committees of Congress, the Library of Congress, and are available upon request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 13, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7-14332 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

National Advisory Council for Environmental Policy and Technology

[FRL-8445-5]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and tribal governments. The purpose of this meeting is to discuss the NACEPT agenda, including sustainable water infrastructure, environmental stewardship, cooperative conservation, energy and the environment, and environmental indicators. A copy of the agenda for the meeting will be posted at <http://www.epa.gov/ocem/nacept/cal-nacept.htm>.

DATES: NACEPT will hold a two day open meeting on Thursday, August 9, 2007, from 8:30 a.m. to 1 p.m. and Friday, August 10, 2007 from 12 p.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Boston Park Plaza Hotel, 50 Park Plaza at Arlington Street, Boston, MA, 02116. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, altieri.sonia@epa.gov, (202) 564-0243, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202-564-0243 or altieri.sonia@epa.gov. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 13, 2007.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 07-3634 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0589; FRL-8140-6]

Naphthenate Salts Risk Assessment; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment(s), and related documents for the pesticides copper naphthenate and zinc naphthenate (the naphthenate salts), and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for the naphthenate salts through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0589, by one of the following methods:

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

normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0589. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](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 [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Rebecca Cool, Antimicrobials Division (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8024; fax number (703) 308-8481; e-mail address: cool.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://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.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for the naphthenate salts, and soliciting public comment on risk management ideas or proposals. The naphthenate salts are microbiocide/microbiostat, miticide, fungicides, insecticides, algacide and herbicide/terrestrial chemicals. EPA developed the risk assessments and risk characterization for the naphthenate salts through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The naphthenate salts are used predominantly in industrial and commercial wood preservation for non-pressure (dip/brush/spray) and pressure treatments (vacuum/full-cell) to protect against fungal rot, decay, termites and wood-boring insects in unfinished wood and various fabricated wood products. These preservatives are also used for remedial treatments to in-service poles (internal/external surfaces at ground or below-ground level via brush/trowel, mechanical injection, or bandage wrap). Treated wood is specified for exterior above-ground, ground-contact, below-ground and fresh or salt water contact use applications. The naphthenate salts are also used as protective wood

preservative surface treatments when applied to bare seasoned wood. Copper/zinc naphthenates are also used for mainly commercial/industrial materials preservation of cellulose-based cordage/textiles. Products are used as fungistats to control rot and mildew and are registered for impregnation by dip (primarily), or by spray and brush surface treatment. It is additionally used for incorporation into industrial textiles meeting military or government-specified needs. Examples of the materials/wood preserved using naphthenate salts include cellulose-based fibers in cordage (ropes, twine, nets) and non-apparel and industrial textiles (tents, awnings, tarpaulins, canvas products, burlap, truck and boat covers, and non-rubber fabrics); outdoor wood building materials, such as particle board; lumber, patio decking, fence posts, and other wood products; and in-service wood utility poles and similar members.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for the naphthenate salts. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as dermal toxicity data to support the wood preservation use; inhalation toxicity data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for the naphthenate salts. Risks of concern associated with the use of the naphthenate salts are: Occupational handler exposure and risks of concern resulting from preservation of textiles and wood preservation; Residential handler exposure and risks of concern resulting from application of preservative coatings/water repellents for protection of outdoor-use wood/textiles (via brush/roller and low pressure sprayer). In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as

a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to the naphthenate salts, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL-7357-9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For the naphthenate salts, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for the naphthenate salts. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review was completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Naphthenate salts

Dated: July 17, 2007.

Betty Shackelford,

*Acting Director, Antimicrobials Division,
Office of Pesticide Programs.*

[FR Doc. E7-14173 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0588; FRL-8140-8]

Acrolein Ecological Risk Assessment; Notice of Availability, and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's ecological risk assessment, and related documents for the pesticide acrolein, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for acrolein through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. The ecological risk assessment is being released with this Federal Register Notice. The human health risk assessment for acrolein is currently under development and will be released within a few months. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0588, by one of the following methods:

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

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

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

Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0588. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](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 [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are

from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Amaris Johnson, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-9542; fax number: (703) 308-7070; e-mail address: johnson.amaris@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://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.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information subject heading, **Federal Register** date and page number.

- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its ecological risk assessment and related documents for acrolein, an aquatic herbicide and biocide, and soliciting public comment on risk management ideas or proposals. The human health risk assessment will be released later. Acrolein is primarily used in irrigation canals and reservoirs to treat aquatic weeds, such as pondweed. Acrolein's secondary use is in oil fields, as a biocide to remove bacteria during petroleum production. EPA developed the ecological risk assessment and risk characterization for acrolein through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on ecological risk management for acrolein. Risks of concern associated with the use of acrolein are: acute and chronic risk to freshwater fish and estuarine/marine fish and invertebrates, acute and chronic risk to mammals, and acute risk to birds and aquatic plants. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures for ecological risks of concern from the irrigation canal use.

EPA seeks to achieve environmental justice, the fair treatment and

meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to acrolein, compared to the general population.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for acrolein. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review was to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7-14329 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0400; FRL-8142-9]

4-Aminopyridine Risk Assessments; Notice of Availability; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of May 30, 2007 (72 FR 29995) (FRL-8132-2), concerning the availability of EPA's ecological risk assessments, and related documents for the pesticide 4-aminopyridine. This document is extending the comment period for 4-aminopyridine for 23 days. The new comment period ends August 22, 2007.

DATES: Comments must be received on or before August 22, 2007.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** of May 30, 2007.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0166; fax number: (703) 308-8090; e-mail address: hall.katie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** of May 30, 2007. In that document, EPA announced the availability of ecological risk assessments and opened a 60-day

public comment period. EPA is hereby extending the comment period, which was set to end on July 30, 2007.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration. Further provisions are made to allow a public comment period. However, the Administrator may extend the comment period, if additional time for comment is requested. In this case, the Humane Society of the United States and the Animal Protection Institute have requested additional time to develop comments. The Agency believes that an additional 23 days is warranted.

List of Subjects

Environmental protection, Fumigants, Pesticides and pests.

Dated: July 18, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7-14367 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0470; FRL-8140-7]

Benzyl Benzoate; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registrations to terminate uses of certain products containing the pesticide benzyl benzoate. The request would not terminate the last benzyl benzoate products registered for use in the U.S. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of

this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0470, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0470. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](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 [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Laura Parsons, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5776; fax number: (703) 308-7070; e-mail address: parsons.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Request to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from registrant S.C. Johnson and Son, Inc. to cancel and to terminate uses of two benzyl benzoate product registrations. Benzyl benzoate, a member of the benzyl derivative family, is an insecticide/miticide used to control dust mites in carpets, mattresses, upholstery, and on furniture, as well as for control of mites on dogs. In a letter dated June 6, 2007, S.C.

Johnson and Son, Inc. requested EPA to cancel affected product registrations identified in this notice (Table 1). Specifically, on January 13, 2000, S.C. Johnson and Son, Inc. issued an immediate voluntary recall of Allercare Dust Mite Powder (Raid Product 319) and Allercare dust Mite Allergen Spray for Carpet and Upholstery (Raid Product 420). The recall was prompted by numerous reports of adverse health reactions in human and pets exposed to the products. S.C. Johnson and Son, Inc. has requested the cancellation of the registrations of two products, Raid Product 319 and Raid Product 420. The products have not been marketed since the 2000 recall. The cancellation will include no existing stocks provisions.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel benzyl benzoate product registrations. The affected products and the registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The benzyl benzoate registrant has requested that EPA waive the 180-day comment period. EPA will provide a 30-day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1.—BENZYL BENZOATE PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Company
4822-433	Raid Product 319	S.C. Johnson and Son, Inc.
4822-480	Raid Product 420	S.C. Johnson and Son, Inc.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
4822	S.C. Johnson and Son, Inc. 1525 Howe Street Racine, WI 53403-2236

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Benzyl Benzoate

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 24, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and

which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary cancellation is granted as discussed above, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7-14290 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0508; FRL-8140-5]

Cancellation of Pesticides for Non-payment of Year 2007 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October, 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee, due January 15, 2007, has gone unpaid for 721 registrations. Section 4(i)(5)(G) of FIFRA provides that the Administrator may cancel these registrations by order and without a hearing; orders to cancel all 721 of these registrations have been issued within the past few days.

FOR FURTHER INFORMATION CONTACT: For further information on the maintenance fee program in general, contact by mail: John Jamula, Office of Pesticide Programs (7504P), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (703) 305-6426; e-mail address: jamula.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this apply to me?

You may be potentially affected by this notice if you are an EPA registrant with any approved product registration(s). Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get additional information or copies of support documents?

1. *Docket.* EPA has established a docket for this action under docket identification [ID] number EPA-HQ-OPP-2007-0508. Publicly available docket materials are available either in the electronic docket at <http://regulations.gov> or in hard copy at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>.

II. Introduction

Section 4(i)(5) of FIFRA as amended in October 1988 (Public Law 100-532), December 1991 (Public Law 102-237), and again in August 1996 (Public Law 104-170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under section 3 as well as those granted under section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991,

Public Law 102-237, amended FIFRA to allow the Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when he determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 182 minor agricultural use registrations at the request of the registrants.

In fiscal year 2007, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Act (PRIA) was passed by Congress in January 2004. PRIA became effective in March 2004 and authorized the Agency to collect \$21 million in maintenance fees in fiscal year 2007. In late December 2006, all holders of either section 3 registrations or section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in mid-February to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,730 section 3 registrations, or about 96% of the registrations on file in December. Fees have been paid for about 2,193 section 24(c) registrations, or about 86 percent of the total on file in December. Cancellations for non-payment of the maintenance fee affect about 466 Section 3 registrations and about 255 Section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2008, one year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the U.S. and which have been packaged, labeled and released for shipment prior to the effective date of the action.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through Special Reviews or other Agency actions. These general

provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-payment

Table 1 lists all of the Section 24(c) registrations, and Table 2 Lists all of the Section 3 registrations which were canceled for non-payment of the 2007 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

SLN no.	Product Name
000100 AL- 00- 0004	Cyclone Concentrate/gramoxone Max
051036 AL- 03- 0001	Pounce 3.2 EC Insecticide
000100 AL- 03- 0004	Tilt Fungicide
000100 AL- 04- 0002	Quilt Fungicide
000100 AL- 06- 0005	Zephyr 0.15 EC
010163 AL- 95- 0001	Imidan 70-WP Agricultural Insecticide
000352 AR- 00- 0008	Linex 50 DF
019713 AR- 02- 0010	Drexel Captan 50W
051036 AR- 02- 0011	Pounce 3.2 EC Insecticide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 AR- 03- 0008	Tilt Fungicide
000100 AR- 05- 0001	Quilt Fungicide
000279 AR- 05- 0004	Command 3ME
000279 AR- 06- 0001	Command 3ME
010163 AR- 93- 0007	Imidan 70-WP Agricultural Insecticide
071649 AR- 99- 0007	Bayluscide 70% Wettable Powder
073748 AZ- 06- 0008	Masterline Permethrin Plus C
010163 AZ- 97- 0002	Lorsban 50W Insecticide In Water Soluble Packets
073318 CA- 00- 0004	Pro-Gibb 4% Liquid Concentrate
053219 CA- 01- 0025	M-Pede Insecticide/Fungicide
000524 CA- 02- 0011	Mon 78112 Herbicide
036029 CA- 03- 0006	Ground Squirrel Bait By Wilco
079407 CA- 03- 0008	Towerchlor 90 Tablets

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 CA- 04- 0005	Cyclone Concentrate/gramoxone Max
000100 CA- 04- 0006	Cyclone Concentrate/gramoxone Max
000100 CA- 05- 0006	Gramoxone Max
066222 CA- 06- 0015	Thionex 3EC Insecticide
034704 CA- 91- 0006	De-Fend W-25 Insecticide
001812 CA- 93- 0004	Kocide 101
010163 CA- 93- 0023	Botran 75 W
010163 CA- 95- 0011	Botran 75 W-Fungicide
000100 CA- 97- 0023	Fusilade Dx Herbicide
000100 CO- 02- 0005	Actara
000524 CO- 04- 0002	Roundup Originalmax
000100 CO- 04- 0003	Gramoxone Max Herbicide
007969 CO- 05- 0003	Headline Fungicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 CO— 06— 0006	Axial Herbicide
000100 CO— 98— 0011	Mefenoxam EC
000100 DE— 03— 0001	Cyclone Max Concentrate/gramoxone
000100 DE— 03— 0002	Cyclone Max Concentrate/gramoxone
010163 DE— 04— 0001	Sandea Herbicide
000100 FL— 01— 0001	Cyclone Max Concentrate/gramoxone
000100 FL— 01— 0002	Cyclone Max Concentrate/gramoxone
000100 FL— 01— 0004	Cyclone Max Concentrate/gramoxone
000100 FL— 01— 0005	Cyclone Max Concentrate/gramoxone
000279 FL— 03— 0009	Carfentrazone Row Herbicide
000100 FL— 04— 0009	Gramoxone Max Herbicide
000100 FL— 05— 0001	Switch 62.5wg

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 FL— 88— 0016	Tilt Fungicide
000100 FL— 92— 0006	Citation Insecticide
067858 FL— 94— 0001	Bayluscide 70% Wettable Powder
063935 FL— 96— 0005	Pursuit DG Herbicide
000100 GA— 01— 0003	Cyclone Max Concentrate/gramoxone
000100 GA— 01— 0004	Cyclone Max Concentrate/gramoxone
000100 GA— 04— 0003	Quilt Fungicide
000100 GA— 05— 0001	Gramoxone Max
000100 GA— 05— 0002	Gramoxone Max
000100 GA— 06— 0001	Gramoxone Inteon
000100 GA— 06— 0003	Zephyr 0.15ec
010163 GA— 94— 0009	Imidan 70-Wp Agricultural Insecticide
000100 GA— 98— 0003	Tilt Fungicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
019713 HI—00— 0004	Drexel Sulfur 90W
000100 HI—02— 0007	Cyclone Concentrate/gramoxone Max
000100 HI—02— 0008	Gramoxone Max
075743 HI—03— 0004	Bayleton 50% Wettable Powder
061667 HI—03— 0006	Ag Sanitizer 12.5%
034704 HI—93— 0004	Clean Crop Dimethoate 400
000100 IA—03— 0002	Protege
010163 ID—01— 0002	Prokil Dimethoate E267
000100 ID—02— 0004	Actara
000100 ID—02— 0009	Cyclone Concentrate/gramoxone Max
000279 ID—03— 0007	Aim Herbicide
080225 ID—05— 0005	Eptam 7E
007969 ID—05— 0006	Outlook Herbicide
000100 ID—05— 0007	Quilt Fungicide
080225 ID—05— 0011	Eptam 7E
034704 ID—91— 0014	Clean Crop Phorate 20G

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
010163 ID-92- 0008	Gowan Dimethoate E267
000100 ID-95- 0012	Tilt Fungicide
000100 ID-98- 0004	Tilt Fungicide
010163 IN-97- 0003	Imidan 70-WP Agricultural Insecticide
000100 IN-98- 0003	Tilt Fungicide
000100 KS- 03- 0001	Tilt Fungicide
007969 KS- 99- 0007	Facet 75 Df Herbicide
000100 KY- 02- 0004	Cyclone Concentrate/gramoxone Max
000100 KY- 05- 0002	Tilt
000352 LA- 00- 0016	Volcano Leafcutter Ant Bait
000279 LA- 01- 0002	Command 3ME Microencapsulated Herbicide
000100 LA- 01- 0005	Cyclone Concentrate/gramoxone Max
000100 LA- 01- 0006	Cyclone Concentrate/gramoxone Max
002217 LA- 01- 0009	Acme Hi-Dep Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000352 LA- 01- 0016	Velpar L Herbicide
000279 LA- 04- 0001	Command 3ME Microencapsulated Herbicide
010163 LA- 05- 0010	Imidan 70-W
000100 LA- 06- 0012	Envoke Herbicide
034704 LA- 92- 0014	Clean Crop Phorate 20G
010163 MD- 05- 0001	Sandea Herbicide
008329 MD- 06- 0002	Biomist 30+30 ULV
000100 MD- 95- 0001	Gramoxone Extra Herbicide
010163 ME- 00- 0002	Imidan 70-WP Agricultural Insecticide
000100 ME- 03- 0002	Cyclone Concentrate/gramoxone Max
000100 ME- 03- 0003	Cyclone Concentrate/gramoxone Max
000100 MI-01- 0001	Dual Magnum Herbicide
000100 MI-03- 0005	Dual Magnum Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 MI-04- 0007	Dual Magnum Herbicide
010163 MI-93- 0006	Imidan 70-WP Agricultural Insecticide
000100 MI-95- 0007	Tilt Fungicide
000100 MI-98- 0001	Tilt Fungicide
000100 MN- 01- 0012	Actara
000100 MN- 03- 0013	Protege
000100 MN- 03- 0015	Cyclone Concentrate/gramoxone Max
034704 MN- 92- 0001	Clean Crop Malathion 57EC
000100 MN- 98- 0003	Tilt Fungicide
000100 MO- 04- 0006	Quilt Fungicide
000279 MO- 05- 0001	Command 3ME Microencapsulated Herbicide
000279 MO- 06- 0001	Command 3ME
000100 MO- 06- 0002	Envoke Herbicide
000100 MO- 95- 0003	Gramoxone Extra Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
059639 MO— 96— 0009	Stellar Herbicide
000100 MO— 98— 0003	Tilt Fungicide
000100 MP— 05— 0019	Zephyr 0.15 EC Miticide/insecticide
000100 MS— 01— 0029	Cyclone Concentrate/gramoxone Max
070829 MS— 02— 0005	Clearout 41 Plus
070829 MS— 04— 0002	Clearout 41
000100 MS— 04— 0011	Quilt Fungicide
000100 MS— 05— 0019	Zephyr 0.15 EC
000100 MS— 06— 0001	Gramoxone Inteon
000100 MS— 06— 0016	Envoke Herbicide
010163 MS— 96— 0003	Imidan 70-WP Agricultural Insecticide
000100 MS— 98— 0004	Tilt Fungicide
051036 MS— 99— 0002	Permethrin 3.2 TC

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 MT— 03— 0004	Tilt (r)
012455 MT— 05— 0005	ZP Rodent Bait AG
000100 MT— 06— 0006	Quadris Flowable Fungicide
034704 MT— 91— 0004	Clean Crop Phorate 20G
010163 MT— 93— 0001	Gowan Dimethoate E267
010163 MT— 94— 0003	Botran 75 W
000100 NC— 00— 0003	Cyclone Concentrate/gramoxone Max
000100 NC— 01— 0002	Cyclone Concentrate/gramoxone Max
000100 ND— 01— 0007	Actara
000100 ND— 01— 0011	Touchdown Herbicide
000100 ND— 02— 0008	Cyclone Concentrate Herbicide
074530 ND— 03— 0014	Glyphosate 41 %
074530 ND— 03— 0015	Glyphosate

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 ND— 03— 0018	Tilt Fungicide
000524 ND— 04— 0006	RT Master II Herbicide
000100 ND— 06— 0005	Quadris Flowable Fungicide
000100 NJ— 02— 0002	Actigard 50wg Plant Activator
000100 NJ— 03— 0001	Cyclone Concentrate/gramoxone Max
010163 NJ— 04— 0004	Imidan 70-WP Agricultural Insecticide
008329 NJ— 99— 0007	Abate 4E Insecticide
059639 NM— 93— 0001	Payload 15 Granular
059639 NM— 93— 0002	Payload 15 Granular
004581 NV— 02— 0007	Microthiol Disperss
055429 NV— 04— 0005	CSC 80% Thiosperse/thioben
036029 NV— 04— 0007	Ground Squirrel Bait By Wilco AG
036029 NV— 93— 0003	Wilco Ground Squirrel Bait

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 NY- 04- 0005	Reward Accugel Aquatic Herbicide
000100 OH- 04- 0002	Tilt Fungicide
000100 OH- 04- 0003	Cyclone Concentrate/gramoxone Max
000100 OH- 04- 0004	Ridomil Gold EC Fungicide
012455 OH- 85- 0001	ZP Rodent Bait AG
069691 OH- 96- 0002	Mushroom Supplement Preservative
000100 OK- 02- 0001	Tilt Fungicide
000100 OK- 04- 0001	Quilt Fungicide
010163 OK- 05- 0002	Supracide 2E
005481 OK- 05- 0005	Discipline 2ec
034704 OK- 05- 0017	Simazine 4L Flowable Herbicide
000100 OK- 93- 0004	Aatrex 4I Herbicide
000100 OK- 93- 0005	Aatrex Nine-0 Herbicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
059639 OK- 95- 0001	Payload 15 Granular
059639 OK- 95- 0002	Payload 15 Granular
034704 OR- 00- 0005	Prometryne 4L Herbicide
034704 OR- 00- 0017	Saber Herbicide
000100 OR- 01- 0019	Actara 25 Wg
055260 OR- 04- 0025	Syllit Flow Fungicide
019713 OR- 04- 0026	Drexel Diazinon Insecticide
000100 OR- 05- 0011	Tilt
000100 OR- 05- 0012	Tilt
080225 OR- 05- 0026	Eptam 7-E Selective Herbicide
004271 OR- 05- 0033	Zinc Phosphide on Oats
019713 OR- 90- 0023	Drexel Diuron 4I Herbicide
010163 OR- 94- 0043	Imidan 70-WP Agricultural Insecticide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
019713 OR- 95- 0016	Drexel Captan 50W
000100 OR- 96- 0013	Tilt Gel Fungicide
000241 OR- 96- 0026	Assert Herbicide
034704 OR- 98- 0001	Clean Crop Dimethoate 400
010163 OR- 99- 0055	Diclor Fungicide
010163 OR- 99- 0056	Botran 75 W-Fungicide
051036 PA- 03- 0001	Diazinon AG 500
000100 PA- 03- 0002	Cyclone Concentrate/gramoxone Max
012455 PA- 82- 0016	Ditrac Rat and Mouse Bait
000400 PA- 98- 0001	Turficide 4F
075451 PR- 02- 0001	Avitrol Powder Mix
069592 PR- 04- 0001	Serenade AS
069592 PR- 04- 0003	Serenade AS

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 SC— 01— 0001	Cyclone Concentrate/gramoxone Max
051036 SC— 03— 0003	Pounce 3.2 EC Insecticide
000100 SC— 06— 0002	Envoke Herbicide
010163 SC— 95— 0004	Imidan 70-WP Agricultural Insecticide
000524 SD— 04— 0009	RT Master II Herbicide
059639 TN— 00— 0001	Orthene 97 Pellets
000100 TN— 03— 0002	Tilt Fungicide
000100 TN— 04— 0001	Cyclone Concentrate/gramoxone Max
000100 TN— 04— 0002	Cyclone Concentrate/gramoxone Max
000100 TN— 04— 0003	Cyclone Concentrate/gramoxone Max
000100 TN— 04— 0004	Quilt Fungicide
000100 TN— 05— 0004	Zephyr 0.15ec

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
000100 TN— 06— 0001	Zephyr 0.15ec
000100 TN— 06— 0003	Envoke Herbicide
051036 TX— 01— 0014	Diazinon AG 500
000100 TX— 03— 0004	Cyclone Concentrate/gramoxone Max
000100 TX— 03— 0009	Gramoxone Max Herbicide
000100 TX— 04— 0006	Cyclone Concentrate Herbicide
000100 TX— 04— 0022	Quilt Fungicide
000279 TX— 05— 0002	Command 3ME Herbicide
000279 TX— 06— 0001	Command 3ME Herbicide
000100 TX— 06— 0019	Envoke Herbicide
059639 TX— 96— 0003	Orthene 90 Wsp
000352 TX— 97— 0007	Dupont Staple Herbicide
000100 TX— 98— 0001	Tilt Fungicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
010163 UT— 01— 0005	Prokil Carbaryl Bait
000100 VA— 02— 0003	Actigard 50wg Plant Activator
000100 VA— 03— 0001	Actigard 50wg Plant Activator
010163 VA— 05— 0002	Sandea Herbicide
012455 VA— 82— 0015	Ditrac Rat and Mouse Bait
000100 VA— 98— 0003	Tilt Fungicide
000100 WA— 01— 0030	Actara 25 Wg
010163 WA— 01— 0032	Imidan 70-WP Agricultural Insecticide
051036 WA— 03— 0011	Diazinon AG 500
000100 WA— 04— 0012	Cyclone Concentrate Herbicide
000100 WA— 04— 0013	Cyclone Concentrate Herbicide
004581 WA— 04— 0016	Microthiol Disperss
000100 WA— 04— 0026	Quilt Fungicide

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
034704 WA— 87— 0010	Clean Crop Phorate 20g
066158 WA— 92— 0027	Di-Syston 15% Granular Systemic Insecticide
045728 WA— 92— 0033	Ziram Granflo
010163 WA— 94— 0017	Botran 75 W
010163 WA— 95— 0015	Imidan 70-WP Agricultural Insecticide
000100 WA— 95— 0033	Tilt Fungicide
019713 WA— 95— 0034	Drexel Captan 50W
066158 WA— 95— 0035	Orthene 75 S Soluble Powder
000241 WA— 96— 0021	Assert Herbicide
034704 WA— 98— 0013	Clean Crop Amine 4 2,4-D Weed Killer
000100 WA— 98— 0018	Tilt Fungicide
059639 WI— 00— 0003	Orthene 97 Pellets
000100 WI— 01— 0005	Tough 5 EC

TABLE 1.—SECTION 24(C) REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

SLN no.	Product Name
059639 WI— 02— 0016	Orthene 75 S Soluble Powder
059639 WI— 02— 0017	Orthene 75 WSP (insecticide In A Water Soluble Bag)
000524 WI— 04— 0001	Roundup Weathermax Herbicide
034704 WI— 88— 0010	Clean Crop Malathion 57EC
034704 WI— 91— 0004	Clean Crop Phorate 20G
000100 WI— 99— 0007	Dual Magnum Herbicide
000100 WI— 99— 0008	Dual Magnum Herbicide
000100 WI— 99— 0009	Dual Magnum Herbicide
000100 WI— 99— 0015	Tilt Fungicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE

Registration no.	Product Name
000072–00289	Miller Simazine 4% Granules Herbicide
000100–01012	Force 1.5G Insecticide
000100–01036	Arrosolo 3-3E
000100–01136	Butafenacil Technical
000100–01137	Inspire EC
000100–01194	Reward Accugel Aquatic Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS CANCELED FOR NON-PAYMENT OF MAINTENANCE FEE—Continued

Registration no.	Product Name
000211–00057	Q 7.0-9.0 Npb-4.0
000228–00133	Riverdale Killsall Liquid
000228–00158	Riverdale Pre-Emergent Crabgrass Control Concentrate
000228–00159	Riverdale Pre-Emergent Weed Killer Plus Fertilizer
000228–00172	Riverdale 34-0-10 & Benefin Crabgrass Preventer
000228–00174	Riverdale 2.5G Pre-Emergent Herbicide
000228–00201	Riverdale Killsall II Ready-To-Use Liquid
000228–00204	Riverdale Triamine II Liquid Weed & Feed
000228–00207	Riverdale Team .87 Lawn Weed and Feed
000228–00215	Riverdale Triamine II Premium Liquid Weed and Feed
000228–00218	Riverdale Triamine II Premium 75 Liquid Weed and Feed
000228–00219	Riverdale Sweet Sixteen Weed & Feed with Triamine II
000228–00224	Riverdale Triamine II Spot Weed Killer
000228–00225	Riverdale Triamine II Weed & Feed
000228–00226	Riverdale 3-Way Weed and Feed with Triamine II
000228–00228	Riverdale Triamine II W.s.
000228–00229	Riverdale Triamine II Granular Weed Killer
000228–00256	Riverdale Team 1.33% Lawn Weed and Feed
000228–00266	Riverdale Duo Lawn Weed Killer
000228–00279	Riverdale Dri-MCPA Amine
000228–00285	Riverdale Tri-Power (r) Dry

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
000228–00299	Riverdale Tri-Power (r) 4000 Weed and Feed
000228–00300	Riverside Sweet Sixteen Weed and Feed with Tri-Power
000228–00301	Riverdale Tri-Power (r) Dry Weed and Feed
000228–00306	Riverdale Tri-Power (r) Dry Granular Weed Kill- er
000228–00349	MCDA Lawn Weed Killer
000228–00350	MCDA 8000 Lawn Weed Killer
000228–00351	MCDA Spot Weed Killer
000228–00352	Riverdale MCDA Weed and Feed
000228–00353	Riverdale MCDA Granular Weed Killer
000241–00370	Pendulum Plus Fertilizer
000264–00631	NA 305
000264–00633	CQ 1451 Sugar Beet Her- bicide
000264–00637	Thiodan Technical (endosulfan)
000264–00638	Phaser 3EC Insecticide
000264–00649	Tiller EC Herbicide
000264–00654	Cheyenne FM Herbicide
000264–00655	Dakota Herbicide
000264–00656	Phaser 50 WP Insecticide
000264–00658	Phaser 3EC Insecticide - for Use In California
000264–00659	Phaser 50WP- for Use In California
000264–00815	Progress B Herbicide
000264–00816	Betamix B Herbicide
000264–00817	Betanex B Herbicide
000264–00835	Progress B 0.75x Herbi- cide
000264–00836	Betamix B 0.75x Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
000400–00412	Terraclor 6.5% with Thimet 6.5% Granular
000400–00490	Gustafson Flowable Lin- dane 40%
000400–00532	Sorghum Guard
000400–00538	Gustafson Lindane 30c Flowable
000400–00539	Gustafson Captan Lin- dane 12.5-25
000400–00540	Gustafson Vitavax-Thiram- Lindane Flowable Fun- gicide
000478–00044	Real-Kill Spot Weed Killer
000498–00137	Spraypak Flying and Crawling Insect Killer
000498–00152	Spray Pak Quik Kil Insec- ticide
000524–00382	Ranger Herbicide
000524–00422	Freedom Herbicide
000524–00471	Mon-8421 Herbicide
000524–00488	Mon 8411 Herbicide
000773–00063	Ectiban D Insecticide
000773–00065	Ectiban EC Insecticide
000773–00078	Atroban Extra Insecticide Ear Tags
000862–00022	Sunspray 11C
000935–00073	Crystal Pure 90M Sani- tizer, One Inch Tablets
000935–00074	Crystal Pure 60M Sani- tizer Granules
000935–00076	Crystal Pure 90M Sani- tizer, Three Inch Tablets
001021–00023	Pyrocid 20
001021–00034	Pyrocid Booster Con- centrate E
001021–00754	Pyrocid Intermediate 6441
001021–00755	Pyrocid Intermediate 6440
001021–01127	D-Trans Intermediate 1862
001021–01198	Pyrocid Fogging Con- centrate 7104

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
001021–01249	Esbiol Intermediate 1971
001021–01299	Pyrocid Intermediate 7198
001021–01340	MGK Formula 7243
001021–01394	D-Trans Fogger & Contact Spray-2147
001021–01417	D-Trans Industrial and Household Space and Contact Spray
001021–01453	Esbiol Fogging Con- centrate 2263
001021–01478	Esbiol Fogging Con- centrate 2289
001021–01549	Evercid Intermediate 2450
001021–01572	Pyrocid Concentrate 7394
001021–01584	Multicide Concentrate 2544
001021–01673	Evercid Total Release Fogger 2613
001021–01694	Multicide Concentrate 2739
001021–01839	Permethrin 1.0% Pour on
001021–01840	Permethrin 0.5% RTU Spray
001021–01842	Permethrin 0.25% RTU
001021–01845	Permethrin 2.5% Con- centrate
001021–01846	Permethrin 1% Pour on Synergized
001677–00042	Q-372 Quaternary Ammo- nium Conc.
001677–00095	Mandate II
001677–00123	Tex-Fluff with Bac-Stat 400
001677–00125	Tex Stat
001677–00145	BK Powder
001677–00163	Eco2000-XP
001677–00166	Eco2000-RX
001677–00177	FUL-BAC

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
001677–00192	Eco2000-FB
001677–00197	Sanimaster III
001757–00314	Generox 270
001769–00164	Kilzone
001769–00259	Grenadier
001812–00292	Kocide Copper Hydroxide Anti Fouling Pigment
001812–00295	Kocide 404s Flowable Ag- ricultural Fungicide
001812–00298	K-Cop
001812–00301	Kocide SD
001812–00304	Kocide Copper Sulfate Pentahydrate Crystals
001812–00314	Blue Viking Star Glow Powder
001812–00333	Kocide Coc Technical
001812–00345	Oxycop WP
001812–00347	Spin Out FP
001812–00377	Copper Fungicide 4E
001812–00383	Oxycop 53WP
001812–00384	Spin Out 440
001812–00450	Finitron Brand Sulfluramid LCA MUP
002217–00720	Trimec 869
002217–00721	Trimec 870
002217–00722	Trimec 871
002217–00729	MM885
002217–00730	Trimec M 886 Liquid Weed & Feed
002217–00731	Trimec M 887 Liquid Weed & Feed
002217–00732	Trimec M 903
002217–00733	Trimec M 904
002217–00734	Trimec M 905
002217–00735	MM 890 Liquid Weed & Feed 20-0-0
002217–00736	Trimec M907 Liquid Weed & Feed
002217–00737	Trimec M908 Liquid Weed & Feed

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
002217–00738	Mm 909 Liquid Weed and Feed
002217–00743	Trimec M891 Weed & Feed
002217–00744	Trimec M 892 Weed & Feed
002217–00745	MM 893 Weed & Feed
002217–00750	Gordon's Trimec M 936 Broadleaf Herbicide
002217–00784	Trimec 1158 Broadleaf Herbicide
002217–00785	M 886 Herbicide
002217–00786	M 887 Herbicide
002217–00792	Trimec 1159 Spot Weeder
002217–00821	EH1356 Herbicide
002217–00822	EH1355 Weed and Feed
002230–00051	Algaecide-Non Foaming
002230–00055	Stay
002230–00056	TBC
002230–00058	Poly O
002724–00075	Vet-Kem Kemc Flea and Tick Powder
002724–00514	Speer Bird Spray
002724–00544	Speer 2x Indoor Fogger (double Strength)
002724–00563	Speer Flea & Tick Sham- poo for Dogs
002724–00575	Pet Guard Animal and Kennel Spray
002724–00719	Elite Flea & Tick Sham- poo Vi
002724–00747	Holiday Kennel Dust
002724–00750	Holiday Flea & Tick Stop for Dogs and Cats
002724–00751	Holiday Tick Stop
002749–00336	Atrazine 4L
002749–00485	Aceto Atrazine 90
002909–00005	Matt-Kleen
002935–00485	BT 320 Sulfur 50 Dust
003008–00088	Osmose Dac-Q

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
003095–00031	Pic Wasp and Hornet Kill- er II
003095–00036	Pic Inside-Outside Bug Killer
003573–00050	Spic and Span Pine
003862–00164	BR-62B
004313–00092	Acid Toilet Bowl Cleaner
004822–00404	Raid Liquid Flea Killer LF4
004822–00500	Whitmire TC 85 Total Re- lease Insect Fogger
004959–00048	Myco-Bac Germicidal De- tergent Sanitizer
005204–00003	Biomet 66
005693–00078	Shield Total Release Fogger Vi
006269–00006	Sanisol Concentrated Cleaner Disinfectant Odor Neutralizer
006459–00003	Calmic Type S Formula- tion-Cascade
007001–00383	Turf Fertilizer with 1.00% Ronstar
007173–00210	Generation Bait Dispenser
007173–00222	Maki Rodenticide Block
007173–00225	Maki Bait Dispenser
007173–00228	Maki Green Paraffin Blocks
007173–00233	Generation Rat & Mouse Bait Tray
007173–00234	Generation Bait Tray
007173–00235	Generation Wrapped Mini Block
007401–00085	Ferti-Lome Ready To Use Liquid Weed & Wild Grass Killer
007401–00087	Ferti-Lome Liquid Vegeta- tion Killer
007401–00123	Ferti Lome Tree Borer Crystals
007401–00173	Ferti-Lome Special Vege- tation Killer
007401–00234	Ferti-Lome Systemic Weed & Feed 11-3-6

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
007401–00242	Ferti Lome Weed Killer Plus Lawn Food
007401–00381	Ferti-Lome Chickweed & Clover Control
007401–00382	Hi-Yield Lawn Weed Killer
007679–00019	American Cotton Chopper Concentrate
007689–00014	Wardley's Liquid Allclear
007689–00016	Allclear II Algicide for Outdoor Fishpools
007689–00017	Allclear II Aquarium Algicide
007946–00019	Abacide
008370–00001	Nyco Bowl Kleen Toilet Bowl Cleaner
008370–00002	Super Toilet Bowl Cleaner
008370–00006	Pine Odor Disinfectant Cleaner
008370–00015	Uno Disinfectant-Cleaner-Sanitizer
008370–00020	White Ocean Foam Porcelain & Tile Cleaner-Disinfectant
008503–00013	Wintergreen Disinfectant
008503–00017	Acid Free Bathroom Cleaner
008503–00019	Weed Killer 101
008503–00020	Veg Kill 15
008596–00032	Bio Savor
008660–00007	Sta-Green Weed & Feed 20-3-6
008660–00024	Vertgreen Mcpp Clover & Chickweed Killer
008660–00071	New Sod Webworm Control
008660–00147	Vertagreen St. Augustine Weed & Feed
008660–00148	Supreme Green
008660–00169	Ace Lawn Food with Weed Control
008660–00170	Ace Lawn Food with Weed Control 22-6-8

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
008660–00172	Deep Green Vigoro 23-3-7 Lawn Fertilizer & Weed Control
008660–00179	Golden Vigoro Weed Control Plus Lawn Fertilizer 18-4-8
008660–00184	Gro-Tone 18 Weed & Feed
008660–00185	Gro-Tone 20 Weed & Feed
008660–00212	Par Ex Slow Release Fertilizer
008660–00221	Park Ridge 18 Weed & Feed
008660–00222	Park Ridge 20 Weed & Feed
008660–00226	Premium Green Turf Lawn Food with Weed Control
008660–00228	Suburban 18 25-3-3 Weed & Feed
008660–00229	Suburban 20 Weed & Feed 25-3-3
008660–00231	Vigoro Deep Green Weed and Feed
008660–00242	Vigoro St. Augustine Grass Lawn Weeder and Feeder
008660–00244	Vigoro Weed Control Plus Lawn Fertilizer
008722–00001	Portion-Pac Germicidal Detergent
008722–00002	Q X 204 Germicidal Detergent
008764–00024	Sta-Fresh 401
008780–00057	Turf Line Crabgrass Preventer 3 Formula
008879–00001	Insect Repellent Citronella Candle
009198–00030	The Andersons Fertilizer with 0.92% Balan
009198–00091	The Andersons Tee Time Plus 0.57% Team
009198–00101	The Andersons Fertilizer with 0.87% Team
009198–00130	The Andersons Fertilizer with 1.50% Team

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
009198–00180	Scotts Proturf 36-0-0 Fertilizer Plus Dicot Weed Contro
009688–00154	Chemsico Eh1365 Herbicide
009688–00155	Chemsico Eh1367 Herbicide
009688–00156	EH 1370 Weed & Feed
010088–00033	Selective Herbicide No. 2
010330–00002	Ethylene Agricultural Grade
010350–00044	3M Mec Z-11-Tetradecenyl Acetate Pheromone Concentrate
010350–00045	3M Mec Tpw Sprayable Pheromone for Tomato Pinworm
010350–00046	3M Mec-Epsb Sprayable Pheromone for Eastern Pine Shoot
010350–00047	3M Sprayable Pheromone-Mating Disruption for Blackheade
010350–00048	3M Sprayable Pheromone-Mating Disruption for Leafroller
010350–00049	3M Mec-PBW Sprayable Pheromone for Pink Bollworm
010350–00051	3M MEC-OFM Sprayable Pheromone for Oriental Fruit Moth
010350–00052	3M Sprayable Pheromone Mating Disruption for Sparganoth
010350–00053	3M Sprayable Pheromone Mating Disruption for Grape
010350–00054	3M MEC-LPTB Sprayable Pheromone for Lesser Peachtree
010350–00055	3M MEC-PTB Sprayable Pheromone for Peach-tree Borer
010350–00059	3M MEC-CM Sprayable Pheromone for Codling Moth

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
010350-00062	3M MEC - GM Sprayable Pheromone for Gypsy Moth
010404-00059	Lesco TFC Dispersible Granule Turf Herbicide
010807-00024	Misty Glycol Air Sanitizer - Lemon/lime Fragrance
010807-00037	Misty Air Sanitizer Mint Fragrance
010807-00043	Misty Mizer Air Sanitizer Lime
011474-00092	Wasp & Hornet Killer V
011603-00040	Acetochlor Technical
011623-00035	Total Release Fogger No. II
011685-00013	MCPA Technical Acid
011685-00024	Riverdale Technical MCPA IOE
011694-00103	WH-40 Wasp & Hornet Spray
012455-00071	1% Diphacinone Concentrate
013799-00008	Four Paws Super Fly Repellent
015297-00002	Bio-Groom Shampoo with Pyrethrins Concentrate for Horse
017545-00005	Moncide
017705-00001	Pathmark Bleach
019713-00061	Drexel Lindane Technical 1
019713-00191	Drexel Lindane Technical 2
020177-00001	Selecticide
021268-00004	Pool Trol Chlorine Powder
021268-00005	Utikem Winter Grade Algaecide
021268-00006	Permanent Algaecide
021268-00007	Utikem Algaecide Algae Control
021268-00011	Blue Shield Sani Shock

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
021268-00014	Slo-Stix
021268-00016	E-Z Cartridge
024909-00015	Deo-Pine Quaternary Pine-Oil
028690-00001	Potomac Sodium Hypochlorite Solution
032802-00079	Ronstar Plus Fertilizer 1.00%
032802-00080	Ronstar Plus Fertilizer 1.50%
033560-00045	Pronone 25g
033981-00009	Sodium Hypochlorite 16%
034797-00029	General Purpose Aqueous Insecticide
034797-00039	Dionne Copper Sulfate Root Killer
034797-00056	Dionne Flea & Tick Spray III
034913-00017	Knockout Granular Weed Killer
035900-00006	Hygiene Mark II
035900-00007	Hygiene Mark III Bacteriostatic Water Filter Media
035900-00013	General Ionics Model Dwc 1500 Bacteriostatic Drinking
035900-00016	Hygiene Mark IV Bacteriostatic Water Filter Media
035900-00021	Hygiene Mark VIII Bacteriostatic Water Filter Media
035935-00002	Propanilo-3
035935-00008	Mcpa Technical Acid
035935-00009	T-H MCPA Acid
035935-00010	Technical MCP Ester
037062-00001	Wechsler Contracting Sodium Hypochlorite Solution
038092-00003	Fly-Curb 7.76% Premix
038635-00004	L-34 Algaecide

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
040849-00035	Enforcer Flea & Roach Fogger III
040849-00041	Enforcer Flea Killer for Pets Shampoo III
040849-00044	Enforcer Flea Killer for Carpets II
040849-00048	Enforcer Overnite Roach Spray III
040849-00054	Enforcer Concentrate for Fleas Xx
040849-00060	Enforcer Next Day Grass & Weed Killer II
040849-00062	Enforcer Esfenvalerate 35% Wettable Powder
040849-00063	Enforcer Two-Hour Fogger
040849-00064	Exterminator's Choice One-Year Flea Control
040849-00065	Enforcer Rose/Flower & Tomato/Vegetable Spray
040849-00066	Enforcer Insecticide Powder
040849-00067	Enforcer Esfenvalerate RTU Insect Spray
040849-00068	Enforcer P001
040849-00071	AT Weed & Grass Killer RTU
040849-00074	Enforcer Home Pest Control X
040975-20004	Acro-Klo
042056-00002	Thiram M Liquid
042056-00020	Tci Mancozeb Ready-To-Use Seed Treatment
042057-00047	Morgro Malathion 57% Spray
042373-00001	Blue Magic Waterbed Conditioner
042373-00006	Blue Magic Multi-Purpose (+) Waterbed Conditioner
042750-00112	Acetochlor Tgai
042964-00009	Bac-Tex
042964-00034	A-464-N
043315-00001	Swim-Chlor

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
043576–00005	Rich Health Flea & Tick Killer
044538–00001	Super Star Disinfectant Sanitizer Fungicide Deodorizer
045220–00001	Pow Herbal Flea Powder
045728–00015	Metam Clr 32.7% Soil Fumigant
045728–00024	Thiram 65
045745–00004	L-100 Lemon Oder-Disinfectant-Deoderizer-Cleanser
045745–00005	P-100 Pine Odor Disinfectant Cleaner Deodorant
045745–00009	Maxim DS 470
046075–00005	Jungle Juice 100 Insect Repellent
046260–00039	Easy Gardener Dog & Cat Repellent Gel with XP-20
046260–00040	Easy Gardener Dog & Cat Repellent Ready-To-Use Spray
046260–00041	Easy Gardener Dog & Cat Repellent Ready-To-Use Granular
046515–00034	Super K-Gro Liquid Weed & Feed Formula II
046515–00055	Broadleaf Weed Killer Aerosol
046620–00002	Requat Antimicrobial 1977 Concentrate
048139–00014	Outdoorsman Insect Repellent
048369–00002	Roach Vanish
049517–00005	Pick-Mor
050956–00001	Chloryte Calcium Hypochlorite
050956–00002	Sask-Chlor Calcium Hypochlorite 65%
051036–00233	Propanil 4EC
051219–00002	CWT - BB12

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
053263–00029	Emtrol Tobacco Sucker Control Agent
055050–00001	Sodium Chlorite Aqueous Solution 31%
055050–00002	Sodium Chlorite 25% Aqueous Solution
055179–00003	Adorn Toilet Bowl Cleaner
055431–00011	Surflan LD Specialty Herbicide
055431–00012	Surflan WDG Plus Specialty Herbicide
056244–00001	TB-65
056244–00002	TB-66
056244–00003	TB-64
056281–20004	Aqua Pure
056336–00017	Consep Spr4 Peach Twig Borer Pheromone Sprayable
056336–00018	Consep Spr5 Pink Bollworm Pheromone Sprayable
056501–00002	Copper Sulphate Superfine Crystals
056782–00001	Simple Green D
056782–00002	Simple Green D Antibacterial
057700–00001	Shirasagi WHA
058415–00001	Liquified Chlorine Gas Under Pressure
058779–00001	Steris LW/SW Master
059825–00002	Mykon ASD
059825–00003	CX 1071
060063–00015	Echo Home Garden Fungicide and Insecticide
061483–00057	Forpen- 50
061483–00061	Trenton Creosote Oil
061483–00066	Anchor Permethrin Pet, Yard and Kennel Spray
061483–00074	Ectrin Insecticide Cattle Ear Tag
061483–00076	Ectrin Insecticide Horse Neck Band

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
061483–00077	Ectrin Insecticide Water Dispersible Liquid
061483–00081	Ptenocide Pet Spray
061483–00082	Pentocide Aerosol House & Carpet Spray
061483–00083	Americare Flea & Tick Lawn Spray
061483–00084	Ptenocide Total Release Fogger
061483–00090	Synergized 0.5 Permethrin / 1% Pbo Pour-On Insecticide
061483–00092	Patriot Plus Insecticide Ear Tag
061495–00004	Virocidin Plus
063376–00007	OKA Mosquito Repellent Coils
064321–00002	BEP Insecticide 25
065615–00006	Scoot Racoon
065700–00001	Alpha-3 Roach Bait
065862–00001	Chlorine Liquified Gas Under Pressure
066222–00113	Double Team Herbicide
066222–00114	Acetochlor 6.4 EC Herbicide
066306–00007	Iguana Oil SPF 4
066330–00288	Thiophanate-Methyl Technical
066330–00340	Tebuconazole 97% Technical
066330–00341	Tebuconazole 3.6f
066330–00342	Tebuconazole 45 Df
066721–00001	Q-6 Detergent Sanitizer
067425–00017	Ecopco G/X
067572–00008	R & M Floral & Vegetable Spray #1
067572–00025	R & M Pyrethrin Powder #1
067572–00037	R & M Dog & Cat Repellent Granules
067572–00040	R & M Aloe Ear Mite Treatment

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
067572-00043	R & M Rabbit and Deer Repellent Spray - Rtu
067572-00049	R & M Permethrin Powder .25%
067572-00051	R & M Synergized Permethrin Powder #1
067599-00001	Permashield Marine Coating
067869-00021	Antimicrobial N-5
067869-00023	Antimicrobial N-40
067869-00039	N2001 Lf C
067869-00040	N2001 Lf P
068086-00004	First Defense Premise Treatment
068086-00006	Ant Enderzzz
068086-00007	"Fooley" Training Aid
068333-00003	Skeet-Daddle Fogging Insecticide
068543-00031	Bengal Flying Insect Killer 2
069117-00006	Pointer-12 Insecticide
070465-00003	Xbinx 19G
070506-00027	Devrinol 2-E Selective Herbicide
070515-00001	LPE-94 10% Aqueous Growth Regulator
070567-00001	BCS Sodium Hypochlorite Solution (12.5%)
070567-00002	Sodium Hypochlorite Solution (12.5%)
070644-00002	Nutrol LC
070810-00005	Auxigro Soluble Granule Plant Metabolic Primer
070852-00004	Agc 0.05 Ag
070909-00004	The Dragonfly Carbon Dioxide Canister
070950-00004	Avachem Sorbitol Octanoate MP
070950-00005	Avachem Octa-SP- 50%
071368-00055	MCPA Amine 4 Herbicide
071368-00056	MCPA Ester 4 Herbicide

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
071864-00002	Herli-Bcd
071871-00001	CD-Cartridge
071946-00002	Calcium Hypochlorite
072106-00002	Evergreen Lawn Food with Weed Control 12-4-4
072106-00003	Spring Feed and Moss Cure
072468-00003	Moldwash Wood Preservative/mold Control
072637-00001	Green Screen Bags Animal Repellent
073417-00001	Woad Warrior
074054-00002	Propiconazole Technical
074152-00003	Megagro Growth Stimulator
074787-00001	Proteku Grape Guard
074905-00001	Socusil Snail and Slug Repellent
075199-20001	12.5% Chlorinating Bleach
075457-00002	Anti-Pest-O Mup
075457-00004	Anti-Pest-O Concentrate
075499-00012	Plant Synergists 6-BA Technical
075499-00014	Plant Synergists Gib 10% WP
075499-00015	Plant Synergists GA Paste
075562-00001	Sani-Spa Disinfectant Tablet
075639-00001	Antmaster's Sweet Gel Bait
075799-00002	Pxts Blend D
075844-00004	Liberty 45 Ultra
079411-20002	Pool Cide 10
079442-00006	Exosex-ECB
079442-00007	Exosex-DBM
079676-00013	Oryzalin G-Pro Herbicide
079705-00001	Act T-558
079705-00002	Act Z-200

TABLE 2.—SECTION 3 REGISTRATIONS
CANCELED FOR NON-PAYMENT OF
MAINTENANCE FEE—Continued

Registration no.	Product Name
079722-00001	Sapphire Pool Products
081260-00001	Pine Cleaner
081449-00001	Sulfur Technical
081449-00002	Technical Copper Oxychloride
081449-00003	Technical Basic Copper Sulfate
081959-00010	Vessel 2 - Aquatic (28.7%)
082378-00001	Lindane Technical
082542-00001	Bifenthrin Technical
082542-00002	Permethrin Technical
082727-00001	Exterminants
082875-00002	Metsulfuron G-Pro Herbicide
082971-00001	Bluewater

IV. Public Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Public Docket, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Product-specific status inquiries may be made by telephone by calling toll-free 1-800-444-7255.

List of Subjects

Environmental protection, Maintenance fees, Pesticides and pests.

Dated: July 13, 2007.

Debra Edwards,
Director, Office of Pesticide Programs.

[FR Doc. E7-14182 Filed 7-24-07; 8:45 a.m.]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION
AGENCY**

[EPA-HQ-OPP-2006-0909; FRL-8139-6]

Diazinon; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted

by the Agency, of a product containing the pesticide diazinon, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a May 16, 2007 **Federal Register** Notice of Receipt of Request from the diazinon registrant to voluntarily cancel their diazinon granular product registration. This is not the last diazinon product registered for use in the United States; however this is the last diazinon granular formulation registered for use in the United States. In the May 16, 2007 Notice, EPA indicated that it would issue an order implementing the cancellation to terminate use, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request within this period. The Agency received a comment on the Notice but none which merited its further review of the request. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation. Any distribution, sale, or use of the diazinon products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 25, 2007.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9342; fax number: (703) 308-7070; e-mail address: andreasen.jude@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. **Docket.** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0909. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. **Electronic access.** You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by registrants, of certain agricultural end-use diazinon products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—DIAZINON PRODUCT CANCELLATIONS

EPA Registration No.	Product Name
2935-408	Diazinon 14G

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS OF CANCELLED DIAZINON PRODUCTS

EPA Company No.	Company Name and Address
2935	Wilbur-Ellis P.O. Box 1286 Fresno, CA 93715

III. Summary of Public Comments Received and Agency Response to Comments

One citizen commented that the Agency should deny the request to voluntarily cancel the diazinon registration. The commenter mistakenly noted that diazinon still has household uses. All retail sales of diazinon products for household use ended on December 31, 2004. The commenter also

noted that use of diazinon should be tracked by EPA. Since all remaining diazinon products are classified as restricted use products with only agricultural uses, only certified applicators or those under the supervision of a certified applicator may purchase and use diazinon products. As such, the Agency believes that diazinon use is sufficiently tracked and monitored. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the request for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of diazinon registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the diazinon product registrations identified in Table 1 of Unit II. are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

The registrant will be allowed to sell and distribute the subject products through December 2008. In addition, existing stocks of diazinon products may be sold or used until they are depleted.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 17, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7-14331 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0208; FRL-8129-7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products that contain new active ingredients not included in any currently registered products and/or that entail a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before August 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0208, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0208. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:

(703) 308-8077; e-mail address: cerrelli.susanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products that contain active ingredients not included in any previously registered products and/or that entail a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products and/or Products for Which a Changed Use Pattern is Proposed

1. *File Symbol:* 524-LTL. *Applicant:* Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167. *Product name:* MON 89034. *Product type:* Plant-Incorporated Protectant. *Active ingredients:* *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production (Vector ZMIR 245) in event MON 89034 corn (OECD Unique Identifier: MON-89034-3) and *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (Vector ZMIR 245) in event MON 89034 corn (OECD Unique Identifier: MON-89034-3). *Proposal classification/Use:* None.

2. *File Symbol:* 524-LTA. *Applicant:* Monsanto Company, 800 N. Lindberg Blvd., St. Louis, MO 63167. *Product name:* MON 89034 x MON 88017. *Product type:* Plant-Incorporated Protectant. *Active ingredients:* *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production (Vector ZMIR 245) in event MON 89034 corn (OECD Unique

Identifier: MON-89034-3), *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (Vector ZMIR 245) in event MON 89034 corn (OECD Unique Identifier: MON-89034-3) and the previously registered active ingredient *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material (Vector ZMIR 39) necessary for its production in event MON 88017 corn (OECD Unique Identifier: MON-88017-3). *Proposal classification/Use:* None.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 16, 2007.

Janet L. Andersen,

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

[FR Doc. E7-14269 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0936; FRL-8137-1]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2006-0936 and the pesticide petition number (PP) of interest, by one of the following methods:

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

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

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday,

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

Instructions: Direct your comments to the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](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 [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) Web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.),

2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 6E7103	EPA-HQ-OPP-2007-0460
PP 7E7199	EPA-HQ-OPP-2007-0438
PP 7E7207	EPA-HQ-OPP-2007-0426
PP 7E7184	EPA-HQ-OPP-2007-0461
PP 6F7119	EPA-HQ-OPP-2007-0475

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions

included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at <http://www.regulations.gov>.

New Tolerances

1. *PP 6E7103.* (Docket ID number EPA-HQ-OPP-2007-0460). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the fungicide dithianon in or on food commodity grapes at 8 parts per million (ppm). An analytical method using high performance liquid chromatography with ultraviolet (UV) detection was used to determine the residues of dithianon on grapes. This method has been confirmed through independent laboratory validations. Contact: Rosemary Kearns; telephone number: (703) 305-5611; e-mail address: kearns.rosemary@epa.gov.

2. *PP 7E7199.* (Docket ID number EPA-HQ-OPP-2007-0438). Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201 W., Princeton, NJ 08540-6635, proposes to establish a tolerance for residues of the insecticide novaluron (1-[3-chloro-4-(1,1,2-trifluoro-2-trifluoromethoxyethoxy)phenyl]-3-[2,6-difluorobenzoyl]urea) in or on food commodities: Tomato at 0.40 ppm; tomato, paste at 0.80 ppm; and sugarcane, cane at 0.50 ppm. Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609, is the manufacturer and basic registrant of novaluron. Makhteshim-Agan of North America Inc., prepared and summarized the following information in support of the pesticide petition for novaluron. An adequate analytical method, gas chromatography/electron capture detector (GC/ECD), is available for enforcing tolerances of novaluron residues in or on tomatoes, sugarcane and its processed commodities, as published in the **Federal Register** of April 5, 2006 (71 FR 17009) (FRL-7756-8). Based on the sample size and dilution factors, the limit of quantitation (LOQ) in matrix was equal to the lowest concentration level for the validation analyses. The method verification trial supports a LOQ of 0.05 ppm in the different tomato and sugarcane matrices. The LOQ = 0.05 ppm was taken as the lowest level validated by this method. Contact: Susan Stanton; telephone number: (703) 305-5218; e-mail address: stanton.susan@epa.gov.

3. *PP 7E7207.* (Docket ID number EPA-HQ-OPP-2007-0426). Interregional Research Project Number 4

(IR-4), 500 College Road East, Suite 201 W., Princeton, NJ 08540-6635, proposes to establish a tolerance for residues of the insecticide buprofezin, in or on food commodities: Vegetable, leafy, except *Brassica*, group 4 at 25 ppm; olive at 3.0 ppm; olive, oil at 9.0 ppm; strawberry, bearberry, bilberry, lowbush blueberry, cloudberry, cranberry, lingonberry, muntries and partridge berry at 2.5 ppm. This summary has been prepared by Nichino America, Inc., Wilmington, DE 19808, the registrant. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography using nitrogen phosphorous detection. Contact: Susan Stanton; telephone number: (703) 305-5218; e-mail address: stanton.susan@epa.gov.

4. *PP 7F7184*. (Docket ID number EPA-HQ-OPP-2007-00461). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance for residues of the fungicide mandipropamid, (benzeneacetamide, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy)phenyl]ethyl]-alpha-(2-propynyloxy)) in or on food commodity vegetables, leafy at 15 ppm. Analytical method RAM 415-01 was developed for determination of mandipropamid residues in crops. This method involves extraction of mandipropamid residues from crop samples by homogenization with acetonitrile: Water (80:20 v/v). Extracts are centrifuged and aliquots diluted with water prior to being cleaned-up using polymeric solid-phase extraction cartridges. Residues of mandipropamid are quantified using high performance liquid chromatography with triple quadrupole mass spectrometric detection (LC-MS/MS). This method has been successfully validated at an independent facility and therefore is suitable for use as the enforcement method for the determination of residues of mandipropamid in crops. The multi-residue method was not successful at determining residues of mandipropamid. Contact: Rosemary Kearns; telephone number: (703) 305-5611; e-mail address: kearns.rosemary@epa.gov.

5. *PP 6F7119*. (Docket ID number EPA-HQ-OPP-2007-00475). Bayer CropScience LLC, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the insecticide spirotetramat, cis-3-(2,5-dimethylphenyl)-8-methoxy-2-oxo-1-azaspiro[4.5]dec-3-en-4-yl ethyl carbonate and its metabolite cis-3-(2,5-dimethylphenyl)-4-hydroxy-8-methoxy-1-azaspiro[4.5]dec-3-en-2-one], calculated as spirotetramat equivalents

in or on food commodities: Vegetable, tuberous and corm, subgroup 1C at 1.0 ppm; potato, granules/flakes at 2.5 ppm; onions, dry bulb, subgroup 3A at 0.3 ppm; vegetables, leafy, except *Brassica*, group 4 at 5.0 ppm; *Brassica*, head and stem, subgroup 5A at 3.0 ppm; *Brassica*, leafy greens, subgroup 5B at 16.0 ppm; vegetables, fruiting, group 8 at 1.0 ppm; tomato, dried pomace at 2.5 ppm; vegetable, cucurbit, group 9 at 0.2 ppm; fruit, citrus, group 10 at 0.5 ppm; citrus, oil at 4.0 ppm; fruit, pome, group 11 at 0.5 ppm; fruit, stone, group 12 at 2.0 ppm; nut, tree, group 14 at 0.5 ppm; almond, hulls at 9.0 ppm; grape at 1.0 ppm; grape, raisin at 2.5 ppm; hop at 10.0 ppm; strawberry at 0.5 ppm; cattle, goat, hog, sheep and horse, meat at 0.01 ppm; cattle, goat, hog, sheep and horse, fat at 0.01 ppm; cattle, goat, hog, sheep and horse, liver at 0.01 ppm; cattle, goat, hog, sheep and horse, meat byproducts, except liver at 0.02 ppm. The residues of spirotetramat and its metabolites were quantified by high pressure liquid chromatography/triple stage quadrupole mass spectrometry (LC-MS/MS) using the stable isotopically labeled analytes as internal standards. The individual analyte residues were converted to spirotetramat molar equivalents and summed to give total spirotetramat residues. The LOQ for each analyte was 0.01 ppm for all commodities except citrus (0.05 ppm) and hops (0.1 ppm). Contact: Rita Kumar, telephone number: (703) 308-8291; e-mail address: kumar.rita@epa.gov.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7-14058 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0086; FRL-8134-2]

Implementation of the Emerging Pathogens and Disinfection Hierarchy for Antimicrobial Products; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: To assure that EPA's practices related to implementing the Food Quality Protection Act of 1996 (FQPA) are transparent and open to public participation, EPA is soliciting comments on the pesticide draft science guidance document entitled "Implementation of the Emerging Pathogens and Disinfection Hierarchy for Antimicrobial Products."

DATES: Comments must be received on or before August 24, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2007-0086, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2007-0086. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The Federal 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 docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to: <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Laura Bailey, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-6212; fax number: (703) 308-6467; e-mail address: bailey.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected entities may include, but are not limited to:

Antimicrobial pesticides (NAICS 325612)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended by the Food Quality Protection Act (FQPA) of August 3, 1996 Section 2(u). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

There is a growing need for the public health community to recognize and respond to unique threats from newly-identified microbial pathogens (e.g., severe acute respiratory syndrome (SARS Co-V) and re-emerging infectious disease agents of importance (e.g., *Vancomycin-Resistant Staphylococcus aureus* (VRSA)). Based upon contemporary understanding of the physiochemical structure of microorganisms and their respective inactivation kinetics, microorganisms can be ranked with respect to their susceptibility to hard surface disinfectants.

The guidance proposes to utilize an organism hierarchy to identify products for use with emerging pathogens and to permit registrants, in accordance with EPA regulations, to make limited label statements. The guidance applies only to emerging enveloped and non-enveloped viruses and may be implemented after the Centers for Disease Control and Prevention has identified the taxonomic genera of the emerging virus. Limitations, label recommendations and the process for implementation are discussed in detail in the supporting guidance document. The supporting implementation guidance is available in the docket at EPA-HQ-OPP-2007-0086.

List of Subjects

Environmental protection, Pesticides and pests, Disinfection hierarchy, Emerging pathogens, Antimicrobial products.

Dated: July 13, 2007.

Betty Shackelford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7-14292 Filed 7-24-07; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

July 18, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a

currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 24, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 or via Internet at Cathy.Williams@fcc.gov, and to Jasmeet Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at Jasmeet_K._Seehra@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0609.
Title: Section 76.934(e), Petitions for Extension of Time.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 20.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 80 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No need for confidentiality required.

Needs and Uses: 47 CFR 76.934(e) states that small cable systems may obtain an extension of time to establish compliance with rate regulations provided that they can demonstrate that timely compliance would result in severe economic hardship. Requests for the extension of time should be addressed to the local franchising authorities ("LFAs") concerning rates for basic service tiers and the Commission concerning rates for a cable programming service tier (CPST) and associated equipment. The filing of a request for an extension of time to comply with the rate regulations will not toll the effective date of rate regulation for small systems or alter refund liability for rates that exceed permitted levels after May 15, 1994.

Since the Commission no longer regulates the CPST, it no longer receives extension requests.

OMB Control Number: 3060-0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or tribal government.

Number of Respondents: 50.

Estimated Time per Response: 10 to 20 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 750 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 1235 is an abbreviated cost-of-service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. FCC Form 1235 is filed following the end of the month in which upgraded cable services become available and are providing benefits to subscribers. In addition, FCC Form 1235 can be filed for pre-approval any time prior to the upgrade services becoming available to subscribers using projected upgrade costs. If the pre-approval option is exercised, the operator must file the form again following the end of the month in which upgraded cable services become available and are providing benefits to customers of regulated

services, using actual costs where applicable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14380 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 18, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before September 24, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554 or via Internet at Cathy.Williams@fcc.gov, and to Jasmeet Seehra, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503

or via Internet at *Jasmeet K. Seehra@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,750.

Estimated Time per Response: 17 hours.

Frequency of Response:

Recordkeeping requirement; Once a year reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 182,750 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality required for this information collection.

Needs and Uses: 47 CFR 76.1713 states cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14381 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

July 17, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 24, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395-3123, or via fax at 202-395-5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: <http://www.fcc.gov/omd/pr>.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0975.

Title: Promotion of Competitive Networks in Local Telecommunications Networks.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, Federal Government, and state, local and tribal government.

Number of Respondents: 6,421

respondents; 6,421 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 571,350 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this extension to the OMB after this 60-day comment period to obtain the full three-year clearance from them. There is no change in the number of respondents, responses, and/or burden hours.

On October 2000, the Federal Communications Commission adopted and released several rulemakings to foster competition in local communications markets by implementing measures to ensure that competing telecommunications providers are able to provide services to customers in multiple tenant environments ("MTEs").

Specifically, the rulemakings require the following: (1) Prohibited carriers from entering into contracts that restrict or effectively restrict a property owner's ability to permit entry by competing carriers; (2) established procedures to facilitate moving the demarcation point to the minimum point of entry ("MPOE") at the building owner's request, and requires incumbent local exchange carriers ("LECs") to timely disclose the location of existing demarcation points where they are not located at the MPOE; (3) determined that, under Section 224 of the Communications Act, utilities, including LECs, must afford telecommunications carriers and cable service providers reasonable and nondiscriminatory access to conduits and right-of-way located in customer buildings and campuses, to the extent such conduits and rights-of-way are owned or controlled by the utility; and (4) extended to antennas that receive and transmit telecommunications and other fixed wireless signals the existing prohibition of restrictions that impair the installation, maintenance or use of certain video antennas on property within the exclusive use or control of the antenna user, where the user has a direct or indirect ownership or leasehold interest in the property.

The demarcation point burden consists of two components. (1) The LEC shall make available information on the location of demarcation point within ten business days of a request from the premises owner (location information); and (2) At the time of installation, the LEC shall fully inform the premises owner of its options and rights regarding the placement of the demarcation point or points (options information).

The OTARD portion of this information collection relates to the revisions of the Commission's rules regarding Over-the-Air Reception Devices ("OTARDs"), 47 CFR 1.4000. Under those revisions, as a condition of invoking protection under 47 CFR 1.4000 from government, landlord, and association restrictions, a licensee must ensure that subscriber antennas are labeled to give notice of potential radio frequency safety hazards of these antennas. Labeling information should include minimum separation distances required between users and radiating antennas to meet the Commission's radio frequency exposure guidelines. Labels should also reference to the Commission's applicable radio frequency exposure guidelines and should use the ANSI-specified warning symbol for frequency exposure. In addition, the instruction manuals and other information accompanying subscriber transceivers should include a full explanation of the labels, as well as a reference to the applicable Commission radiofrequency exposure guidelines.

The availability of this information will give notice to the public—particularly to purchasers of OTARD dishes—of potential radiofrequency safety hazards of OTARD antennas used for telecommunications service. Thus, this information will help ensure that these antennas comply with the Commission's limits on radio frequency exposure.

This information will facilitate efficient interaction between premises owners and LECs regarding the placement of the demarcation point, which marks the end of wiring under control of the LEC and the beginning of wiring under the control of the premises owner or subscriber. The demarcation point is a critical point of interconnection where competitive LECs can gain access to the inside wiring of the building to provide service to customers in the building. This collection will also help ensure that customer-end antennas used for telecommunications service comply with the Commission's limits on radio frequency exposure, and it will provide the Commission with information on

the state of the market. In short, this information will be used to foster competition in local telecommunications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7-14382 Filed 7-24-07; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202-523-5793 or tradeanalysis@fmc.gov).

Agreement No.: 011960-001.

Title: The New World Alliance Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. ("APL"); Hyundai Merchant Marine Co., Ltd. ("HMM"); and Mitsui O.S.K. Lines, Ltd.

Filing Party: David B. Cook, Esq.; Goodwin Procter LLP; 901 New York Avenue, NW; Washington, DC 20001.

Synopsis: The amendment would add provisions authorizing APL to subcharter space to CMA CGM, S.A. and HMM to subcharter space to the Evergreen Line Joint Service Agreement.

Agreement No.: 011982-002.

Title: Evergreen Line Joint Service Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd.; Evergreen Marine (UK) Ltd.; Italia Marittima S.p.A.; and Evergreen Marine (Hong Kong) Ltd.

Filing Party: Paul M. Keane, Esq.; 61 Broadway; Suite 3000; New York, NY 10006-2802.

Synopsis: The amendment removes the footnote indicating that Evergreen Marine (Hong Kong) will operate solely in non-U.S. trades.

By Order of the Federal Maritime Commission.

Dated: July 20, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7-14395 Filed 7-24-07; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

EZ Logistics Group, Inc., 17890 Castleton Street, Suite 306, City of Industry, CA 91748. Officer: Zhao Gang Zhong, President (Qualifying Individual).

ACT Shipping, Inc., 15204 S. Berando Ave., Suite #7, Garena, CA 90247. Officer: Dan S. Quan, President (Qualifying Individual).

Hisped Trans Service Inc., 750 Arthur Avenue, Elk Grove Village, IL 60007. Officer: Kyo Hyon Kim, President (Qualifying Individual).

Rapido Express Envios, 35 Beacon Blvd., Miami, FL 33135. Officer: Mario M. Morales, President (Qualifying Individual).

Expolanka USA LLC, 175-11, 148th Rd., Ste. 202, Jamaica, NY 11434. Officers: Simon Tung, Member (Qualifying Individual), Chandana J. Rodrigo, CEO/Member.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Majic Transport, Inc., La Calle S. Del Palmar #P-11, Reparto Flamingo, Bayamon, Puerto Rico. Officers: Antonio Pabon Urrutia, Vice President (Qualifying Individual), Carlos Padial, President.

Dated: July 20, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7-14399 Filed 7-24-07; 8:45 am]

BILLING CODE 6730-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12⁵/₈% for the quarter ended June 30, 2007. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 17, 2007.

Jean Augustine,

Director, Office of Financial Policy and Reporting.

[FR Doc. 07-3628 Filed 7-24-07; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-07-07BH]

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

Environmental Health Specialists Network (EHS-NET) Program—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting OMB approval for a research program focused on identifying the environmental causes of food and waterborne illness and improving environmental public health practice. This research program is conducted by the Environmental Health Specialists Network (EHS-Net), a collaborative project of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (U.S.EPA), and nine states (California, Connecticut, Georgia, Iowa, New York, Minnesota, Oregon, Rhode Island, and Tennessee). The network consists of environmental health professionals, epidemiologists, and laboratorians.

EHS-Net plans to conduct approximately twenty applied research projects per year. These research projects will focus on identifying and understanding environmental factors associated with food and waterborne illness, such as poor food and water handling practices. These projects will also focus on evaluation of food and water safety regulatory programs. Data collection for these projects may involve (1) surveys, (2) observations, and (3) food, water, and environmental sampling. Data may be collected from

(1) retail food establishments, where the majority of foodborne illness outbreaks originate, (2) public and non-public water systems, representing possible sources of waterborne illness, and (3) food and water safety program regulators, who are responsible for food and water safety.

EHS-Net will conduct three food safety projects with all nine EHS-Net states per year. There will be up to 900 respondents for each project (total=2,700). Additionally, each EHS-Net state will conduct at least one individual food safety project, with up to 250 respondents for each project (total=2,250). Approximately three-fourths of the respondents for these projects will be retail food service workers; the remaining will be food safety program regulators. Thus, there will be approximately 3,713 retail food service worker and 1,237 food safety program regulator respondents to EHS-Net food safety projects annually. Each respondent will respond only once and the average burden per response will be approximately 90 minutes. The estimated total annual burden for EHS-Net food safety projects is 5,570 hours for retail food service workers and 1,856 hours for food safety program regulators.

Five EHS-Net states (California, Georgia, Minnesota, New York, and Tennessee) have funding to study water safety; EHS-Net will conduct three water safety projects with these five states per year. There will be up to 375 respondents for each project (total=1,875). Additionally, each EHS-Net water state will conduct at least one individual water safety project, with up to 250 respondents for each project (total=1,250). Approximately three-fourths of the respondents for these projects will be water system operators; the remaining will be water safety program regulators. Thus, there will be approximately 1,781 water system operator and 594 water safety program regulator respondents to EHS-Net water safety projects annually. Each respondent will respond only once and the average burden per response will be approximately 90 minutes. The estimated total annual burden for EHS-Net water safety projects is 2,672 hours for water system operators and 891 hours for water safety program regulators. The total annual burden for all EHS-Net projects is expected to be approximately 10,987 hours.

There is no cost to the respondents other than their time.

ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Retail food service workers	3,713	1	90/60	5,570
Food safety program regulators	1,237	1	90/60	1,855
Water system operators	1,781	1	90/60	2,671
Water safety program regulators	594	1	90/60	891
Total				10,987

Dated: July 18, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7-14389 Filed 7-24-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N-0165]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 24, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written

comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to baguilar@omb.eop.gov. All comments should be identified with the OMB control number 0910-0466. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice—(OMB Control Number 0910-0466)—Extension

FDA's regulations in part 120 (21 CFR part 120) mandate the application of hazard analysis and critical control point (HAACP) procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these

food products are safe. FDA's mandate to ensure the safety of the Nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, *et seq.*). Under the act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under section 701 (21 U.S.C. 371), the act authorizes the agency to issue regulations for its efficient enforcement. The agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State to another State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

In the **Federal Register** of May 14, 2007 (72 FR 27138), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

21 CFR Sections	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
120.6(c) and 120.12(a)(1) and (b)	1,875	365	684,375	0.1	68,437.5
120.7; 120.10(a); and 120.12(a)(2), (b), and (c)	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b)	1,450	14,600	21,170,000	0.01	211,700

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹—Continued

21 CFR Sections	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
120.10(c) and 120.12(a)(4)(ii) and (b)	1,840	12	22,080	0.1	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12(a)(5)	1,840	52	95,680	0.1	9,568
120.11(b) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d)	308	1	308	4	1,232
Total					358,466

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 of this document provides a breakdown of the total estimated annual recordkeeping burden. FDA bases this hour burden estimate on its experience with the application of HACCP principles in food processing.

The burden estimates in table 1 of this document are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of this final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers were obtained from the agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under these regulations.

Dated: July 19, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7-14403 Filed 7-24-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Submission for OMB Review; Comment Request Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3507(A)(1)(D) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Clinical Center (CC) of the National Institutes of Health, (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 9, 2007 (Volume 72, page 26400–26401) and allowed 60-days for public comments. One comment regarding resources required to conduct surveys was received during the 60-day comment period. The purpose of this notice is to provide an additional 30 days for public comment.

5 CFR 1320.5 Respondents to this request for information collection should not respond unless the request displays a currently valid OMB control number.

Proposed Collection: Title: Generic Clearance for Satisfaction Surveys of Customer and Other Partners. **Type of Information Collection Request:** Reinstatement (OMB Control Number: 0925–0458). **Need and Use of Information Collection:** The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of

modifications of these services, based on customer input; (3) to develop new services, based on customer need; and 4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. **Frequency of Response:** The participants will respond yearly. **Affected public:** Individuals and households, businesses and other for profit, small businesses and organizations. **Types of respondents:** These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small

businesses, regulators, and other

organizations. The annual reporting burden is as follows:

FY 2007

Customer	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Clinical Center Patients	5000	1	.5	2500
Family Members of Patients	2000	1	.5	1000
Visitors to the Clinical Center	1000	1	.17	170
Clinical Center Employees	2500	1	.25	625
NIH Investigators	2000	1	.25	625
NIH Intramural Collaborators	2000	1	.17	340
Vendors and Collaborating Commercial Enterprises	2500	1	.33	833
Professionals and Organizations Referring Patients	2000	1	.33	833
Regulators	30	1	.33	10
Volunteers	275	1	.5	138
Total	19,305			7074

Estimated costs to the respondents consists of their time; time is estimated using a rate of \$10.00 per hour for patients and the public; \$30.00 for vendors, regulators, organizations and \$55.00 for health care professionals. The estimated annual costs to respondents for FY 2007 for which the generic clearance is requested is \$159,250. Estimated Capital Costs are \$7,000. Estimated Operating and Maintenance costs are \$73,000.

Requests for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection

plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, National Institutes of Health Clinical Center, Building 10, Room 6-1480, 10 Center Drive, Bethesda, Maryland 20892, or call non-toll free: 301-496-3515, or e-mail your request or comments, including your address to: dkh@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: July 18, 2007.

David K. Henderson,

Deputy Director for Clinical Care, CC, National Institutes of Health.

[FR Doc. E7-14364 Filed 7-24-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; NICHD Research Partner Satisfaction Surveys

SUMMARY: 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 National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: NICHD Research Partner Satisfaction Surveys.
Type of Information Collection Request: RENEWAL of OMB Clearance 0925-0532. **Need and Use of Information**

Collection: Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the National Institute of Child Health and Human Development (NICHD), Office of Science Policy, Analysis and Communication (OSPAC), seeks to obtain OMB's generic approval to conduct customer satisfaction surveys surrounding its research programs and activities.

The NICHD was founded in 1963. Its mission is to ensure, through research, the birth of healthy infants and the opportunity for each to reach full potential in adulthood, unimpaired by physical or mental disabilities. The NICHD conducts and supports research on the many factors that protect and enhance the processes of human growth and development. The developmental focus of the NICHD means that its research portfolio is unusually broad. NICHD programs include research on infant mortality, birth defects, learning disorders, developmental disabilities, vaccine development, and demographic and behavioral sciences, among others.

In addition to supporting laboratory research, clinical trials, and epidemiological studies that explore health processes, the NICHD disseminates information that emanates from its research programs to its customers, or those who are partners with the Institute. This includes scientists, practitioners, other health professionals, and the public.

Survey information will augment the NICHD's on-going efforts to assess their research funding mechanisms, activities, and programs, as well as the information products that are used to disseminate research findings. Primary

objectives are: (1) To identify opportunities and barriers to achieving scientific aims; (2) to learn about emerging scientific opportunities and unmet public health needs; (3) to measure customer satisfaction with information products; and (4) to identify strengths and weaknesses of the NICHD's program operations. The OSPAC will use the survey results to better respond to its customers, including its various partners in research, and to improve the NICHD's research programs and activities. Findings will help to: (1) Formulate strategies to help enhance research

opportunities and remove barriers; (2) target the NICHD's research programs and activities to take advantage of emerging scientific opportunities and meet public health needs related to its mission; (3) develop information products tailored to the NICHD audience; and (4) improve program planning, management, and operations. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Members of the public; eligible grant applicants and actual

applicants (both successful and unsuccessful); clinicians and other health professionals; and actual or potential clinical trials participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 28,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* Varies with survey type, see below; and *Estimated Total Annual Burden Hours Requested:* 5,883. The annualized cost to respondents is estimated at: \$109,541.46. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Web-based	24,000	1	0.167	4,008.00
Telephone	2,000	1	0.50	1,000.00
Paper	1,500	1	0.25	375.00
In-person	500	1	1.00	500.00
Total	28,000			5,883.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Paul L. Johnson, NIH NICHD Office of Science Policy, Analysis and Communication (OSPAC), 9000 Rockville Pike, Bldg. 31, Rm. 2A-18, Bethesda, Maryland 20892-2425, or call non-toll-free at 301-402-3213. You may also e-mail your request to pjohnson@mail.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: July 19, 2007.

Paul L. Johnson,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. E7-14366 Filed 7-24-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1699-DR]

Kansas; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-1699-DR), dated May 6, 2007, and related determinations.

EFFECTIVE DATE: July 13, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now May 4, 2007, through June 1, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030,

Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7-14342 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1711-DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA-1711-DR), dated July 2, 2007, and related determinations.

EFFECTIVE DATE: July 13, 2007.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 2007.

Labette County for Individual Assistance.

Allen, Cowley, and Linn Counties for Individual Assistance (already designated for emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7-14347 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-1710-DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA-1710-DR), dated July 2, 2007, and related determinations.

EFFECTIVE DATE: July 13, 2007.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 2007.

Ulster County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7-14345 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-1712-DR]

Oklahoma; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA-1712-DR), dated July 7, 2007, and related determinations.

EFFECTIVE DATE: July 13, 2007.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 2007.

Nowata County for Individual Assistance. Comanche and Pottawatomie Counties for Individual Assistance (already designated for

emergency protective measures [Category B], limited to direct Federal assistance under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7-14348 Filed 7-24-07; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-1709-DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-1709-DR), dated June 29, 2007, and related determinations.

EFFECTIVE DATE: July 13, 2007.

FOR FURTHER INFORMATION CONTACT:

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 29, 2007.

Bosque, Collin, and Fannin Counties for Public Assistance.

Cooke, Coryell, Grayson, and Lampasas Counties for Public Assistance (already designated for Individual Assistance and Public Assistance Category B [emergency protective measures], limited to direct Federal assistance.)

Burnett, Eastland, and Webb Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,
Administrator, Federal Emergency Management Agency.
[FR Doc. E7–14343 Filed 7–24–07; 8:45 am]
BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–60]

Notice of Submission of Proposed Information Collection to OMB; Implementation of the Violence Against Women and Department of Justice Reauthorization Act of 2005

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.

Residents residing in the public housing and Section 8 voucher programs will submit a HUD approval certification form that attest that the individual is a victim of abuse and that the incidences of abuse are bona fide. Without the certification, a PHA or owner may terminate assistance. The information provided to the PHA and owner is confidential.

DATES: *Comments Due Date:* August 24, 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 (2577–0249) 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: Implementation of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

OMB Approval Number: 2577–0249.

Form Numbers: HUD–VAWA.

Description of the Need for the Information and Its Proposed Use: Residents residing in the public housing and Section 8 voucher programs will submit a HUD approval certification form that attests that the individual is a victim of abuse and that the incidences of abuse are bona fide. Without the certification, a PHA or owner may terminate assistance. The information provided to the PHA and owner is confidential.

Frequency of Submission: Annually, Other one time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	200	1		60		12,000

Total Estimated Burden Hours: 12,000.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 2007.

Lillian L. Deitzer,
Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.
[FR Doc. E7–14402 Filed 7–24–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–05]

Privacy Act of 1974; New System of Records, Distributive Shares and Refunds System (DSRS, A80D)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establish a new Privacy Act system of records.

SUMMARY: HUD proposes to establish a new system of records to add to its inventory of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of records identified as HUD/HS–56,

entitled Distributive Shares and Refund System (DSRS, A80D), is utilized to monitor, manage and distribute unearned payment portions of Mortgage Insurance Premiums (MIP) to eligible homeowners.

DATES: *Effective Date:* The action will be effective without further notice on August 24, 2007 unless comments are received that would result in a contrary determination.

Comments Due Date: August 24, 2007.

ADDRESSES: Interested person and invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room 10276, Washington, DC 20410-0500. Communication should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The Departmental Privacy Act Officer, telephone number (202) 708-2374 or Silas C. Vaughn, Chief, Disbursements & Customer Services Branch, (202) 402-3545; Gabriella Scandone, Chief, Systems Management Branch, (202) 402-3545. (These are not toll free numbers.) Telecommunication device for hearing and speech-impaired individuals (TTY) is available at (800) 877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 13, 2007.

Lisa Schlosser,
Chief Information Officer.

HUD/HS-56

SYSTEM NAME:

Distributive Shares and Refunds System (DSRS, A80D).

SYSTEM LOCATION:

Government-owned HITS Data Center in South Charleston, West Virginia and Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All homeowners who had FHA-guaranteed loans or FHA direct loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Borrows, co-borrow and claimant, name, social security number, mailing address; Loan/ Case Data, FHA Case Number, Property Address Endorsement

Date, Termination Date; Financial data; Correspondence data

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203 of the National Housing Act and Section 7(d) of the Department of Housing and Urban Development Act; Public Law 89-174; 24 CFR 5.210, 24 CFR 200.1101, 24 CFR 203.35; Debt Collection Act of 1982, Public Law 97-365; Housing and Community Development Act of 1987, 42 U.S.C 3543

PURPOSE(S):

Upon loan termination DSRS calculates the unearned portion of the upfront MIP, and for eligible cases to distribute payments of the unearned portion of the upfront mortgage insurance premium to homeowners; and serves as the repository of all non-claim terminated loan data in the Federal Housing Administration's (FHA) single family guaranteed loan portfolio. DSRS receives information from the Single Family Insurance (SFIS-A-43) when the insurance is terminated. In approximately 75 % of these situations, a refund is automatically made to the homeowner, for the remaining cases, DSRS generates an application for Premium Refund of Distributive Share Payment (form HUD-27050-B) that is sent to the homeowner. The homeowner returns this form and supporting documentation to HUD. These records are forwarded to a data entry contractor who extracts information from the form and prepares an electronic submission to DSRS. Documents are returned to HUD headquarters where they are reviewed and shredded after processing of the payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follow:

(a) HUD staff/management—in order to review and authorize payment to the homeowner(s), management reporting summary information (number and type of refunds/distributive shares, dollar value) for production/operations reporting;

(b) Online system access if provided to Contractor operated call centers—for general homeowner inquiries, form request, payments status. In compliance with the Privacy Act and Litigation, after a two-year period during which the payment has not yet been made, the Department has an online query screen, Does HUD Owe You a Refund? (<http://www.hud.gov/offices/hsg/cop/refunds/>

[index.cfm](#)). At this site, homeowners and other interested parties can determine if they have a refund/share due;

(c) To the Financial Transaction Repository—in order to record accounting transactions in the U.S. General Ledger format. Summary information is case specific details (excluding SSN) are provided during the financial and systems audits conducted by the HUD OIG, CFO, and external auditors for audit purposes; and,

(d) To the U.S. Department of the Treasury—to issue payment to the homeowner(s) and/or claimants.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on the mainframe and on microfilm, microfiche, and CD.

RETRIEVABILITY:

Records are retrieved by FHA case number and for the webpage by an individual's name.

SAFEGUARDS:

Records are maintained in secured office space and secure file rooms to which access is limited to those personnel who service the records.

RETENTION AND DISPOSAL:

Documents are destroyed by shredding once the review and/or approval of payment has been made and the document image has been verified (usually within 30 days of receipt). Microfilm, microfiche, and CD images of the records are maintained for 40 years after which they are destroyed by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Disbursements & Customer Services Branch, Office of the Single Family Insurance Operations Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3120, Washington, DC 20026; Chief, Systems Management Branch, Office of the Single Family Insurance Operations Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3120, Washington, DC 20026

NOTIFICATION PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410, in accordance with the procedures in 24 CFR Part 16.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and appeals appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 4176, Washington DC 20410.

RECORD SOURCE CATEGORIES:

Homeowners provide the data on their loan application—the HUD/VA Addendum to Uniform Residential Loan Application (form HUD-92900-A). Part III of this form, Notice to Borrowers, discusses the collection of personal information. In addition, homeowners are provided with the Important Notice to Homebuyers (form HUD-92900-B) at loan origination and at loan termination by the lender. For those refunds that are not automatically paid, a form HUD-27080-B (OMB Control Number 2502-0414) is generated and requires the homeowner/claimant to fill in data in order to validate that they are due the refund/share payment.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7-14405 Filed 7-24-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

Draft Environmental Impact Statement, Section 10 Permit Application, Draft Horseshoe-Bartlett Habitat Conservation Plan, and Draft Implementing Agreement for Incidental Take by the Salt River Project, Maricopa and Yavapai Counties, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments; announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Salt River Project (SRP) (applicant) for an incidental take permit under the Endangered Species Act (Act) of 1973, as amended. If approved, the permit would be for a period of 50 years, and would authorize incidental take of 16 species currently listed under the Act, as well as of species that may become listed under the Act in the future. We request comments and plan to hold a public hearing on the application and associated documents.

DATES: We will accept written comments on the draft EIS and application until September 24, 2007. We will also accept oral and written comments at a public hearing on August 29, 2007, 6–9 p.m.

ADDRESSES: *Comments:* Send comments by one of the following means:

- *E-mail:* Horeshoe-BartlettHCP@fws.gov;
- *Fax:* 602/242-2513; or
- *Hand delivery or U.S. Mail:* Mr. Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.

Public Hearing: We will hold our public hearing at the offices of the Salt River Project, 1521 Project Drive, Tempe, AZ 85281.

For more information on submitting comments or requesting documents, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Draft EIS: Ms. Debra Bills, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; 602/242-0210.

Application: Mr. Charles Paradzick, Senior Ecologist, Salt River Project, P.O. Box 52025, PAB352, Phoenix, AZ 85072-2025; 602/236-2724, or Mr. Craig Sommers, President, ERO Resources Corporation, 1842 Clarkson Street, Denver, CO 80218; 303/830-1188.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that we have gathered the information necessary to: (1) Determine impacts and formulate alternatives for the EIS, related to the potential issuance of an ITP to SRP; and (2) develop and implement the HCP, which provides measures to minimize and mitigate the effects of the incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act.

If approved, the 50-year permit would authorize incidental take of 16 species currently listed under the Act, as well as for species that may become listed under the Act in the future (covered species):

1. Southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher),
2. Bald eagle (*Haliaeetus leucocephalus*),
3. Yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo),
4. Razorback sucker (*Xyrauchen texanus*),
5. Colorado pikeminnow (*Ptychocheilus lucius*),
6. Gila topminnow (*Poeciliopsis o. occidentalis*),

7. Spikedace (*Meda fulgida*),
8. Loach minnow (*Tiaroga cobitis*),
9. Roundtail chub (*Gila robusta*),
10. Longfin dace (*Agosia chrysogaster*),
11. Sonora sucker (*Catostomus insignis*),
12. Desert sucker (*Catostomus clarki*),
13. Speckled dace (*Rhinichthys osculus*),
14. Lowland leopard frog (*Rana yavapaiensis*),
15. Northern Mexican gartersnake (*Thamnophis eques megalops*), and
16. Narrow-headed gartersnake (*Thamnophis rufipunctatus*).

The proposed take would occur in Maricopa and Yavapai Counties, Arizona, as a result of impacts on occupied habitat from continued operation of Horseshoe Dam and Reservoir (Horseshoe) and Bartlett Dam and Reservoir (Bartlett). We have issued a draft Environmental Impact Statement (EIS) to evaluate the impacts of and alternatives for the possible issuance of an incidental take permit (ITP). SRP has completed the draft Horseshoe-Bartlett Habitat Conservation Plan (HCP), along with a draft Implementing Agreement as part of the application package submitted to the Service (collectively, the “Application”) as required by the Act, for consideration of issuance of an ITP. The Application provides measures to minimize and mitigate to the maximum extent practicable the effects of the proposed taking of covered species and effects to the habitats upon which they depend.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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.

Read-only downloadable copies of the draft EIS and Application documents are available on the Internet at <http://www.fws.gov/southwest/es/arizona>. A printed or CD copy of the documents is available upon request to Chuck Paradzick, Salt River Project, P.O. Box 52025, Phoenix, AZ 85072-2025; (602) 236-2724; Charles.Paradzick@srpnet.com. Copies of the draft EIS and Application are also

available for public inspection and review at the locations listed below.

Copies of the draft EIS and Application are available for public inspection and review at the following locations (by appointment at government offices):

- Department of the Interior, Natural Resources Library, 1849 C Street NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 110 S. Church, Suite 3450, Tucson, AZ 85701.
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021.
- Salt River Project, 1521 Project Drive, Tempe, AZ 85281.
- Flagstaff Public Library, 300 W. Aspen Ave., Flagstaff, AZ 86001.
- Government Document Service, Arizona State University, Tempe, AZ 85287.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix, AZ 85004.
- Cottonwood Public Library, 100 S. 6th St., Cottonwood, AZ 86326.
- Camp Verde Public Library, 130 Black Bridge Loop Rd., Camp Verde, AZ 86322.
- Fountain Hills Library, 12901 N. La Montana Dr., Fountain Hills, AZ 85268.

If you wish to comment by e-mail, please include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Field Office at 602/242-0210. Please note that at the end of the public comment period, we will close the e-mail address *Horeshoe-BartlettHCP@fws.gov*.

Background

SRP operates Horseshoe and Bartlett in conjunction with four reservoirs on the Salt River and one reservoir on East Clear Creek as integral features of the Salt River Federal Reclamation Project, authorized by the Reclamation Act of 1902, and pursuant to a 1917 contract with the United States. Since completion in the 1930s and 1940s, Horseshoe and Bartlett have provided water for irrigation, municipal, and other uses. Currently, SRP reservoirs supply much of the water for the population of more than 2.6 million people in the cities of Phoenix, Mesa, Chandler, Tempe, Glendale, Gilbert, Scottsdale, Tolleson, and Avondale. Water deliveries are also made pursuant to specific water rights in Horseshoe and Bartlett held by the City of Phoenix, the Salt River Pima-Maricopa Indian Community, and the Fort McDowell

Yavapai Nation. In addition, water is provided to irrigate agricultural lands within SRP and for satisfaction of the independent water rights of Buckeye Irrigation Company, Gila River Indian Community, Roosevelt Irrigation District, Roosevelt Water Conservation District, and others. Horseshoe, Bartlett, and the other SRP reservoirs also provide a variety of recreational uses in central Arizona.

Due to dry conditions in central Arizona for the past 12 years, water levels in Horseshoe and Bartlett have been below normal. As a result, riparian trees and shrubs have grown in the Horseshoe storage space and have been colonized by a population of flycatchers, which are listed as endangered under the Act. Thus, periodic refilling of the reservoir may adversely affect the habitat and nesting of the flycatcher as well as the cuckoo, which uses similar habitat. Also, nonnative fish produced in Horseshoe and Bartlett can adversely impact covered fish, frog, and gartersnake species through predation, competition, and alteration of habitat in the Verde River and portions of its tributaries.

Proposed Action

The proposed action is the issuance of an ITP for the covered species for SRP's continued operation of Horseshoe and Bartlett, pursuant to section 10(a)(1)(B) of the Act. The requested duration of the permit is 50 years. The areas covered by the proposed permit would include Horseshoe up to an elevation of 2,026 feet, Bartlett up to an elevation of 1,748 feet, the Salt River from Granite Reef Dam to the Verde River, most of the Verde River upstream from the Salt River, and portions of the Verde River tributaries. The action area for the proposed permit also includes mitigation lands acquired as part of the HCP.

To meet the requirements of a section 10(a)(1)(B) permit, SRP has developed and would implement the HCP, which would provide modified operating objectives to support stands of tall riparian vegetation at the upper end of Horseshoe to minimize impacts to covered bird species, and to manage Horseshoe water levels to minimize impacts to covered native fish, frog, and gartersnake species. The HCP also includes a description of other measures to minimize and mitigate for incidental take of the covered species to the maximum extent practicable, and which ensures that incidental take of covered species will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

Alternatives

Two other alternatives we are considering include the following:

1. No Permit—No issuance of an ITP by the Service. This alternative would require SRP to do everything within its control to avoid any take of federally listed species associated with its continued operation of Horseshoe and Bartlett.

2. Modified Historical Operation—Approval by the Service of an application for an ITP authorizing the continued full operation of Horseshoe and Bartlett by SRP using historical operating objectives for the reservoirs, along with additional measures to minimize and mitigate the potential take of covered species.

Section 9 of the Act and its implementing regulations prohibit the "taking" of threatened and endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 et seq.) and its implementing regulations (40 CFR 1506.6).

Christopher T. Jones,

Acting Regional Director, Region 2
Albuquerque, New Mexico.

[FR Doc. E7-14354 Filed 7-20-07; 8:45 am]

BILLING CODE 4510-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-300-1110-PI]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Idaho Falls, Idaho on August 29 and 30, 2007. Day 1 of this meeting will start at 1 p.m. and will include an hour-long discussion of proposed fee changes for the U.S. Forest Service in Eastern and Central Idaho. The remainder of the day

and the following day will be tours of the St. Anthony Sand Dunes and the South Fork of the Snake River, respectively. The public will be responsible for their own transportation and food if they desire to join the RAC on the tours. Other subjects named above will be the status of the Upper Snake Field Office's recreation program, lands and realty initiatives on the South Fork, noxious weed control, and other topics of relevance to the tour.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524-7559. E-mail: David_Howell@blm.gov.

Dated: July 19, 2007.

David Howell,

RAC Coordinator.

[FR Doc. E7-14384 Filed 7-24-07; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-050-1430-EQ-P; AA-081894]

Notice of Realty Action; Issuance of a 5-Year Renewable Lease of Public Land, Caribou Lake, AL

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that issuance of a 5-Year renewable land lease to resolve unauthorized use and occupancy of public land, approximately one (1) acre in size, on the shore of Caribou Lake, including an existing 10'x14' cabin, located

approximately 13 miles southeast of the rural community of Cantwell, Alaska, is consistent with the 1985 BLM Glennallen District Management Framework Plan and East Alaska Final Resource Management Plan/Environmental Impact Statement. This action is pursuant to section 302 (b) of the Federal Land Policy and Management Act of 1976, as amended, and 43 CFR 2920.0-6. The leasing of public land is within the authority of the Secretary of the Interior. The annual rental amount will be required to be paid in advance as outlined in 43 CFR 2920.8(a), and through Instruction Memorandum AK-2005-028.

DATES: Interested parties may submit comments to the Bureau of Land Management Glennallen Field Office Manager at the below stated address. Comments must be received not later than 45 days from publication date. Only written comments will be accepted. 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 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.

ADDRESSES: Address all written comments concerning this Notice to Ramone McCoy, BLM Glennallen Field Office Manager, P.O. Box 147, Glennallen, Alaska 99588-0147.

FOR FURTHER INFORMATION CONTACT: Joseph Hart, Realty Specialist, by phone at (907) 822-3217, or by e-mail at joseph_hart@ak.blm.gov.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of section 302 (b) of the Federal Land Policy and Management Act of 1976 and 43 CFR 2920.0-6 is within Section 30, T. 19 S., R. 6 W., Fairbanks Meridian, Alaska, and is approximately one (1) acre in area. An application to lease the site will be accepted from only Ray Atkins to resolve an unauthorized use of public lands. An existing cabin was constructed on site by Ray Atkins with the safety concerns of many local residents in mind for use during harsh winter conditions that are common for this area of Alaska. Intended to be remote emergency shelter in times of need, the cabin will also be open and available for general public use year-round, except when the applicant will utilize the cabin in support of his

guiding activities in the area during a short period in the fall. Any comments and application must include a reference to this notice. Fair market value rent, as required in 43 CFR 2920.8 and as determined by Instruction Memorandum AK-2005-028, will be collected for the use of these lands, as well as reasonable administrative, processing, and monitoring costs for processing the lease as required in 43 CFR 2920.6.

This determination was made upon completion of an Environmental Assessment, recommending that a one-acre site, be leased to Ray Atkins within Sec. 30, T. 19 S., R. 6 W., Fairbanks Meridian, Alaska, to authorize the use and occupancy of public lands and thereby resolve an unauthorized use (Authority: 43 CFR 2920.4(c)).

Ramone McCoy,

Field Office Manager, Glennallen Field Office.

[FR Doc. E7-14336 Filed 7-24-07; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-056-5101-EQ F186; N-81843]

Notice of Realty Action: Airport Lease and Non-Competitive (Direct) Sale in Searchlight, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to initially lease and then convey 21.4 acres of public land located south of the town of Searchlight, Nevada, for a public airport. An existing airport is located on public and private lands, and the center portion of the airport runway is located on lands currently owned by Searchlight Airpark Developers, LLC (Searchlight). Searchlight proposes to develop a residential airpark on the remaining portion of its private lands and use its 1,600 feet of private runway in conjunction with the 3,700 feet of runway located on public lands. Searchlight has requested that the existing airport runway be leased and then conveyed to it at the appraised fair market value of the land. At a future date, the BLM proposes to sell the 21.4 acres of public airport runway to Searchlight by non-competitive (direct) sale at not less than the appraised fair market value. The sale of the airport runway will require a cadastral survey and updated appraisal prior to conveyance.

DATES: On or before September 10, 2007, interested parties may submit written comments concerning the proposed airport lease and direct sale to the BLM Field Manager, Las Vegas Field Office, at the address stated below. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification.

ADDRESSES: Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Shawna Woods, Realty Specialist, at (702) 515-5099.

SUPPLEMENTARY INFORMATION: On February 1, 1965, Clark County, Nevada, submitted an application for an airport lease near Searchlight, Nevada. The land was determined to be suitable for airport purposes, and a lease (Nev—065340) was issued to Clark County on May 17, 1965, for a 20-year term. The lease was renewed on May 16, 1985, for an additional 20-year term. On November 10, 1986, airport regulations were amended to require that rental values be determined by appraised fair market value. The lease expired on May 15, 2005, and Clark County has decided not to renew.

The existing runway is approximately 5,300 feet long, of which approximately 1,600 feet in the center of the runway is owned by Searchlight through two patented mining claims. Searchlight has applied for an airport lease for 21.4 acres, which constitutes the remaining approximately 3,700 feet of the runway. The subject 21.4 acre parcel would be leased at an appraised fair market value of \$23,200 annually as determined by a BLM-approved appraisal.

Searchlight has also requested direct sale of the same parcel. The subject parcel will require a cadastral survey prior to conveyance and would be offered for sale at no less than appraised fair market value based on an updated BLM-approved appraisal. The land meets the criteria for direct sale pursuant to 43 CFR 2711.3-3(a)(2), (3), and (4).

The following described land in Clark County has been examined and found suitable for airport lease and direct sale pursuant to Sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (FLPMA) P.L. 94-579, as amended, 43 U.S.C. 1713 and 1732 and 43 CFR Subparts 2711 and 2911.

Mount Diablo Meridian

T. 29 S., R. 63 E.,
Sec. 2 lots 18, 19, and 20;
Sec. 11, NE¼ and N½SE¼.

The area described contains approximately 21.4 acres in Clark County.

This proposed action is in conformance with the BLM Las Vegas Resource Management Plan, approved on October 5, 1998. The plan has been reviewed and it is determined the proposed action conforms with land use plan decision LD-1 and 2a established in accordance with Sections 203 and 302 of FLPMA, as amended (43 U.S.C. 1713 and 1732).

Issuance of an airport lease is being proposed and is considered appropriate. Regulation 43 CFR 2911.0-8 states that “any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act [of May 24, 1928, 49 U.S.C. Appendix 211-213], subject to valid existing rights under the public land laws.”

The land will be subject to the following:

1. A reservation of a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945);
2. A reservation to the United States of all minerals together with the right to prospect for, mine, and remove such deposits from the above-described lands under applicable law and such regulations as the Secretary of the Interior may prescribe;
3. Valid existing rights of record, including, but not limited to those documented on the BLM public land records at the time of lease and conveyance;
4. Rights for a power transmission line, telephone line, and roads granted to So. Cal. Metro Water District, its successors and assigns, by BLM right-of-way No. CC-018307, pursuant to the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617d);
5. Rights for an underground fiber optic line and regeneration facilities granted to AT&T, its successors and assigns, by BLM right-of-way No. 52050, pursuant to Title V of FLPMA (90 Stat. 2776; 43 U.S.C. 1761);
6. Rights for an underground fiber optic line and regeneration facilities granted to Central Telephone, its successors and assigns, by BLM right-of-way No. 52985, pursuant to Title V of FLPMA (90 Stat. 2776; 43 U.S.C. 1761);
7. Rights for a fiber optic line and regeneration facilities granted to Electric Lightwave, Inc., its successors and assigns, by BLM right-of-way No. 58566, pursuant to Title V of FLPMA (90 Stat. 2776; 43 U.S.C. 1761);
8. Rights for an underground fiber optic line granted to IXC Carrier Group, Inc., its successors and assigns, by BLM right-of-way No. 61851, pursuant to

Title V of FLPMA (90 Stat. 2776; 43 U.S.C. 1761);

9. Rights for an aerial powerline granted to Central Telephone, its successors and assigns, by BLM right-of-way No. Nev-057664, pursuant to Title V of FLPMA (90 Stat. 2776; 43 U.S.C. 1761).

The lessee/patentee by accepting a lease and/or patent, covenants and agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, or future acts or omissions of the lessee/patentee, its employees, agents, contractors, lessees, or any third-party, arising out of or in connection with the lessee/patentee's use, occupancy, or operations on the real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now, or may in the future become, applicable to the real property and/or applicable to the use, occupancy, and/or operations thereon; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal and State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Activities by which solid or hazardous substance(s) or waste(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal and State environmental laws, are generated, released, stored, used, or otherwise disposed of on the leased/patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substance(s) or waste(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be structured as running with the above described parcel of real property and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind, express or implied is given or will be given by the United States as to the title, physical condition, or potential uses of the land proposed for lease/patent and the conveyance of this land will not be on a contingency basis. Pursuant to the

requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor have any hazardous substances been disposed of or released on the subject property.

Publication of this notice in the **Federal Register** temporarily segregates the above described land from appropriation under the public land laws, including the mining laws, but not the laws authorizing direct sales or airport leases, 43 U.S.C. 1713, 1732. The segregative effect of this notice will terminate in accordance with 43 CFR 2911.2-3(b) (airport lease) and 43 CFR 2711.1-2(d) (direct sale). Detailed information concerning the proposed lease/patent, including an environmental assessment and the approved appraisal report, is available for review at the BLM Las Vegas Field Office at the address above. The Field Manager, BLM, Las Vegas Field Office, will review the comments of all interested parties concerning the lease/patent. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated above in this notice for that purpose. 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. Any adverse comments will be reviewed by the BLM, Nevada State Director.

In the absence of any adverse comments, the decision will become effective on September 24, 2007. The lands will not be offered for lease/patent until after the decision becomes effective.

(Authority: 43 CFR 2711 and 2911)

Dated: May 2, 2007.

Mark R. Chatterton,

Assistant Field Manager, Non-Renewable Resources, Las Vegas, Nevada.

[FR Doc. E7-14338 Filed 7-24-07; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

Request for Comments Concerning the Institution of a Section 751(b) Review Investigation; Certain Orange Juice From Brazil

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731-TA-1089 (Final), Certain Orange Juice from Brazil.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the Commission's affirmative determination in investigation No. 731-TA-1089 (Final). The purpose of the proposed review investigation is to determine whether revocation of the existing antidumping duty order on imports of certain orange juice from Brazil is likely to lead to continuation or recurrence of material injury. See 19 U.S.C. 1675(b)(2)(A). Certain orange juice is provided for in subheadings 2009.11.00, 2009.12.25, and 2009.19.00 of the Harmonized Tariff Schedule of the United States.

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

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202-205-3184), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this matter may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On January 13, 2006, the Department of Commerce determined that imports of certain orange juice from Brazil were being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act (19 U.S.C. 1673) (71 FR 2183, January 13, 2006); and on March 3, 2006

the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was materially injured by reason of imports of such LTFV merchandise. Accordingly, Commerce ordered that antidumping duties be imposed on such imports (71 FR 12183, March 9, 2006).

On June 13, 2007, the Commission received a request to review its affirmative determination in investigation No. 731-TA-1089 (Final) pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). The request was filed by Tropicana Products, Inc. (Tropicana). Tropicana alleges that there is good cause for the Commission to conduct a review despite the statutory prohibition against conducting a review within two years of the publication of its injury determination (19 U.S.C. 1675(b)(4)). Tropicana alleges that shortfalls in the Florida juice orange crop and depleted inventories; significant price increases and a greatly constricted supply; and disruption of the alternative sources of Brazilian supply following imposition of the antidumping duty order have resulted in the domestic orange juice producers being harmed by the order.

Written comments requested.

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure, the Commission requests comments concerning whether the alleged changed circumstances, brought about by shortfalls in the Florida juice orange crop and depleted inventories; significant price increases and a greatly constricted supply; and disruption of the alternative sources of Brazilian supply following imposition of the antidumping duty order are sufficient to warrant institution of a review investigation.

Written submissions. Comments must be filed with the Secretary to the Commission no later than 60 days after the date of publication of this notice in the **Federal Register**. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Authority: This notice is published pursuant to section 207.45 of the Commission's rules.

Issued: July 20, 2007.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7-14346 Filed 7-24-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on July 16, 2007, a proposed Consent Decree in *United States v. Dixie-Narco, Inc., et al.*, Civil Action No. 1:07-cv-1925-MBS, was lodged with the United States District Court for the District of South Carolina.

The proposed Consent Decree resolves the United States' claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, for implementation of remedial action and recovery of response costs incurred and to be incurred by the United States at the Admiral Home Appliances Superfund Alternative Site located in Williston, Barnwell County, south Carolina. The Consent Decree requires Dixie-Narco, Inc., Maytag Corporation and Rheem Manufacturing Company to conduct remedial action at the Admiral Home Appliances site, pay EPS's costs to oversee the work, and pay EPA's remaining unreimbursed costs incurred at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Dixie-Narco, Inc., et al.*, D.J. Ref. 90-11-3-07761/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1441 Main Street, Suite 500, Columbia, SC 29201, and at U.S. EPA Region IV, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the proposed Consent Decree may also be obtained by mail from the Consent

Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$58.25 for the Consent Decree plus Appendices or \$13 for the Consent Decree without Appendices (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-3642 Filed 7-24-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed Environmental Consent Decree

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree in *United States v. Equistar Chemicals, LP* ("Equistar") (Civil Action No. 1:07-CF-4045), which was lodged with the United States District Court for the Northern District of Illinois on July 18, 2007.

This proposed Consent Decree was lodged simultaneously with the Compliant in this multi-facility, multimedia case covering seven of Equistar's petrochemical plants in four states. Our complaint alleges claims pursuant to Clean Air Act ("CAA"), 42 U.S.C. 7401-7671q; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901-6992k; the Clean Water Act ("CWA"), 33 U.S.C. 1251-1387; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. 11001-11050; and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601-9675.

Under the settlement, Equistar will take immediate action to correct the regulatory violations identified and will implement enhancements to its air, water and hazardous waste programs at all 7 facilities to address deficiencies across the board. Equistar will also install a waste water treatment plant at the Channelview, Texas, facility as part of an injunctive relief project to eliminate the land disposal of 150,000

tons of benzene hazardous waste per year. The estimated cost to Equistar of implementing all the Consent Decree requirements is \$125 million. In addition, Equistar will pay a civil penalty of \$2.5 million and spend \$6,560,000 on Federal and state Supplemental Environmental Projects ("SPEs"). The federal SEP project will control an estimated 26 tons per year of hazardous air emissions from process vents at Channelview. The state environmental projects include: (1) The purchase of emergency response equipment and newer, cleaner school buses; (2) funding for the Mississippi River Eco Tourism Center; and (3) hazardous waste cleanup activities in the wake of hurricanes Katrina and Rita. The states of Iowa, Illinois, and Louisiana have joined in the settlement, will each file Complaints-in-Intervention and receive a \$178,600 share of the civil penalty.

Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and may be submitted to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or via e-mail to pubcomment-ees.enrd@usdoj.gov, and should refer to *United States v. Equistar Chemicals, LP*, D.J. Ref. 90-5-2-1-08012/1.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, 219 S. Dearborn Street, Fifth Floor, Chicago, Illinois 60604. During the public comment period the Equistar consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Equistar Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood tonia.fleetwood@usdoj.gov, fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$37.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-3612 Filed 7-24-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed consent decree in *United States et al. v. J.H. Berra Construction Company, Inc., et al.*, Civil action No. 07-01268, was lodged on July 12, 2007 with the United States District Court for the Eastern District of Missouri. The United States and the State of Missouri filed this action pursuant to the Clean Water Act and Missouri Clean Water Law to obtain civil penalties and injunctive relief to address violations of stormwater pollution control permits issued pursuant to the Clean Water Act and the Missouri Clean Water Law and violations of the Clean Water Act's prohibition on unpermitted discharges. The action involves violations at three construction sites in Missouri: The Enclaves at Cherry Hills, a 130-acre residential development located in the City of Wildwood; the Countryshire Development, a 150-acre residential development in O'Fallon; and Seckman Lake Estates, a 120-acre construction site in Jefferson County.

The Consent Decree, with resolves claims by the United States, the State of Missouri, and the City of Wildwood, Missouri, requires the defendants, J.H. Berra Construction Co. Inc., a land developer in the St. Louis, Missouri areas, and four associated companies (JHB Properties Inc., J.H. Berra Holding Co. Inc., JMB No. 2 LLC, and CMB Rhodes LLC), to pay a penalty of \$590,000 and to reimburse more than \$52,000 to the State of Missouri and the City of Wildwood for their investigation and enforcement costs. The consent decree also requires the defendants to institute a program to improve training and implementation of storm water controls at future construction sites, to implement remedial plans for the pollution caused by their violations, and to pay for mitigation of the impact of their violations on Foxwood Estate Lake and Lake Chesterfield.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments, relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either mailed to pubcomment-ees.enrd@usdoj.gov or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States et al. v. J.H. Berra Construction Co, Inc., et al.*, DOJ Ref. #90-5-1-1-08444.

The proposed consent decree may be examined at the office of the United States Attorney, Thomas Eagleton U.S. Courthouse, 111 S. 10th Street, 20th Floor, St. Louis, MO 63102, and at the Region VII Office of the Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101. During the public comment period, the proposed consent decree may also be examined on the Department of Justice Web site, at http://www.usdoj.gov/enrd/Consent_Decrees.htm. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or emailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax number (202) 514-0097, phone confirmation number (202) 514-1574. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$26.50 (or \$17 for a copy that omits the exhibits and signature pages) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07-3643 Filed 7-24-07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Solicitation for grant applications.

Announcement Type: New.
Funding Opportunity Number: SGA 07-01.

Catalog of Federal Domestic Assistance Number: 17.603.

SUMMARY: The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), is making \$500,000 available in grant funds for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants will be on training and training materials for mine rescue and mine emergency preparedness in underground coal mines. Applicants for the grants may be States and nonprofit (private and public) entities. MSHA could award as

many as 10 separate grants with a 12-month period of performance. The amount of each individual grant will be at least \$50,000. This notice contains all of the necessary information needed to apply for grant funding.

DATES: Grant applications must be received electronically by the *Grants.gov* system no later than 4:30 p.m., E.T., on August 24, 2007, the application deadline date. Applicants must contact the MSHA Directorate of Educational Policy and Development office listed on the announcement at least one week prior to the application deadline date, (or no later than 4:30 p.m., E.T., on Friday, August 13, 2007) to speak to a representative who can provide assistance to ensure that applications are submitted online by the closing date. Requests for extensions to this deadline will not be granted. MSHA will award grants on or before September 30, 2007.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the Government-wide site at <http://www.grants.gov>. If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to ensure that applications are submitted online by the closing date. MSHA's Web page at www.msha.gov is a valuable source of background for this initiative.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 07-01) should be directed to Robert Glatter at Glatter.Robert@dol.gov or at 202-693-9570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the critical elements required of projects funded under the solicitation. It also describes the application submission requirements, the process that eligible applicants must use to apply for funds covered by this solicitation, and how grantees will be selected. Further information regarding submitting the grant application electronically is listed in Section IV.C, Submission Date, Times, and Addresses. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.

- Part V explains the review process and rating criteria that will be used to evaluate applications.

- Part VI provides award administration information.

- Part VII contains MSHA contact information.

- Part VIII addresses Office of Management and Budget information collection requirements.

I. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Training Grant Program

Responding to several coal mine disasters last year, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). Section 14 of the MINER Act requires the Secretary to establish a discretionary competitive grant program called the Brookwood-Sago Mine Safety Grants (Brookwood-Sago grants). This program provides funding to educate and train miners to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary shall emphasize programs and materials that target workers in smaller mines, to include training on new MSHA standards, high-risk activities, and other identified health and safety priorities.

B. Educational and Training Program Priorities

MSHA priorities for the fiscal year (FY) 2007 funding of the Brookwood-Sago grants will focus on training and training materials for mine rescue and mine emergency preparedness in underground coal mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety and health training and/or educational programs, recruit workers and employers for the training, and conduct and evaluate the training on one of MSHA-selected priorities. Grantees are also expected to conduct follow-up evaluations with people trained by their program to determine how effective their training was in either reducing hazards or improving skills for the selected training topics and cooperate fully with MSHA evaluations of the program. If Brookwood-Sago applicant is not the entity operating the MSHA-approved State training grant, MSHA expects the applicant to contact the State grantee(s) and coordinate any

proposed training or educational program with the applicable State(s) in order not to duplicate any training or educational program offered. An applicant's proposed area for the grant may cover more than one State.

II. Award Information

A. Award Amount for FY 2007

MSHA is providing \$500,000 total for the FY 2007 Brookwood-Sago, which could be divided into as many as 10 separate grants. The amount of each individual grant will be at least \$50,000.00. Applicants requesting less than \$50,000 or more than \$500,000 will not be considered for funding.

B. Period of Performance

The period of performance will be 12 months from the date of execution of the grant documents. This performance period must include all necessary implementation and start-up activities as well as follow-up for performance outcomes. A timeline clearly detailing these required grant activities and their expected completion dates must be included in the grant application. MSHA may approve a request for a no-cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States and State- or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service. A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. *See* 2 U.S.C. 1611.

B. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility. The leveraging of public and/or private resources to achieve project sustainability, however, is highly encouraged and will be awarded up to 10 application evaluation points.

C. Other Eligibility Requirements

1. Dun and Bradstreet Number

Since October 1, 2003, every applicant for a Federal grant funding

opportunity is required to include a DUNS number with its application. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. The DUNS number is a nine-digit identification number that identifies business entities uniquely. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1-866-705-5711 or access the following Web site: <http://dunandbradstreet.com/>.

After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration (CCR) through the Web site <http://www.ccr.gov> or by phone at 1-888-227-2423. CCR registration should become active within 24 hours of completion. After registration, grant applicants will receive a confirmation number. The grant applicant must list an individual as the Point of Contact, who will receive a Trader Partnership Identification Number (TPIN) via mail. The TPIN is, and should remain, a confidential password.

2. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. *See* 29 CFR part 2, subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

3. Non-Compliant Applications

Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B will not be reviewed.

4. Late Applications

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through Grants.gov, Apply for Grants. The CFDA number needed to locate the appropriate application for this opportunity is

17.603. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at 1-800-518-4726 or support@grants.gov. Also, the complete **Federal Register** notice and application forms may also be downloaded from MSHA Web site at www.msha.gov.

B. Content and Form of the Application

Each grant application must address either mine rescue or mine emergency preparedness for underground coal mines. Organizations interested in applying for funds on more than one of these topics must submit separate applications for each topic. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Financial Plan and Forms (No page limit).
- Section 2—Project Summary (Not to exceed 2 pages).
- Section 3—Technical Proposal (Not to exceed 10 pages) Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Financial Plan and Forms

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the application and forms. Applications submitted electronically through Grants.gov do not need to be signed manually; the form will automatically affix an electronic signature for the authorized person identified.

(a) *Completed SF 424, "Application for Federal Assistance."* This form is available online at <http://apply.grants.gov/apply/FormLinks?category=1>, identified in the boxes as Government Wide "Application for Federal Assistance (SF-424)" and also is available at www.msha.gov. The SF 424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.

(b) *Completed SF 424A, "Budget Information Form."* This form is available online at <http://apply.grants.gov/apply/FormLinks?category=4>, identified in the boxes as Government Wide "Budget Information for Non-Construction Programs (SF-424A)" and also is available at www.msha.gov. The project

budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with Federal cost principles and the administrative requirements set forth in this SGA. (Copies of all regulations that are referenced in this SGA are available on-line at www.msha.gov.)

Among other things, the budget should include the costs of travel for two staff members (one program and one financial) to the National Mine Health and Safety Academy in Beckley, West Virginia to attend a grantee orientation meeting; a financial audit, if required; project closeout; document preparation (e.g., quarterly progress reports, project document); and ensuring compliance with procurement and property standards under applicable OMB circulars.

(c) *Budget Narrative.* The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds and leveraged resources to each of the activities specified in the technical proposal; and it should discuss precisely how any administrative costs support the project goals. Indirect cost charges, which are considered administrative costs, must be supported with a copy of an approved Indirect Cost Rate Agreement. Indirect Costs are those costs that are not readily identifiable with a particular cost objective but nevertheless are necessary to the general operation of an organization, e.g., personnel working in Accounting. Administrative costs may not exceed 15% of the total grant budget.

If applicable, the applicant must provide a statement about its program income. Program income is gross income earned by the grantee directly generated by a supported activity, or earned as a result of the award.

Any leveraged resources should not be listed on the SF 424 or SF 424A Budget Information Form, but must be described in the budget narrative and in the technical proposal of the application (as described in Part IV.B.3(d) of this SGA). The amount of Federal funding requested for the entire period of performance must be shown on the SF 424 and SF 424A Budget Information Form.

(d) *Completed SF 424B, "Assurances, Non-Construction Programs."* Each applicant for these grants must certify compliance with a list of assurances. This form is available online at <http://apply.grants.gov/apply/FormLinks?category=2>, identified in the

boxes as government wide "Assurances for Non-Construction Programs (SF-424B)" and also is available at www.msha.gov.

(e) *Supplemental Certification Regarding Lobbying Activities form.* If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit Standard Form (SF)-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. This form is available online at <http://apply.grants.gov/apply/FormLinks?category=2>, identified in the boxes as agency specific "Disclosure of Lobbying Activities (SF-LLL)" and at www.msha.gov.

(f) *Non-profit status.* Applicants must provide evidence of non-profit status, preferably from the Internal Revenue Service (IRS), if applicable. (This requirement does not apply to State and local government-supported institutions of higher education.)

(g) *Accounting System Certification.* An organization that receives less than \$1 million annually in Federal grants must attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

- (1) Accurate, current and complete disclosure of the financial results of each Federally sponsored project.
- (2) Records that identify adequately the source and application of funds for Federally sponsored activities.
- (3) Effective control over and accountability for all funds, property and other assets.
- (4) Comparison of outlays with budget amounts.
- (5) Written procedures to minimize the time elapsing between transfers of funds.
- (6) Written procedures for determining the reasonableness, allocability, and allowability of cost.
- (7) Accounting records, including cost accounting records that are supported by source documentation.

(h) *Attachments.* Any attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Project Summary

The project summary is a short one-to-two page abstract that succinctly summarizes the proposed project and provides information about the applicant organization. The project summary must include the following information:

(a) *Applicant*. Provide the organization's full legal name and address.

(b) *Project Director*. Provide the name, title, street address and mailing address if it is different from the organization's street address, telephone and fax numbers, and e-mail address of the project director. The project director is the person who will be responsible for the day-to-day operation and administration of the program.

(c) *Certifying Representative*. Provide the name, title, street address and mailing address if it is different from the organization's street address, telephone

and fax numbers, and e-mail address of the certifying representative. The certifying representative is the official in the organization who is authorized to enter into grant agreements.

(d) *Funding requested*. List how much Federal funding is being requested. If the organization is contributing non-Federal resources, also list the amount of non-Federal resources and the source of the funds.

(e) *Grant Topic*. List the grant topic and the location and number of miners that the organization has selected to train or describe the training materials to be created with these funds.

(f) *Summary of the Proposed Project*. Write a brief program summary of the proposed project. This summary must identify the key points of the proposal including an introduction describing the project activities and the expected outcome(s).

(g) *Applicant Background*. Describe the applicant, including its mission and

a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit).

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials to meet the objectives of this solicitation. MSHA's focus for this SGA is on training miners and developing training materials for mine rescue and mine emergency preparedness in underground coal mines. MSHA has two program goals that will be considered indicators of the success of the program as a whole. The following table explains the types of data grantees must provide and their relationship with the Agency's program goals and performance measures for the Brookwood-Sago grants.

Program goals	Performance measures	Data grantee provides
1. Agency creates more effective training and improves safety.	Increase overall number of trainers trained Increase overall number of miners trained Provide quality training with clearly stated goals and objectives for improving safety.	Number of training events during the period. Number of trainers trained. Number of miners trained during the current reporting period. Conduct and report pre-test and post-test results of trainees. Course evaluations of trainer and training materials. The extent to which others replicate (i.e., adopt or adapt) or institutionalize and continue the projects after grant funding ends.
2. Agency creates training materials and improves safety.	Increase number of quality educational materials developed. Provide quality training materials with clearly stated goals and objectives for improving safety. Training materials are reproducible	Conduct and report pre-test and post-test results of the training materials. Evaluation of training materials to include the target audience, statement of goals and objectives, learning level, instructions for using, additional material requirements, secondary purposes, adult learning principles and usability in the mine training environment. The extent to which others replicate (i.e., adopt or adapt) the funded projects.

The technical proposal narrative is not to exceed 10 single-sided pages, double spaced, 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, Impact or Outcomes and Evaluation, and Leveraging of Funds. Any pages over the 10-page limit will not be reviewed. Major sections and sub-sections of the proposal should be divided and clearly identified. MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design.

(1) *Problem Statement/Need for Funds*. Applicants must provide a clear and specific need for proposed

activities. They must identify whether they are providing a training program or creating training materials or both.

Applicants also must identify the number of individuals that will benefit from their training and education program; this should include identifying the type of mines (e.g., smaller mines, anthracite mines, large mine), the geographic location(s), and the number of workers and employers. Applicants must also identify other Federal funds they receive for similar activities.

(2) *Quality of the Project Design*. MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin September 30, 2007, and

end September 29, 2008. An outline of specific items required in the workplan follows.

(i) *Plan Overview*. Describe the plan for grant activities and the anticipated outcomes. The overall plan will describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to workers and employers receiving the training.

(ii) *Activities*. Break the overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and anticipated results of the activity. For training, discuss the subjects to be

taught, the length of the training sessions, and training locations (classroom worksites). Describe how the applicant will recruit workers and/or employers for the training. (Note: Any commercially-developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used.)

(iii) *Quarterly Projections.* For training and other quantifiable activities, estimate the quantities involved. For example, estimate how many classes will be conducted and workers and employers will be trained each quarter of the grant (grant quarters match calendar quarters, i.e., January to March, April to June) and also provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) *Materials.* Describe each educational material to be produced under the grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products. MSHA must review and approve training materials for technical accuracy and suitability of content before materials may be used in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) *Overall Qualifications of the Applicant.*

(1) *Administrative and Program Capability.* Briefly describe the organization's functions and activities, i.e., the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received within the last five years any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include the organization for which the work was done and the dollar value of the grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to

manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed.

Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experience with other organizations.

(2) *Program Experience.* Describe the organization's experience conducting the proposed mine training program or the type of program. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety and health may partner with an established mine safety and health organization to acquire safety and health expertise.

(3) *Staff Experience.* Describe the qualifications of the professional staff you will assign to the program. Include resumes of staff already employed as an attachment (which will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety and health experience, training experience, or experience working with the mining community.

(c) *Impact or Outcomes and Evaluations.*

There are three types of evaluations that should be conducted. First, describe plans to evaluate the training sessions and/or training materials. Second, describe plans to evaluate the applicant's progress in accomplishing the grant work activities listed in the application. This includes comparing planned and actual accomplishments. Discuss who is responsible for taking corrective action if plans are not being met. Third, describe plans to assess the effectiveness of the training the applicant is conducting or the training materials. This will involve following up with an evaluation, or on-site review, if feasible, of people who attended the training to find out what changes were made to abate hazards or to incorporate the training in the workplace. For training materials, an evaluation of individuals on the clarity of the presentation, organization, and the information on the subject matter and whether they would use training materials is required. Include timetables for follow-up and for submitting a

summary of the assessment results to MSHA.

(d) *Leveraging of Funds.*

Leveraged resources are cash or in-kind contributions obtained from sources other than the Federal government devoted to advancing the strategies described in the applicant's proposal. Applicants must include a description of any non-Federal contribution or commitments, including the source of funds and the estimated amount.

C. *Submission Date, Times, and Addresses*

The closing date for receipt of applications under this announcement is August 24, 2007. Grant applications must be submitted electronically through the *Grants.gov* site. The *Grants.gov* site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties must search for the downloadable application package by the CFDA number, 17.603.

Applications received by *Grants.gov* are electronically date and time stamped. An application must be fully uploaded and submitted (and must be date and time stamped by the *Grants.gov* system) before the application deadline date. Once an interested party has submitted an application, *Grants.gov* will notify the interested party with an automatic notification of receipt that contains a *Grants.gov* tracking number. (This notification indicates receipt by *Grants.gov* only, not receipt by MSHA.) MSHA then will retrieve the application from *Grants.gov* and send a second notification to the interested party by e-mail.

D. *Intergovernmental Review*

The Brookwood-Sago grants are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." MSHA, however, reminds applicants that if they are not operating MSHA-approved State training grant(s), contact the State grantee(s) and coordinate any training or educational program in order not to duplicate any training or educational program offered. Information about each state grant and the entity operating the state grant is provided online at: www.msha.gov/PROGRAMS/EPD4.HTM.

E. *Funding Restrictions*

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training, conducting outreach and recruiting activities to increase the number of workers and employers participating in the program, developing educational materials, and on necessary expenses to support these activities. Allowable costs are determined by the applicable federal costs principles identified in Part VI.B. Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

- (a) Any activity inconsistent with the goals and objectives of this SGA.
 - (b) Training on topics that are not targeted under this SGA;
 - (c) Duplicating training or services offered by MSHA or any MSHA State grant under section 503 of the Mine Safety and Health Act of 1977;
 - (d) Any equipment unless pre-approved and in writing by the MSHA grant officer;
 - (e) Administrative costs that exceed 15% of the total grant budget; and
 - (f) Any pre-award costs.
- Unallowable costs also include any cost determined by MSHA that is not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications against the criteria listed below on the basis of 100 maximum points. Up to 10 additional points will be given for leveraging non-Federal resources.

1. Program Design—40 Points Total

(a) *Problem Statement/Need for Funds.* (3 points)

The proposed training and education program or training materials must address the recognition and prevention of safety and health hazards for mine rescue or mine emergency preparedness in underground coal mines.

(b) *Quality of the Project Design.* (25 points)

(1) The proposal to train miners and/or employers clearly estimates the

number to be trained and clearly identifies the types of workers and employers to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if during the grant period.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the miners and employers to be trained. Any special constituency to be served through the grant program is described, e.g., smaller mines, limited English proficiency miners. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.

• If the proposal includes developing training materials, the workplan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially-developed training products will be used for a training program, applicants also should plan for MSHA to review the materials before using the products in their grant programs.

- The utility of the educational materials is described.

• The outreach or process to find miners or trainees to receive the training is described.

(c) *Replication.* The extent a project will be replicated and the potential for the project to serve a variety of miners or mine sites. (4 points)

(d) *Innovativeness.* The novelty of the approach used. (3 points)

(e) *MSHA's Performance Goals.* The extent the proposed project will contribute to MSHA's performance goals. (5 points)

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

- The budgeted costs are reasonable.
- No more than 15% of the total budget is for administrative cost.
- The budget complies with Federal cost principles (which can be found in the applicable OMB Circulars) and with MSHA budget requirements contained in the grant application instructions.

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) The applicant has administered, or will work with an organization that has administered, a number of different Federal and/or State grants in the past five years. The applicant may demonstrate this experience by having project staff that has experience administering Federal and/or State grants in the past five years. (6 points)

(b) The applicant applying for the grant demonstrates experience with mine safety and health teaching or providing mine safety and health educational programs. Applicants that do not have prior experience in providing mine safety and health training to workers or employers may partner with an established mine safety and health organization to acquire mine safety and health expertise. (13 points)

- Project staff has experience in mine safety and health, the specific topic chosen, and/or in training workers.

• Project staff has experience in recruiting, training and working with the population the organization proposes to serve.

- Applicant has experience in designing and developing training materials for a mining program.

• Applicant has experience in managing educational programs.

(c) Applicant demonstrates internal control and management oversight of the project. (6 points)

4. Impacts/Outcomes and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change. The proposal should include plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

5. Leveraged Resources—10 Points Total

MSHA will award up to 10 additional rating points to applications that include non-Federal resources that expand the size and scope of project-related activities. To be eligible for the additional points, the applicant must list the resource(s), the nature of programmatic activities anticipated and

any partnerships, linkages, or coordination of activities, cooperative funding, etc., including the monetary value of such contributions.

B. Review and Selection Process

A technical panel will rate each complete application against the criteria described in this SGA. One or more applicants may be selected as grantees on the basis of the initial application submission, or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Assistant Secretary will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost and other factors. The Assistant Secretary's determination for award under this SGA is final.

C. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur by September 15, 2007. The grant agreement will be signed by no later than September 29, 2007.

VI. Award Administration Information

A. Award Process

Organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary, usually the Grant Officer or his staff. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award, MSHA may enter into negotiations with the awardee concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations

law) and applicable Office of Management and Budget (OMB) Circulars. The grant(s) awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 2, subpart D, *Equal Treatment for Religious Organizations*.
- 29 CFR parts 31, 32, 35 and 36, *Nondiscrimination*.
- 29 CFR part 93, *Restrictions on Lobbying*.
- 29 CFR part 94, *Drug-free Workplace*.
- 29 CFR part 95, *Uniform Grant Requirements for Nonprofit Organizations*.
- 29 CFR parts 96 and 99, *Audits*.
- 29 CFR part 97, *Uniform Grant Requirements for States*.
- 29 CFR part 98, *Debarment and Suspension*.
- 2 CFR part 220, *Cost Principles for Educational Institutions*.
- 2 CFR part 225, *Cost Principles for State and Local Governments*.
- 2 CFR part 230, *Cost Principles for Other Nonprofit Organizations*.

Administrative costs for these grants may not exceed 15%. Except as specifically provided, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program(s) does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format (CD-ROM/DVD) for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training

materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced under a grant, and to authorize others to do so. Grantees must agree to provide the Department of Labor a paid-up, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award. Such products include, but are not limited to, curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: "This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

- (a) The percentage of the total costs of the program or project that will be financed with Federal money;
- (b) The dollar amount of federal financial assistance for the project or program; and
- (c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) and MSHA Logos

The USDOL or the MSHA logo may be applied to the grant-funded material including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantee(s) must consult with MSHA on whether the logo may be used on any such items prior to final draft or final

preparation for distribution. In no event shall the USDOL or the MSHA logo be placed on any item until MSHA has given the grantee written permission to use either logo on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below, each calendar quarter. All reports are due no later than 30 days after the end of the calendar quarter and shall be submitted to MSHA. Grantees also are required to submit final reports 90 days after the end of the grant period. MSHA will provide further details on the format and process for each of the reports in the grantee orientation meeting.

(a) *Financial Reports.* The grantee shall submit financial reports on a quarterly basis.

(b) *Technical Project Reports.* After signing the agreement, the grantee shall submit technical project reports to MSHA at the end of each calendar quarter. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments and/or problems affecting the organization's ability to accomplish work.

(c) *Final Reports.* At the end of the grant period, each grantee must provide a final financial report, a summary of its technical project reports, and an evaluation report.

H. Freedom of Information

Any information submitted in response to this SGA will be subject to the provisions of the Freedom of Information Act, as appropriate.

VII. Agency Contacts

Any questions regarding this SGA should be directed to Robert Glatter at Glatter.Robert@dol.gov or at 202-693-9570 (this is not a toll-free number); or the Grant Officer, Darrell A. Cooper at cooper.darrell@dol.gov or on 202-693-9831. MSHA's webpage at www.msha.gov is a valuable source of background for this initiative.

VIII. Office of Management and Budget Information Collection Requirements

This SGA requests information from applicants. This collection of information is approved under *OMB Information Collection No. 1205-0458* (expires September 30, 2009).

According to the Paperwork Reduction Act of 1995, no persons are

required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, and 5 hours for grantee reporting. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine reports to MSHA. Each report will take approximately five hours to prepare. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, should be directed to Mine Safety and Health Administration, Robert Glatter at Glatter.Robert@dol.gov or at 202-693-9570 (this is not a toll-free number); or the Grant Officer, Darrell A. Cooper at cooper.darrell@dol.gov or on 202-693-9831. SEND APPLICATIONS TO MSHA, USING THE GRANTS.GOV SITE.

This information is being collected for the purpose of awarding a grant. The information collected through this "Solicitation for Grant Applications" will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Authority: Section 14 of the MINER Act, 30 U.S.C. 965.

This 20th day of July, 2007.

Robert M. Friend,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. E7-14365 Filed 7-24-07; 8:45 am]

BILLING CODE 4510-43-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Thursday, September 13, 2007. Written comments are due by noon, Monday, September 17, 2007. A hearing will be held in Washington, DC, on Thursday, September 27, 2007.

ADDRESSES:

Submissions by electronic mail:
FR0713@ustr.eop.gov.

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395-6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395-3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, (202) 395-3900, or Claire E. Reade, Chief Counsel for China Trade Enforcement, (202) 395-9625.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106-286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (at www.ustr.gov/World_Regions/North_Asia/China/Section_Index.html).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working

Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, <http://www.mac.doc.gov/China/WTOAccessionPackage.htm>, or on the WTO Web site, <http://docsonline.wto.org> (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the Administration's view that China should be held accountable as a full participant in, and beneficiary of, the international trading system now that almost all of its WTO commitments should have been implemented (see "U.S.-China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement," issued by USTR in February 2006, http://www.ustr.gov/World_Regions/North_Asia/China/2006_Top-to-Bottom_Review/Section_Index.html), USTR requests that interested persons also specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force. Written comments must be received no later than noon, Monday, September 17, 2007.

A hearing will be held on Thursday, September 27, 2007, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Thursday, September 13, 2007. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony;

and (2) a short (on or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "China WTO" followed by (as appropriate) "Written Comments" "Notice of Testimony," or "Testimony." Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-" and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except for confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be

available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395-6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site <http://www.ustr.gov>

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 07-3639 Filed 7-24-07; 8:45 am]

BILLING CODE 3110-W7-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Vision Airships, Inc.; Order of Suspension of Trading

July 23, 2007.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Vision Airships, Inc. ("Vision Airships") because questions have arisen regarding the adequacy and accuracy of assertions made by Vision Airships in publicly disseminated press releases concerning among other things (1) The company's acquisition of blimps, (2) the existence of company negotiations with other entities for use of the blimps, (3) the company's funding for its global expansion, and (4) the potential annual revenues from airship use.

Vision Airships, a company traded in the Over-the-Counter market under the ticker symbol VPSN, has made no public filings with the Commission, and has recently been the subject of spam email touting the company's shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST July 23, 2007 through 11:59 p.m. EST, on August 3, 2007.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 07-3655 Filed 7-23-07; 10:48 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56090; File No. SR-Amex-2007-73]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Extension of the iShares® Russell 2000® Index Fund Option Pilot Program Until January 18, 2008

July 18, 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 July 11, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Amex. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ 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 Exchange proposes to extend the existing pilot program that increases the position and exercise limits for options on the iShares® Russell 2000® Index Fund (“IWM”) traded on the Exchange (“IWM Pilot Program”). The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and <http://www.amex.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, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the IWM Pilot Program and to make non-substantive changes to simplify the rule text describing the IWM Pilot Program. The IWM Pilot Program will allow position and exercise limits for options on IWM to remain at 500,000 contracts on a pilot basis, for an additional six-month period through January 18, 2008.⁵

The Exchange established the IWM Pilot Program in January 2007.⁶ As noted in that filing, in June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit would have reverted to the pre-split level (as provided for in connection with the Rule 904 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.⁷

The Exchange continues to believe that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are $\frac{1}{10}$ th the size of options on the Russell 2000® Index (“RUT”), which have a position limit of 50,000 contracts.⁸ Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum—500,000 IWM options to properly hedge the position. Therefore, the Exchange continues to believe that a position limit of 250,000 contracts is too low and may adversely affect market participants’

ability to provide liquidity in this product.

As the Exchange also described in the proposal that established the IWM Pilot Program, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, through July 9, 2007, year-to-date industry volume in IWM options has averaged over 513,344 contracts per day, for a total of 61,167,982 million contracts. In addition, through July 9, 2007, Amex volume in IWM options has averaged 25,852 contracts per day for a total of 3,231,466 contracts.

As a result, the Exchange proposes that options on IWM continue to be subject to position and exercise limits of 500,000 contracts on a pilot basis to run through January 18, 2008.⁹ The Exchange believes that maintaining the increased position and exercise limits for IWM options will lead to a more liquid and more competitive market environment for IWM options that will benefit customers interested in this product.

The Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the IWM option class, for its own account or for the account of a customer report certain information.¹⁰ This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange Registered Options Traders and specialists would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange’s market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for IWM options.¹¹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,¹² in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

⁵ January 18, 2008 is the third Friday of the month (or expiration Friday), which is the day on which the January 2008 IWM options will expire.

⁶ See Securities Exchange Act Release No. 55163 (January 24, 2007), 72 FR 4547 (January 31, 2007).

⁷ See Amex Information Circular #05-0397.

⁸ See Amex Rule 904C; see also Securities Exchange Act Release Nos. 45236 (January 2, 2002), 67 FR 1378 (January 10, 2002) (increase of position and exercise limits to 300,000 for QQQ options); and 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005) (accelerated approval granted to increase position and exercise limits for options on Standard and Poor’s Depository Receipts from 75,000 to 300,000).

⁹ Pursuant to Amex Rule 905, the exercise limit established for IWM options shall be equivalent to the position limit prescribed for IWM options in Commentary .07 to Amex Rule 904. The increased exercise limits would only be in effect during the pilot period, to run from June 22, 2007 through January 18, 2008.

¹⁰ See Amex Rule 906(b).

¹¹ See Amex Rule 906(a).

¹² 15 U.S.C. 78f(b)(5).

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).

open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁵ However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to continue at 500,000 option contracts for a six-month pilot period. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹⁷

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

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-Amex-2007-73 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-Amex-2007-73. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-73 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-14312 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56102; File No. SR-Amex-2007-64]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Extension of the Linkage Fee Pilot Program

July 19, 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 27, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one year, until July 31, 2008, the current pilot program regarding transaction fees for trades executed through the intermarket options linkage (the "Linkage") on the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.amex.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,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii). 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 Exchange has satisfied the five-day pre-filing notice requirement.

¹⁶ *Id.*

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex proposes to extend for one year, until July 31, 2008, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") submitted through the Linkage. The fees in connection with the pilot program are scheduled to expire on July 31 2007.³

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) \$0.10 per contract side options transaction fee for equity options, exchange traded fund share ("ETF") options, QQQQ options and trust issued receipt options; (ii) \$0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) \$0.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from \$0.15 per contract side to \$0.05 per contract side depending on the particular ETF or index option.⁴ These are the same fees charged to specialists and registered option traders ("ROTs") for transactions executed on the Exchange.⁵ The Exchange does not charge for the execution of Satisfaction Orders sent through the Linkage.

As was the case in the original pilot program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage Orders.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one year until July 31, 2008 is appropriate.

2. Statutory Basis

The proposed fee change is consistent with Section 6(b)(4) of the Act⁶ regarding an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2007-64 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-Amex-2007-64. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-Amex-2007-64 and should be submitted on or before August 15, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁷ and, in particular, the requirements of Section 6(b) of the Act⁸ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2008 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission continue considering the appropriateness of Linkage fees. Therefore, the Commission

³ See Securities Exchange Act Release No. 54161 (July 17, 2006), 71 FR 42141 (July 25, 2006) (SR-Amex-2006-62).

⁴ See the Options Licensing Fee section of the Amex Options FeeSchedule available at <http://www.amex.com>.

⁵ As set forth in the Amex Options Fee Schedule, P/A Orders and POrders are not subject to the options marketing fee and the options cancellation fee even though specialists and ROTs may be subject to these fees for trades executed on the Exchange. E-mail from Jeffrey P. Burns, Vice President & Associate General Counsel, Amex to David Liu, Assistant Director, Division of Market Regulation, Commission dated July 18, 2007.

⁶ 15 U.S.C. 78f(b)(4).

⁷ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

finds good cause, consistent with Section 19(b)(2) of the Exchange Act,¹⁰ to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Amex-2007-64), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14358 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56094; File No. SR-CBOE-2007-80]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism Until July 18, 2008

July 18, 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 July 13, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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

CBOE proposes to extend two pilot programs related to the Exchange's

Automated Improvement Mechanism ("AIM") for one year, until July 18, 2008. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 2006, CBOE obtained approval of a filing adopting the AIM auction process.⁵ AIM exposes certain orders electronically to an auction process to provide such orders with the opportunity to receive an execution at an improved price. The AIM auction is available only for orders that an Exchange member represents as agent and for which a second order of the same size as the "Agency Order" (and on the opposite side of the market) is also submitted (effectively stopping the Agency Order at a given price).

Two components of AIM were approved on a pilot basis: (1) That there is no minimum size requirement for orders to be eligible for the auction; and (2) that the auction will conclude prematurely anytime there is a quote lock on the Exchange pursuant to Exchange Rule 6.45A(d).⁶ In connection with the pilot programs, the Exchange has submitted to the Commission reports providing detailed AIM auction and order execution data. In July 2006, the Exchange extended the pilot program until July 18, 2007.⁷ The

proposed rule change merely extends the duration of the pilot programs until July 18, 2008. Extending the pilots for an additional year will allow the Commission more time to consider the impact of the pilot programs on AIM order executions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that by allowing the Commission additional time to evaluate the AIM pilot programs, it should serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally may not

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² Rule 19b-4(f)(6)(iii) under the Act requires the Exchange to provide the Commission notice of the Exchange's 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. See 17 CFR 240.19b-4(f)(6)(iii). The Commission deems this requirement to have been satisfied by the notice of intent filed by the Exchange on July 10, 2007.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (approving SR-CBOE-2005-60).

⁶ That rule relates to situations where a Market-Maker's quote interacts with the quote of another CBOE Market-Maker (i.e. when internal quotes lock).

⁷ See Securities Exchange Act Release No. 54147 (July 14, 2006), 71 FR 41487 (July 21, 2006) (SR-CBOE-2006-64).

become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, because the proposal would allow the pilots to continue without interruption until July 18, 2008.¹⁴ For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-80. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-80 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14311 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56091; File No. SR-ISE-2007-57]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clarifying the Fee Schedule

July 18, 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 July 2, 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, 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 ISE is proposing to amend its Schedule of Fees to add a clarifying sentence to resolve an ambiguity with respect to fees charged to MidPoint Match executions. The text of the proposed rule change is available at http://www.iseoptions.com/legal/proposed_rule_changes.asp and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to add a clarifying sentence to the Schedule of Fees to resolve an ambiguity with respect to fees charged to MidPoint Match executions. The Exchange currently waives fees in the circumstances where the same Member enters MidPoint Match orders that execute against each other in the MidPoint Match System. Additionally, the Exchange offers discounted fees based on a Member's average daily volume ("ADV") via a tiered schedule that provides increased discounts as a Member's ADV increases. The Exchange proposes to add a sentence clarifying that transactions for which fees are waived do not count towards the ADV discounts and do not accrue market data revenue.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(4)³ that the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(3)(C).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(4).

among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-57 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-ISE-2007-57. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-57 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14313 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56093; File No. SR-ISE-2007-58]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change Relating to ISEE Select Market Data Fees

July 18, 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 July 6, 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, 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

ISE proposes to amend its Schedule of Fees to adopt a subscription fee for an enhanced sentiment market data offering. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at <http://www.ise.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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to a filing previously approved by the Commission, the Exchange currently sells on a subscription basis, to both members and non-members, ISEE Select™ ("ISEE Select"), an enhanced sentiment market data offering.³ Earlier this year, the Exchange also adopted a multi-product discount for the ISEE Select offering.⁴ ISEE Select is based on the ISE Sentiment Index®, or ISEE®, a calculation that represents an overall

³ See Securities Exchange Act Release Nos. 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR-ISE-2005-56) (Notice of Filing of Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data) and 53756 (May 3, 2006), 71 FR 27526 (May 11, 2006) (SR-ISE-2005-56) (Order Approving Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data) ("Initial Filing").

⁴ See Securities Exchange Act Release No. 55288 (February 13, 2007), 72 FR 8219 (February 23, 2007) (SR-ISE-2007-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fee Discounts for Enhanced Sentiment Market Data Offering) ("Subsequent Filing").

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

view of market sentiment. The ISEE® provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. Unlike the traditional put/call ratio which makes no distinction between customer, market maker or firm transactions, the ISEE® measures only opening long customer transactions on ISE. ISE updates the current ISEE® value hourly during market hours and posts it for free on its Web site.⁵

Pursuant to the Initial Filing, ISEE Select allows subscribers to identify bullish and bearish investor sentiment for nearly any issue traded on the Exchange using the same formula that is used for the ISEE calculation. Where the ISEE® is a single value for the overall market sentiment, ISEE Select provides specific information to allow an end user to retrieve a sentiment value for an individual symbol via a user-defined query tool. In addition to the user-defined query tool, ISE also offers a pre-defined scanning tool that combs the market for sentiment levels that meet pre-defined parameters. ISEE Select provides sentiment values for particular indices, industry sectors or individual stocks and is calculated three times per hour versus only one time per hour for the ISEE®.

ISEE Select is currently available to on-line investors on a subscription basis as follows: (i) 100 user-defined queries for \$11.95 per month; (ii) 200 user-defined queries for \$14.95 per month; (iii) unlimited user-defined queries for \$19.95 per month; and (iv) unlimited pre-defined queries for \$11.95 per month. ISEE Select is also offered by third-parties that participate in the Exchange's Marketing Alliance program.⁶ Customers of participating third-parties are able to take advantage of a discounted price for the same four subscription levels. The discounted

rates for these subscribers are as follows: (i) 100 user-defined queries for \$9.95 per month; (ii) 200 user-defined queries for \$11.95 per month; (iii) unlimited user-defined queries for \$15.95 per month; and (iv) unlimited pre-defined queries for \$9.95 per month.

Pursuant to the Subsequent Filing, the Exchange also offers to both member and non-member subscribers the following multi-product discounted subscription fees: \$24.95 per month for customers who subscribe directly through ISE to both the unlimited pre-defined query and either 200 user-defined queries or unlimited user-defined queries; or \$19.95 per month for customers of the Marketing Alliance program partners that subscribe to both the unlimited pre-defined query and either 200 user-defined queries or unlimited user-defined queries. The Exchange notes that the multi-product discounts noted above are a reduction of the actual subscription fees for the products to which they apply. If not for the multi-product discount, for on-line subscribers, these fees would be (i) \$26.90 per month for subscribers to both unlimited pre-defined queries and 200 user-defined queries, or (ii) \$31.90 per month for subscribers to both unlimited pre-defined queries and unlimited user-defined queries. For customers of the Marketing Alliance program partners, if not for the multi-product discount, these fees would be (i) \$21.90 per month for subscribers to both unlimited pre-defined queries and 200 user-defined queries, or (ii) \$25.90 per month for subscribers to both unlimited pre-defined queries and unlimited user-defined queries.

The Exchange now proposes to offer to both member and non-member subscribers a data feed that will provide a bulk delivery of ISEE Select values. The existing ISEE Select browser application allows a subscriber to access ISEE Select values for up to five securities simultaneously. The current proposal, on the other hand, will allow subscribers to access numerous ISEE Select values simultaneously. The actual potential number of ISEE Select values accessible by this proposed data feed offering can range from one to more than 1,700.

The ISEE Select data feed will have a flat rate subscription fee based on a fixed number of end users that each subscriber allows to view the data, as follows: \$0.10 per end user, per month, for a minimum of 10,000 end users; \$0.10 for each additional end user, per month, up to 74,999 end users, in increments of 5,000 end users; \$0.084 per end user, per month, for redistribution from 75,000 to 199,999

end users, in increments of 5,000 end users; and \$0.0825 per end user, per month, for redistribution to 200,000 or more end users, in minimum increments of 5,000 end users. An example of the monthly subscription fee for a subscriber with 100,000 end users is as follows:

Number of users per increment	Monthly fee per user	Monthly sub-total
10,000	\$.10	\$1,000
10,001–74,999	.10	6,500
75,000–100,000 ..	.084	2,100
Monthly Total ..		9,600
Average Fee per User		.096

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act,⁷ that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, the proposed rule filing will provide members and non-members with the ability to subscribe to a data feed of ISEE Select values at a flat rate subscription basis for redistribution to their customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

⁷ 15 U.S.C. 78f(b)(4).

⁵ http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp.

⁶ When the Commission published the Initial Filing, the Marketing Alliance program was known as the ISE Broker Marketing Alliance, and participation in it was limited to broker-dealers. Following the launch of the ISEE Select market data offering, and in response to the interest the Exchange received from many non-broker-dealers wishing to participate in the Marketing Alliance program, the Exchange subsequently expanded the program by eliminating its limitation to only broker-dealers. See Securities Exchange Act Release Nos. 54508 (September 26, 2006) 71 FR 58459 (October 3, 2006) (SR-ISE-2006-44) (Notice of Filing of Proposed Rule Change To Expand the Broker Marketing Alliance To Include Non-Broker-Dealers with Regard to Enhanced Sentiment Market Data Offering) and 54704 (November 3, 2006), 71 FR 65859 (November 9, 2006) (SR-ISE-2006-44) (Order Approving Proposed Rule Change To Expand the Broker Marketing Alliance To Include Non-Broker-Dealers with Regard To Enhanced Sentiment Market Data Offering).

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-ISE-2007-58 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-2007-58. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-ISE-2007-58 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14314 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56106; File No. SR-ISE-2007-62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Week Extension for the Price Improvement Mechanism Pilot Program

July 19, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 18, 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 the ISE. The ISE has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend two pilot programs related to its Price Improvement Mechanism ("PIM") contained in paragraphs .03 and .05 of the Supplemental Material to Rule 723. The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, at ISE's principal office, and at the Commission's Public Reference Room.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 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. The 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 Exchange currently has two pilot programs related to its PIM.⁵ The current pilot period provided in paragraphs .03 and .05 of the Supplementary Material to Rule 723 is set to expire on July 18, 2007.⁶ Paragraph .03 provides that there is no minimum size requirement for orders to be eligible for the Price Improvement Mechanism. Paragraph .05 concerns the termination of the exposure period by unrelated orders. In accordance with the Approval Order, the Exchange recently submitted certain data in support of extending the current pilot programs. The purpose of this filing is to extend the pilot programs in their present form until July 25, 2007, while the Commission reviews the data and considers to extend the pilot programs for an additional one-year period.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Since the PIM has only been operating for a relatively short period of time, the Exchange believes it is appropriate to

⁵ See Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving the PIM Pilot (the "Approval Order")) and 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) (extending the PIM pilot until July 18, 2006).

⁶ See Securities Exchange Act Release No. 54151 (July 14, 2006), 71 FR 41490 (July 21, 2006).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

extend the pilot periods to provide the Exchange and Commission more data upon which to evaluate the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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) ⁹ of the Act and Rule 19b-4(f)(6) thereunder.¹⁰ As required under Rule 19b-4(f)(6)(iii),¹¹ the Exchange provided the Commission with 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 the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) ¹² normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) ¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),¹⁴ which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public

interest because such waiver would allow the pilot periods to continue without interruption until July 25, 2007.¹⁵ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-62 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-2007-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-62 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14355 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56092; File No. SR-NASDAQ-2007-042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Modify the Entry and Annual Fees Paid by a Company That Lists on Nasdaq Upon Emerging from Bankruptcy

July 18, 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 April 13, 2007, The NASDAQ Stock Market LLC ("Nasdaq" 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 Exchange filed Amendment No. 1 to the proposed rule change on June 28, 2007. The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the entry and annual fees paid by a company that lists on Nasdaq upon emerging from bankruptcy. Nasdaq will implement the proposed rule as of the date it filed this proposed change.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ *Id.*

¹⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

The text of the proposed rule change is set forth below. Proposed new language is in italics.

* * * * *

IM-4500-6. Waiver of Fees for Companies Emerging from Bankruptcy

(a) *Entry Fees.* Any company that lists on Nasdaq upon emerging from bankruptcy is not required to pay the entry fee (including the application fee) set forth in Rules 4510(a) and 4520(a).

(b) *Annual Fees.*

(1) *The annual fee for any company that lists on the Nasdaq Global Market (including the Nasdaq Global Select Market) upon emerging from bankruptcy will be the minimum annual listing fee specified in Rule 4510(c)(1) for the first (pro rated) year that such a company is listed and for each of the subsequent two full years.*

(2) *Any company listing on Nasdaq upon emerging from bankruptcy that relists during the same year that it had previously paid an annual fee will not be subject to a second annual fee in that year.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Nasdaq proposes to modify the fees charged to companies that list upon emerging from bankruptcy. Specifically, Nasdaq proposes to waive the entry fee (which includes a \$5,000 non-refundable application fee) that such companies would otherwise be required to pay. In addition, for companies listing on the NASDAQ Global Market (including the NASDAQ Global Select Market), Nasdaq proposes to charge the company the minimum annual listing fee applicable to companies on that market (currently \$30,000) for the first (prorated) year that such a company is

listed³ and for each of the subsequent two full calendar years.⁴ Finally, Nasdaq proposes that a company that emerges from bankruptcy and relists during the same year that it has previously paid an annual fee will not be required to pay a second annual fee for that year.

Nasdaq believes that the proposed fees are justified by the unique circumstances faced by companies emerging from bankruptcy. These companies typically are not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, these companies are much more sensitive to both the initial and continued costs associated with listing. As such, Nasdaq believes the proposed fees are reasonable and equitably allocated.

The proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its other regulatory programs. Specifically, Nasdaq historically has not listed a large number of companies emerging from bankruptcy in any given year.⁵ Further, Nasdaq will still conduct a complete review of these companies for compliance with Nasdaq listing standards in the same manner as any other company applying for listing on Nasdaq. The company must successfully complete that review process and demonstrate compliance with the initial listing requirements prior to being approved for listing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act⁶ in general, and with Section 6(b)(4) of the Act⁷ in particular, which requires that Nasdaq's rules provide for the equitable allocation of reasonable dues, fees, and other charges among its issuers. Nasdaq believes that the proposed waivers are equitable and reasonable in light of the unique circumstances faced by companies emerging from bankruptcy.

³ Nasdaq prorates the annual fee for the year a company lists, based on the month in which the company lists.

⁴ All domestic companies on the NASDAQ Capital Market pay the same annual fee.

⁵ Nasdaq listed four companies upon their emergence from bankruptcy from January 1, 2006, through March 31, 2007.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Nasdaq-2007-042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Nasdaq-2007-042. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Nasdaq-2007-042 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-14315 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56096; File No. SR-NASDAQ-2007-037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Modify Order Audit Trail System Rules To Provide an Exemption From Transmission Requirements for Proprietary Orders

July 18, 2007.

I. Introduction

On April 3, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to provide an exemption from OATS transmission requirements for certain

proprietary orders. On June 4, 2007, Nasdaq filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the **Federal Register** on June 6, 2007.³ The Commission received one comment letter expressing support for the proposal.⁴ On July 17, 2007, Nasdaq filed Amendment No. 2. This notice and order notices Amendment No. 2; solicits comments from interested persons on Amendment No. 2; and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposal

Nasdaq proposes to modify its OATS rules to adopt a limited exemption from OATS⁵ order data transmission requirements for proprietary trading firms. Nasdaq proposes to define a "Proprietary Trading Firm" as a Nasdaq member that trades its own capital, with all the trading being done in the firm's accounts by traders that are owners of, employees of, or contractors to the firm. A Proprietary Trading Firm would not have "customers," as that term is defined in Nasdaq Rule 0120(g) and would not be a member of the NASD.

Nasdaq proposes to amend Nasdaq Rule 6955 regarding transmission of OATS data to provide that a Proprietary Trading Firm would be required to transmit OATS order data information to Nasdaq Regulation only upon request.⁶ Although a Proprietary Trading Firm would not be required to transmit the order data information to Nasdaq Regulation unless requested, it still would be responsible for maintaining and retaining the information in a format that could be easily integrated into the NASD's OATS system in the event Nasdaq Regulation makes a request for such information.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments

³ See Securities Exchange Act Release No. 55870, 72 FR 32692 (June 13, 2007).

⁴ See letter from Stephen Schuler, Managing Member, Global Electronic Trading Company, LLC to Nancy M. Morris, Secretary, Commission, dated July 3, 2007.

⁵ OATS is an integrated audit trail of order, quote, and trade information for Nasdaq securities used to recreate events in the life cycle of orders and more completely monitor the trading practices of member firms.

⁶ Rule 0130 provides that the term Nasdaq Regulation should be understood as also referring to NASD staff, NASD Regulation staff, and NASD departments acting on behalf of Nasdaq pursuant to a regulatory services agreement between Nasdaq and the NASD.

may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-037. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2007-037 and should be submitted on or before August 15, 2007.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁷ and, in

⁷ The Commission has considered the amended proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

particular, the requirements of Section 6 of the Act.⁸ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act⁹ in that the proposal 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 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.

OATS was designed to provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution. One of the principle objectives of OATS is customer protection through the transparency of the executions of customer orders. The Commission does not believe that the proposed rule change would impact this objective since, by definition, Proprietary Trading Firms do not handle customer orders. Further, the Commission notes that Nasdaq believes that the current requirement for Proprietary Trading Firms to transmit all order data information is onerous and is not offset by an equivalent regulatory benefit. In addition, the Commission notes that this approach parallels the approach undertaken by the New York Stock Exchange ("NYSE") in NYSE Rule 132C, which requires NYSE members, upon request, to transmit order tracking data to the NYSE.¹⁰

The Commission therefore believes that it is consistent with the Act to permit Proprietary Trading Firms to submit OATS data to Nasdaq only upon request.

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.¹¹ In

Amendment No. 2, Nasdaq clarified that the proposed exception from the daily OATS transmissions requirements for Proprietary Trading Firms would not extend to persons associated with Proprietary Trading Firms. The Commission believes that this is a clarifying change to the scope of the proposed rule change and raises no significant regulatory issues. The Commission therefore finds good cause exists to accelerate approval of the proposed change, as modified by Amendment Nos. 1 and 2, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASDAQ-2007-037), as modified by Amendments No. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14356 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56103; File No. SR-NASD-2007-039]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of Certain Changes to the Manning Rule

July 19, 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 20, 2007, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective

the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

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

NASD is proposing to delay implementation of certain NASD rule changes approved in SR-NASD-2005-146 until November 26, 2007.⁵ There are no new changes to the text of NASD rules. The text of the proposed rule change is available at NASD, <http://www.nasd.com>, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other clarifying and conforming changes, proposed amendments to NASD IM-2110-2⁶ to (1) expand the scope to apply to OTC Equity Securities;⁷ (2) modify the minimum price-improvement standards for securities trading in decimals; (3) adopt on a permanent basis the pilot price-improvement standards for

⁵ See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146).

⁶ Currently, NASD IM-2110-2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. As part of SR-NASD-2005-146, NASD replaced the term "exchange-listed security" with the term "NMS stock," which is defined as any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS. Although the replacement of the term would not become effective until the November 26, 2007 final implementation date, as stated in SR-NASD-2005-146, NASD IM-2110-2 does not apply to options.

⁷ See NASD Rule 6610(d) (definition of "OTC Equity Security").

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (Order approving SR-NYSE-99-51).

¹¹ 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change prior to the thirtieth day after

securities trading in decimals; and (4) delete certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions. On April 27, 2007, NASD published Notice to Members 07-19, which announced the Commission's approval of SR-NASD-2005-146 and established July 26, 2007 as the effective date of the rule changes in SR-NASD-2005-146.⁸

Following Commission approval of SR-NASD-2005-146 and the publication of the Notice to Members, several firms have requested that the effective date of the approved rule changes be delayed to allow firms additional time to make necessary systems changes in light of other competing technological demands required by implementation of Regulation NMS. In addition, some broker-dealers raised concerns regarding the application of the approved minimum price-improvement standards. NASD staff is currently revisiting the amended price-improvement standards in light of these concerns. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the Commission.

Therefore, to provide adequate time to firms to make technological changes given competing technological demands from Regulation NMS, and to consider and potentially act upon the concerns regarding the minimum price-improvement standards, NASD is proposing that the effective date of certain NASD rule changes approved in SR-NASD-2005-146 as described herein be delayed until November 26, 2007. Specifically, NASD is proposing to delay the approved rule changes in SR-NASD-2005-146 that relate solely to the expansion of the scope of NASD IM-2110-2 to OTC Equity Securities and the related deletion of NASD Rule 6541. Accordingly, the requirements in NASD Rule 6541 would continue to apply to OTCBB securities until NASD IM-2110-2 is implemented for OTC Equity Securities.

In addition, the amendments in SR-NASD-2005-146 also make changes to the minimum price-improvement standards in NASD IM-2110-2, which, as approved, would apply uniformly to both OTC Equity Securities and NMS stocks. NASD is delaying these changes as well, with one exception: For customer limit orders in exchange-listed securities priced less than \$1.00 that are at or inside the best inside market, the

minimum amount of price improvement required is the lesser of \$0.01 or one-half (½) of the current inside spread. This provision will go into effect on July 26, 2007, as currently scheduled.

All other changes unrelated to the expansion to OTC Equity Securities, including the deletion of certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions and the adoption on a permanent basis of the pilot price-improvement standards for securities trading in decimals that were approved pursuant to SR-NASD-2005-146 will become effective as scheduled on July 26, 2007.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve the treatment of customer limit orders and promote investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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) of the

Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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.

In accordance with Rule 19b-4,¹² NASD submitted 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2007-039 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-NASD-2007-039. 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, 100 F Street, NE., Washington,

⁸ See NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4.

DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-039 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14359 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56101; File No. SR-Phlx-2007-50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Extending the Specialist Option Transaction Charge Credit Pilot Program

July 19, 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 22, 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. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act ³ and Rule 19b-4(f)(2) thereunder, ⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to extend for a one-year period, until July 31, 2008, its current pilot program that provides for an option transaction charge credit of \$0.21 per contract for Exchange options specialist units ⁵ that incur Phlx option transaction charges when a customer order is delivered to the limit order book via the Exchange’s Options Floor Broker Management System (“FBMS”) ⁶ and is then sent to an away market and executed via the Intermarket Option Linkage (“Linkage”) under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Plan”) ⁷ as a Principal Acting as Agent Order (“P/A Order”). ⁸ The pilot program in effect is currently scheduled to expire on July 31, 2007. ⁹ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.phlx.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,

⁵ The terms “specialist” and “specialist unit” are used interchangeably herein.

⁶ The FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

⁷ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

⁸ A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. See Phlx Rule 1083(k)(i).

⁹ See Securities Exchange Act Release No. 54257 (August 1, 2006), 71 FR 45089 (August 8, 2006) (SR-Phlx-2006-46). This proposal is scheduled to be in effect for the same time period as fees for Linkage Principal Orders (“P Orders”) and P/A Orders. See Securities Exchange Act Release No. 54233 (July 27, 2006), 71 FR 44070 (August 3, 2006) (SR-Phlx-2006-44). The Exchange intends to file a separate proposed rule change to extend, for a one-year period through July 31, 2008, the pilot relating to transaction fees applicable to the execution of P/A Orders and P Orders sent to the Exchange via Linkage under the Plan.

the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially 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, the Exchange provides an option transaction charge credit of \$0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered to the limit order book via FBMS and is then sent to an away market and executed via Linkage under the Plan as a P/A Order.

The purpose of this proposal is to continue to alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units by establishing a credit for Exchange option transaction charges incurred by an Exchange specialist unit when a customer limit order placed on the limit order book by a Floor Broker ¹⁰ results in an execution of a P/A Order that is sent to another exchange via Linkage. The Exchange believes that continuing to give an options transaction charge credit of \$0.21 per contract should encourage the use of Linkage and should allow the Exchange to remain competitive with other exchanges with respect to the assessment of Linkage-related fees. ¹¹

This proposal is to remain in effect as a pilot program until July 31, 2008. ¹²

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act ¹³ in general, and Section 6(b)(4) of the Act ¹⁴ in

¹⁰ A Floor Broker who wishes to place a limit order on the limit orderbook must submit such a limit order electronically through the FBMS. See Exchange Rule 1063, Commentary .01. See also Phlx Rule 1080, Commentary .02(b).

¹¹ See Securities Exchange Act Release No. 53866 (May 25, 2006), 71 FR 31237 (June 1, 2006) (SR-CBOE-2006-44) (rebate of certain transaction fees to Designated Primary Market Makers related to the execution of outbound P Orders and P/A Orders). See also Footnote 8 and Section 21 of the CBOE Fees Schedule.

¹² This proposal is in connection with an existing pilot program for Linkage P and P/A Orders and is scheduled to be in effect for the same time period as the pilot program for Linkage P and P/A Orders. See *supra* at note 9.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member. Accordingly, the proposal became effective upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-50 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-Phlx-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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-50 and should be submitted on or before August 15, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14357 Filed 7-24-07; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Buncombe County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed extension of I-26 from I-40 to US 19-23-70, including widening I-240 from the I-26/I-40/I-240 interchange to US 19-23-74 (Patton Avenue), and

construction on new location from US 19-23-74 (Patton Avenue) across the French Broad River to US 19-23-70 in Buncombe County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P.E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601-1418, Telephone: (919) 856-4350, Extension 133.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal for extending I-26, partly on new location, from I-40 to US 19-23-70 including the I-26/I-40/I-240 interchange. The project is commonly referred to as the I-26 Connector and is intended to provide a link between existing I-26 and US 19-23-70 north of Asheville, completing a gap in the I-26 corridor through Asheville. The project includes upgrading the I-26/I-40/I-240 interchange and improving I-240 (including the interchanges) north to the I-240/US 19-23-74A/Patton Avenue interchange west of the French Broad River. The project also includes construction of a multilane freeway segment on new location from the I-240/US 19-23-74A/Patton Avenue interchange across the French Broad River, merging into US 19-23-70 south of the existing US 19-23-70 interchange with SR 1781 (Broadway). Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand and improve connectivity between I-26 south of Asheville and US 19-23-70 north of Asheville. In addition, upgrades are needed on existing interstates within the study area to meet current design standards.

Opportunities have been provided for involvement with the public in defining the project purpose and need and determining the range of alternatives to be considered for the project. Further opportunities for the public to comment on the environmental review process will be provided throughout the remainder of the project development process. From 1989 to 1995, the I-26 Connector was studied as part of the Asheville Urban Area Corridor Preservation Pilot Project in order to develop the Asheville Urban Area Thoroughfare Plan, a long-range regional transportation plan. Extensive public involvement was incorporated to identify overall transportation goals, specific projects in the Asheville area that would fulfill those goals (which identified the I-26 Connector as one of

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

those projects) and potential corridors for the I-26 Connector. NCDOT published a final *Phase I Environmental Analysis for the Asheville Urban Area* (Phase I Study) in April 1995.

Prior to the initiation of environmental studies in preparation of an Environmental Impact Statement (EIS), a scoping letter soliciting comments on the proposed project was sent in 1996 to the local, state, and federal agencies, by NCDOT. No further scoping actions are planned.

In 1997, the United States Army Corps of Engineer (USACE), FHWA, and NCDOT signed an Interagency Agreement integrating Section 404 and the National Environmental Policy Act (NEPA) of 1969, known as the Section 404/NEPA Merger Process. The agreement requires the establishment of a project team at the beginning of each transportation project and outlines the coordination process with a series of Concurrence Points in order to promote cooperation and coordination during the study process and to ensure compatibility with local, state and federal planning projects and policies.

In addition to the project merger team providing guidance and input, involvement with the public continued with a Project Educational Forum and a separate Project Design Forum in 2000. In the summer of 2004, public informational meetings were held to receive public comments on the functional alternatives presented. The engineering designs for the project alternatives were then presented at Community Informational Workshops in October 2006. Upon completion of the draft EIS, a public hearing will be held, with public notice of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 19, 2007.

Clarence W. Coleman,

P.E., Operations Engineer, Raleigh, North Carolina.

[FR Doc. E7-14353 Filed 7-24-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Final Environmental Impact Statement; Graham County, NC

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Final Environmental Impact Statement (Supp. FEIS) will be prepared for the proposed relocation of U.S. 74 from U.S. 129 in Robbinsville to NC 28 in Stecoah, Graham County, North Carolina. The proposed project would be the construction of a four-lane divided highway approximately 11 miles in length. This project is identified as TIP Project No. A-9 B&C.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence W. Coleman, P.E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601-1418, telephone: (919) 856-4350, Extension 133.

SUPPLEMENTARY INFORMATION: The proposed relocation is part of the North Carolina Department of Transportation (NCDOT) Transportation Improvement Program (TIP) Project No. A-9, which includes four different relocation projects, identified as TIP Project Nos. A-9 A, B, C, & D. The "A" portion of the project begins in Cherokee County with a proposed terminus in Andrews and extends into Graham County with a proposed terminus in Robbinsville. The proposed relocation from Robbinsville to Stecoah is the "B & C" portion of the project. The "D" portion of the project begins in Stecoah and extends east into Swain County, terminating in Almond; most of this segment is complete.

An FEIS for the entire A-9 project was completed in 1984. Federal regulations impose a three-year restriction, commencing from the time a document is signed, for action to be taken on a project. If action is not taken within this period, a reevaluation of the FEIS is required. The Supp. FEIS will serve as this reevaluation (40 CFR 1502.9). The FEIS identified a Preferred Corridor for the entire A, B, C, & D corridor from Andrews to Almond. A

reevaluation was completed for A-9D (a widening project), while A-9 A, B, & C (the new location portion) was subject to further analysis due to the project's potential impacts. The Supp. FEIS and its associated technical memorandum (indirect and cumulative effects report, air analysis, noise analysis, etc.) are being prepared only for the B & C portion of the project. The A portion of the project is currently unfunded. The project includes a tunnel under Stecoah Gap where an easement will be obtained from the U.S. Forest Service. The project corridor follows the existing NC 143 alignment in some areas; however, the majority of the project is on new location, as is the area through Stecoah Gap. The project also includes several new stream crossings including a bridge over Stecoah Creek.

The purpose of this project is to improve the US 74 corridor throughout the state providing better system linkage, economic and social development, highway capacity, and safety resulting in road user savings from a more efficient highway facility. It will also provide better accessibility with highway connections for Graham County. The proposed US 74 relocation is part of the Appalachian Development Highway System (ADHS), which would complete a missing link in the Appalachian Highway Corridor K. In summary, the purpose of the ADHS is to improve the economic conditions of the region by providing the infrastructure necessary for economic and human resource development.

A scoping letter was sent to federal and state resource agencies on December 5, 1995, and an interagency scoping meeting held on January 4, 1996. Additional interagency meetings were held on July 31, 1996, December 9, 1999, January 20, 2004, and September 19, 2006. An interagency meeting is currently scheduled for August 14, 2007. Public involvement has occurred for this project. The first Citizens Informational Workshop was held in two locations to accommodate interests at each end of the entire ABC project study area. The first workshop was held on March 11, 1996, at the Robbinsville High School in Robbinsville; the second was held at the Andrews Community Center in Andrews. The second Citizens Informational Workshop was also held in two locations on subsequent days. The workshop in Robbinsville was held October 28, 1996, at the Robbinsville High School; the second on October 29, 1996, at the Andrews Community Center in Andrews. The third Citizens Informational Workshop was also held on subsequent days in Robbinsville and

Andrews. The workshop in Robbinsville was held March 14, 2000, at the Robbinsville High School; the second on March 15, 2000, at the Andrews Community Center in Andrews. The most recent Citizens Informational Workshop was held on November 28, 2006, at the Graham County Community Building in Robbinsville. Local Officials Meetings were held immediately before the Citizens Informational Workshops with the exception of the November 28, 2006, workshop.

To ensure that the full range of issues related to the proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 19, 2007.

Clarence W. Coleman,

P.E., Operations Engineer, Raleigh, North Carolina.

[FR Doc. E7-14352 Filed 7-24-07; 8:45 am]

BILLING CODE 4910-22-P



Federal Register

**Wednesday,
July 25, 2007**

Part II

Millennium Challenge Corporation

**Notice of Entering Into a Compact With
the Government of the Republic of
Mozambique; Notice**

MILLENNIUM CHALLENGE CORPORATION**[MCC FR 07–06]****Notice of Entering Into a Compact With the Government of the Republic of Mozambique****AGENCY:** Millennium Challenge Corporation.**ACTION:** Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the

Government of the Republic of Mozambique. Representatives of the United States Government and the Government of the Republic of Mozambique executed the Compact documents on July 13, 2007.

Dated: July 17, 2007.

William G. Anderson Jr.,
Vice President & General Counsel,
Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Government of the Republic of Mozambique*A. Introduction*

Since emerging in 1992 from three decades of nearly continuous conflict, Mozambique has experienced one of the fastest growth rates in Africa, averaging eight percent per year over the last decade. To sustain this growth, it is

necessary to unlock the potential of the economically lagging Northern provinces, which are home to approximately 10 million people. Moreover, given Mozambique's rapid urbanization, its next stage of economic recovery cannot succeed without well-functioning public services in its cities, where coverage levels for water and sanitation, for example, are declining.

*B. Program**1. Goal and Objectives*

The \$506.9 million Compact focuses on water, sanitation, roads, land tenure, and agriculture (the "Program"), as summarized in the table below. The Program involves crucially needed investments in physical assets, policy reforms, capacity building, and institutional strengthening.

Program	CIF/Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Water Supply & Sanitation Project	\$16,250,586	\$33,486,540	\$60,354,509	\$51,577,477	\$41,916,281	\$203,585,393
2. Roads Project	5,430,562	4,420,542	39,733,884	79,578,499	47,143,993	176,307,480
3. Land Tenure Services Project	5,261,274	12,369,941	9,541,389	6,823,931	5,071,772	39,068,307
4. Farmer Income Support Project	3,754,417	3,491,632	3,851,878	3,375,446	2,958,838	17,432,211
5. Monitoring and Evaluation	2,195,000	955,000	1,880,000	920,000	2,255,000	8,205,000
6. Program Administration & Oversight ...	23,577,473	11,014,974	10,086,885	9,009,757	8,636,572	62,325,661
Total MCC Contribution	56,469,312	65,738,629	125,448,545	151,285,110	107,982,456	506,924,053

The Program's goal is to reduce poverty in Northern Mozambique through economic growth. The Program's objective is to increase the productive capacity of the population in selected districts, with the intended impact of reducing the poverty rate, increasing household income and employment, and reducing chronic malnutrition in the targeted districts. The various interventions are designed to foster investment and increase economic opportunities for Mozambicans living in the North.

2. Program Rationale

The Program addresses key constraints to growth in Mozambique, which include:

- An inadequate stock of infrastructure—particularly for roads, water, and sanitation—that has degraded because of years of war and lack of maintenance;
- A poor investment climate, including land tenure administration;
- Limited human capacity and poor health; and
- Low levels of productivity affecting agriculture.

The Program is consistent with two key themes of the Government of Mozambique's ("GOM") development strategy: (a) Decentralization and urban-based growth; and (b) meeting the

Millennium Development Goals for water and sanitation. It also is consistent with and a key part of the United States Government's ("USG") foreign policy and public diplomacy objectives.

*C. Program Description**1. Water and Sanitation Project (\$203.6 million)*

Lack of access to water and sanitation is a major barrier to growth and health. Mozambique has one of the lowest levels of per-capita water consumption in the world. With an average of less than 10 liters per day, the country is far below global benchmarks. Moreover, due to existing gender norms, girls and women are responsible for collecting most of the water at the household level. They spend hours fetching water, leaving little time for child care, attending school, or income-generating activities.

The Water Supply and Sanitation Project will improve access to safe, reliable water supply and sanitation services, thereby increasing productivity and reducing water-borne diseases—one of the causes of death in children under five. It involves: (a) Water supply and sanitation services in three large cities (Quelimane, Nampula, and Pemba) and three mid-sized towns (Gurué, Mocuba,

and Nacala) in the provinces of Zambézia, Nampula and Cabo Delgado; (b) water supply services in two small towns (Monapo and Montepuez) and 600 rural villages in the provinces of Nampula and Cabo Delgado; (c) capacity building of local institutions; and policy development.

MCC's capital investments in water and sanitation will build on the pioneering work begun in the mid-1990s and funded by the World Bank to put in place the key sectoral institutions and regulatory frameworks. MCC funding will also address some key heretofore neglected market segments—small-town water supply and sanitation—and, in so doing, will help consolidate and advance the GOM's water sector strategy. In urban water supply, the strategy is based on a separation of asset ownership and operations and maintenance ("O&M"). Under the so-called system of delegated management, the state owns the water assets; O&M is carried out by the private sector; and an independent regulatory authority ("CRA") sets service standards and regulates tariffs. Accordingly, the MCC program is predicated on private sector participation to reduce operating costs and improve service—factors that are key to sustainability.

2. Roads Project (\$176.3 million)

The objective of the Roads Project is to: (a) Improve access to markets, resources, and services; (b) reduce transport costs for the private sector to facilitate investment and commercial traffic; (c) expand connectivity across the Northern region and down toward the southern half of the country; and (d) increase public transport access for individuals to take advantage of job and other economic opportunities. Specifically, MCC funding will rehabilitate 491 km of key segments of the National Route 1, which forms the backbone of country's transportation network, in three provinces. The road segments will include Rio Lurio—Metoro in Cabo Delgado (74 km); Namialo—Rio Lurio (148 km) and Nampula—Rio Ligonha (102 km) in Nampula; and Nicoadala—Chimuara (167 km) in Zambézia.

These roads are part of the GOM's five-year master plan for roads, known as the Integrated Road Sector Program (PRISE), a sector-wide initiative for developing the national road network. The PRISE's first three-year rolling investment program (covering 2007–2009) is budgeted at more than US\$1 billion, and includes: (i) The building, rehabilitation, and maintenance of roads and bridges; (ii) the development of pilot projects to test low-cost materials; and (iii) the implementation of a road-safety initiative.

MCC funding will support the following types of interventions:

- Design, environmental assessment, and construction activities;
- Implementation of environmental and social mitigation measures, including compensation for physical and economic displacement of individuals and businesses affected by the rehabilitation and construction;
- Design, construction and rehabilitation of drainage and bridge structures;
- Posting of signage and incorporation of other safety improvements;
- Project management, supervision, and auditing; and
- Technical assistance and capacity building.

3. Land Tenure Services Project (\$39.1 million)

The objective of the Land Tenure Services Project (“Land Project”) is to establish more efficient and secure access to land by improving the policy and regulatory framework and helping beneficiaries meet their immediate needs for registered land rights and better access to land for investment. The

Land Project—which would operate in all four provinces, but could have a national impact—is comprised of three mutually reinforcing activity areas: (a) A Policy Support Pillar to help improve the policy environment by addressing implementation problems in the existing land law and regulatory reviews to improve upon it; (b) a Capacity Building Pillar to build the institutional capacity to implement policies and provide quality public land-related services; and (c) a Site-specific Pillar to facilitate access to land use by helping people and business with: (i) Clear information on land rights and access; (ii) more predictable and speedy resolution of land and commercial disputes, thereby creating better conditions for investment and business development; and (iii) registering their grants of land use.

4. Farmer Income Support Project (\$17.4 million)

Coconuts and coconut products form an important part of the economy in Northern Mozambique. However, outbreaks of Coconut Lethal Yellowing Disease (“CLYD”) now threaten the industry and the livelihood of over 1.7 million people in the provinces of Zambézia and Nampula. At the present rate of spread, more than 50 percent of the coconut area is likely to be lost over the next nine years. Affected trees cease producing and threaten the productivity of healthy trees; therefore they must be removed and replaced.

The objective of the Farmer Income Support Project is to improve productivity of coconut products, and encourage diversification into other cash-crop production. The Project will eliminate biological and technical barriers hindering economic growth among farms and targeted enterprises, while supporting diversification into other cash crops and improved farming practices to assist smallholders and producers to recover lost income. In conjunction with tree removal and replacement, the Project will assist farmers in adopting new cropping systems and developing alternative sources of cash income during the time required for new coconut trees to reach productive age, i.e., seven years and beyond. The Project will also provide technical support to introduce better practices aimed at increasing crop yields.

D. Impacts

Four strategic elements coalesce to form a platform to achieve the overall Program objectives:

- Increase the accessibility, reliability, and quality of water and sanitation facilities;
- Increase access to productive resources and markets;
- Make land access more efficient and secure for households, smallholders, and investors; and
- Improve productivity of coconut products and diversify into other cash crops.

The four strategic objectives, if achieved, will result in increased investment and employment. Overall, the Program will increase regional gross domestic product across the targeted provinces in Northern Mozambique—Cabo Delgado, Nampula, Zambézia, and Niassa—by nearly \$75 million in 2015 and \$180 million in 2025. A projected 33 percent of the population of these provinces would have been poor in 2015 without the Program. The Program can be expected to reduce the projected poverty rate by over 7 percent by 2015 and by over 16 percent by 2025. As a result of Program implementation, nearly 270,000 persons will be lifted out of poverty by 2015 and 440,000 persons by 2025. The net present value of the net economic benefits of the Program comes to more than \$420 million discounted at the MCC hurdle rate for Mozambique.

At the project level, the Water Supply and Sanitation Project is expected to assist some 1.9 million beneficiaries by 2015 through improved water systems, wastewater disposal, and storm water drainage. Around one-third of these beneficiaries are among the poor. The net present value of the net economic benefits for all of the water and sanitation activities (for large cities and towns, small towns, and rural stand posts) amounts to close to \$360 million discounted at the MCC hurdle rate for Mozambique.

By 2015, nearly 2.3 million people—of whom more than one-third is likely to be poor—will benefit from the Roads Project, by having improved access to markets and services. The net present value of the net economic benefits for all of the roads activities amounts to more than \$20 million discounted at the MCC hurdle rate for Mozambique.

The Land Project will assist anyone who has or acquires land-use rights. Improved land tenure services are projected to benefit 1.9 million people by 2015, the first year after the end of the Compact, and to benefit 2.6 million people, 15 years after the end of the Compact. The net present value of the net economic benefits for the Land Project amounts to more than \$4 million discounted at the MCC hurdle rate for Mozambique.

The Farmer Income Support Project will benefit 1.7 million smallholders as well as workers on coconut estates, which employ some 5,000 workers. Half of these smallholders would be in poverty even without income losses from CLYD. The net present value of the net economic benefits for the Farmer Income Support Project amounts to \$38 million discounted at the MCC hurdle rate for Mozambique.

E. Program Management

1. Governance Structure

The implementation and management arrangements are designed to ensure strong governance, oversight, management, monitoring and evaluation ("M&E"), and fiscal accountability in the use of MCC funds. The GOM will create MCA-Mozambique as a public institution to oversee and manage the program as an autonomous accountable entity. MCA-Mozambique will have: (1) A Board of Directors to oversee implementation, make strategic decisions, and ensure the execution of agreed policy reforms; (2) an Executive Committee, composed of a smaller working group of Board members or their representatives, to facilitate implementation by assisting in decisions regarding technical matters; and (3) a Management Unit to handle the day-to-day operations. The Board will be composed of representatives from government, private sector, and civil society. It will also include as non-voting members, a representative from MCC, a representative of an environmental NGO, and the Executive Director of MCA-Mozambique. The Management Unit will be composed of professional staff hired through an open and competitive recruitment. MCA-Mozambique will have an office in Maputo and a field office in Nampula.

Stakeholder participation will occur at both the Program and Project levels. At the Program level, stakeholders will be able to provide feedback through participatory M&E fora. Mechanisms will also be structured at the Project-level to allow the private sector, civil society, and local/regional governments to provide advice and input for implementation.

2. Implementation Arrangements

Line ministries and public institutions will serve as Implementing Entities ("IEs") and service providers for the various projects. IEs will be responsible for developing the operational requirements for the Projects and performance monitoring of contractors. Teams will be located within the IEs to ensure institutional

strengthening and close collaboration and communication. To help ensure Program success, the Compact has budgeted nearly \$40 million for technical assistance, capacity building, and institutional strengthening. In addition, competitively selected external service providers will perform the Procurement and Fiscal Agent functions.

F. Other Highlights

1. Transformational Change

The Program has the potential for significant transformational change to help unlock the economic potential of the northern part of the country by addressing key binding constraints to growth. Overall, the Program is expected to reach a total of five million people, many of whom will benefit from multiple Projects. In addition, the Program will have an important qualitative developmental impact, by helping to develop and consolidate key sectoral institutions and improve water and sanitation services, road maintenance, and land tenure.

2. Consultative Process

The Compact is derived from Mozambique's Poverty Reduction Strategy Paper, known as PARPA in Portuguese, which was submitted to a domestic consultation involving a wide variety of sectors and an extensive range of stakeholder groups, including the poor. For the MCC program, the GOM conducted a consultative process through two organizations: The Poverty Observatory, an umbrella group of non-governmental organizations ("NGOs"), and the Federation of Economic Associations (the "CTA"), a private sector trade association. The Poverty Observatory and CTA together represent the preponderance of NGOs, not-for-profit, and domestic for-profit businesses in Mozambique.

Government Commitment and Effectiveness

The GOM has demonstrated commitment by showing a willingness and flexibility to develop solutions for inefficient government procedures that affect implementation of donor-funded programs. It also has already initiated institutional reform and organizational restructuring processes in the water and sanitation and roads sectors and in land. The GOM is working with MCC and the World Bank to carry out the necessary policy reforms for program success, building on the crucial institutional developments identified by the GOM as part of the Compact development work funded by an MCC 609(g) grant. Over

the past two years, the GOM has developed a new road strategy and investment program that includes an organizational restructuring of the road agency and performance-based disbursements linked to measurable indicators for routine maintenance, among others. To supplement this, MCC also successfully negotiated a commitment by the GOM to implement a rigorous periodic maintenance program covering the country's entire paved road network, upon which disbursement of MCC funding is contingent. In December 2006, the GOM passed a decree approving urban land regulations, which establish the rules governing the use and enjoyment of land in towns and cities.

G. Sustainability

1. Water and Sanitation

For urban water, the Water and Sanitation Project will help promote the sector's evolution and solidify its institutions, while addressing the institutional capacity gap for smaller cities and towns and for sanitation. The sustainability of the water supply projects in the three large cities (Nampula, Quelimane, and Pemba) is assured through the existing state-owned asset-holding company for water ("FIPAG"), which operates on a self-sustaining basis. The proposed investments will help consolidate the financial sustainability of FIPAG by providing additional assets and water sales volume without adding additional debt. The GOM is establishing a FIPAG-like entity, the Asset Management Unit ("AMU"), as part of the National Water Directorate, with the assistance of World Bank funding to improve service delivery in the smaller cities and towns (Nacala, Gurué, Mocuba, Monapo, and Montepuez). The AMU—along with the expansion of the scope of the independent regulatory authority—will provide the basis for cost-based tariffs to ensure commercially sustainable operations and maintenance services. For the largest cities, CRA will continue to set tariffs to ensure full cost recovery. In smaller towns and in rural areas, as well as for sanitation, tariffs will be set to recover, at a minimum, 100 percent of O&M costs. This is projected to occur by 2015, after a period of tariff adjustments.

2. Roads

The Roads Project's sustainability depends upon the functioning of the two major institutions in the sector—the National Road Agency ("ANE") and the Road Fund. ANE is undergoing reorganization in order to provide more

efficient maintenance and system management. On the financial side, responsibility for revenue collection, identifying sources of funding, and financial management is the purview of the Road Fund, which is under the Ministry of Finance. The Road Fund is capitalized by a fuel levy, which enables the roads sector to meet its routine maintenance requirements. Nevertheless, to help ensure asset preservation, MCC obtained a government commitment from the GOM during Compact negotiations to fully fund and execute periodic maintenance, which should occur on a seven-year cycle for paved roads. As a condition precedent to disbursements for civil works, the GOM will present—to MCC's satisfaction—a rigorous plan for periodic maintenance covering the entire paved road network. Under this plan, the near-term periodic maintenance funding will come from user fees, GOM funds, and donor funds. Over a 10-year period, however, the plan would phase out donor-funded periodic maintenance and replace it with user fees.

3. Land

The Land Project addresses sustainability by supporting the development of an overall strategy for modernization of land services that emphasizes client service, adoption of technology solutions adapted to the local context, and strengthening of financial and human resource capacity. Re-establishing trust and creating efficiency in public land services will increase citizen and business use of services, thereby contributing to high-quality, up-to-date records. The GOM's increased ability to collect land rents from leases of public land and expanded collection of rationalized service fees will provide a major improvement in capacity to fund public land services at the national, provincial, and municipal levels. Finally, the Project will enable significant progress to improving access to and security of land tenure, which will help facilitate sustainable economic development through increased investment.

4. Farmer Income Support Project

Sustainability for the Farmer Income Support Project is linked to the overall market performance of coconuts and alternate crops. The market for coconuts and its processed products is growing domestically and internationally, as are markets for targeted alternate crops. Yield improvements should help foster sustainability, as should the adoption by smallholders of improved farming practices and crop diversification,

which can help reduce their risks and vulnerability. The Project would also promote environmental sustainability, as coconut trees are particularly productive at carbon sequestration.

5. Environment and Social Impacts

MCC requires that all Projects comply with national laws and regulations, MCC's Environmental Guidelines and Gender Policy, and World Bank Operational Procedure 4.12 on Involuntary Resettlement (WB OP 4.12). None of the Projects is likely to generate significant adverse environmental, health, or safety impacts. However, several of the Water and Sanitation Project ("Category A," according to MCC's Environmental Guidelines) activities have the potential for limited resettlement, alteration of river flows and aquatic habitat, and over-extraction of surface and/or groundwater resources that may require mitigation. Since the Roads Project ("Category B") involves the rehabilitation and paving of existing roads and not the construction of new roads, any negative environmental or social impacts are expected to be mitigatable. Similarly, any potential negative environmental and social impacts of the Land Project ("Category C") and the Farmer Income Support Project ("Category B") are expected to be mitigatable. The full scope of the impacts of each Project will be further examined through various environmental and social assessments that the GOM will conduct during the first year of implementation. Any negative impacts or risks identified through these assessments would be mitigated or managed through adequate approaches to implementation, including preparing and implementing environmental management plans, resettlement action plans, and gender analyses, as necessary.

It is important to note that a number of positive environmental and social benefits should emerge from many of the Compact activities, most notably from the Water and Sanitation and the Farmer Income Support Projects. Furthermore, to maximize the positive social impacts of the Compact and ensure compliance with MCC's Gender Policy, the GOM will develop: (a) A Gender Integration Plan that includes approaches for meaningful and inclusive consultations with women and vulnerable and under-represented groups; and (b) Project-specific gender analyses, the results of which will be incorporated into final Project designs.

To promote environmental and social sustainability, MCA-Mozambique will ensure that comprehensive public consultations are developed so that

Project stakeholders, including women and vulnerable groups, are afforded consultation and an opportunity to provide their inputs to Project design and implementation. MCA-Mozambique will ensure that environmental and social mitigation measures are followed for all Project activities in accordance with the provisions set forth in the Compact and supplemental agreements.

H. Donor Coordination

MCC has worked closely with various multilateral, bilateral, and private donors to facilitate Program design. MCC has not only built off existing successful programs, but has also catalyzed financial support from several donors. In water and sanitation, MCC coordinated closely with the water sector working group of donors throughout all stages of Compact development. For land tenure, MCC coordinated closely with many donors, including most extensively with USAID, DFID, and the World Bank. The Land Project is designed to build on prior schemes and to complement existing initiatives. Specifically, it will support a "buy-in" to a multi-donor program called the Land Fund to allow its expansion into three more provinces. MCC funds will add greater emphasis on women's land rights. Finally, the Compact will support municipal cadastre work, and will draw lessons from the experience gained under USAID's local governance project, which is piloting cadastre work in five municipalities currently. In roads, MCC resources, like all major donor and GOM investments going into the sector, will fund road improvements in the context of the GOM's five-year master plan, called the Integrated Road Sector Program ("PRISE"). MCC's participation in the PRISE would be in the form of project finance, while other donors will use a mixture of both project finance and pooled funding.

MCC has also taken a proactive approach to coordinating with various USG agencies throughout the Compact development and due diligence process, including: USAID, State Department, USTR, USTDA, Africa Development Foundation, Treasury Department, Department of Commerce, Department of Justice, USDA Forest Service, OPIC, U.S. Export-Import Bank, and the HELP Commission.

I. The "MCC Effect" in Mozambique

The "MCC Effect" has been pronounced in Mozambique in several different ways, including: (1) Creating space to increase the voice of civil society in developing the original proposal; (2) mobilizing other donor

activity; and (3) catalyzing the implementation of an urban water and sanitation strategy for small towns.

In the water/sanitation sector, the prospect of a large MCC investment led the World Bank to assemble a package of up to \$40 million in funding to complement MCC's interventions and invest in areas beyond MCC's scope. This package will help leverage the impact of MCC's investments, and is estimated to reach approximately two million beneficiaries at the national level. Combined with MCC investments in water/sanitation, which will reach more than 1.9 million people, nearly four million people in total will benefit from improved water and sanitation services.

In addition, through the 609(g)-funded Compact development process, MCC has already succeeded in pushing to develop further Mozambique's land policy and to make it more effective in practice. This was not easy given the post-war legacy of extreme sensitivity around land issues. As a result, other donors are contemplating ramping up their own initiatives to support interventions on land policy and to engage the government on needed policy and institutional reform.

Millennium Challenge Compact Between The United States of America Acting Through the Millennium Challenge Corporation and the Government of the Republic of Mozambique

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this "Compact") is between the Government of the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation ("MCC"), and the Government of the Republic of Mozambique (the "Government") (individually a "Party" and collectively, the "Parties").

Recalling that the Government consulted with the private sector and civil society of the Republic of Mozambique ("Mozambique") to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal based on the integrated Government development strategy to reduce poverty and increase household incomes by increasing the productive capacity of the population in selected provinces in northern Mozambique (Cabo Delgado, Nampula, Niassa and Zambézia); and

Recognizing that MCC wishes to help Mozambique implement a program to achieve the goal and objectives described herein (the "Program");

The Parties hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty in Mozambique through economic growth.

Section 1.2 Program Objectives

The objective of the Program (as further described in Annex I) (the "Program Objective") is to increase the productive capacity of the population in selected provinces in northern Mozambique.

Section 1.3 Project Objectives

The objectives of the Projects (as further described in Annex I) (collectively, the "Project Objectives" and each a "Project Objective") are to:

- (a) Increase the accessibility, reliability and quality of water and sanitation services;
- (b) Improve access to productive resources and markets;
- (c) Establish more efficient and secure access to land, particularly in the four provinces included in the Program; and
- (d) Improve productivity of coconut products and encourage diversification into other cash crop production.

The Government will take all the steps necessary or appropriate to achieve the Program Objective and Project Objectives during the Compact Term (as defined in Section 7.4).

Article 2. Funding and Resources

Section 2.1 MCC Funding

(a) MCC grants to the Government, under the terms of this Compact, an amount not to exceed Five Hundred Six Million, Nine Hundred Twenty-Four Thousand, Fifty-Three United States Dollars (US\$506,924,053) ("MCC Funding") to help the Government implement the Program.

(b) Annex II of this Compact describes the use of MCC Funding.

Section 2.2 Compact Implementation Funding

(a) Of the total amount of MCC Funding, MCC will make up to Twenty-Five Million, Three Hundred Forty-Six Thousand, Two Hundred United States Dollars (US\$25,346,200) ("Compact Implementation Funding") available to the Government under Section 609(g) of the Millennium Challenge Act of 2003 for activities which may include:

- (i) Fiscal and procurement administration activities;
- (ii) Administrative activities including start-up costs such as staff salaries and administrative support expenses such as rent, computers and other information technology or capital equipment;
- (iii) Baseline surveys for monitoring and evaluation;
- (iv) Additional work for feasibility studies and development of technical scopes; and
- (v) Other Compact implementation activities approved by MCC.

(b) Notwithstanding anything to the contrary in this Compact, this Section 2.2 will provisionally apply, after MCC and the Government sign this Compact, without regard to whether this Compact has entered into force under Section 7.3.

(c) Compact Implementation Funding is subject to (i) the limitations on the

use or treatment of MCC Funding set forth in Sections 2.6 and 2.7 as if such provisions were in full force and effect, and (ii) any other requirements and limitations as may be required by MCC in writing in accordance with this Compact, the Program and relevant legislation.

Section 2.3 Disbursement

In accordance with this Compact and the Program Implementation Agreement (as defined in Section 3.1), MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a "Disbursement"). The proceeds of such Disbursements will be made available to the Government, at MCC's sole election, (a) by deposit to a bank account established by the Government and acceptable to MCC (a "Permitted Account") or (b) through direct payment to a provider of goods, works or services under this Compact. MCC Funding may be expended only to cover Program expenditures as provided in this Compact and the Program Implementation Agreement.

Section 2.4 Interest

The Government will pay to MCC any interest or other earnings that accrue on MCC Funding in accordance with the Program Implementation Agreement (including by directing such payments to the bank account outside Mozambique that MCC may from time to time indicate).

Section 2.5 Government Resources; Budget

(a) The Government will provide all funds and other resources, and will take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Compact.

(b) The Government will use its best efforts during each year it receives MCC Funding to ensure that all MCC Funding it receives or is projected to receive in such year is fully accounted for in the annual budget of Mozambique on a multi-year basis.

(c) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program.

Section 2.6 Limitations on the Use of MCC Funding

The Government will ensure that MCC Funding will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting on the MCC Web site at www.mcc.gov/implementation, including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, where the phrase "likely to cause a significant environmental, health, or safety hazard" has the meaning set forth in environmental guidelines delivered by MCC to the Government or posted by MCC on its Web site at <http://www.mcc.gov/implementation> or otherwise publicly made available, as the guidelines may be amended from time to time (the "MCC Environmental Guidelines"); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.7 Taxes

(a) Unless the Parties otherwise specifically agree in writing, the Government will ensure that each of the following is free from the payment of any taxes, duties, levies, contributions or other comparable charges ("Taxes") of or in Mozambique: (i) The Program; (ii) MCC Funding; (iii) interest or earnings on MCC Funding; (iv) any Project or activity implemented under the Program; (v) goods, works, services and other assets and activities under the Program or any Project; (vi) persons and entities that provide such goods, works, services and assets or perform such activities; and (vii) income, profits and payments with respect thereto. The Parties acknowledge and agree that the

foregoing includes, inter alia, value added and other transfers, property and ad valorem items and import and export of goods (including for goods imported and re-exported for personal use).

(b) Before any Disbursement, the Government and MCC must have entered into one or more agreements setting forth the mechanisms for implementing this Section 2.7, including (i) Waivers of certain filing and compliance requirements relating to Taxes and (ii) an agreement on exceptions to paragraph (a) above for (1) Taxes on and contributions for certain individuals who are nationals or residents of Mozambique; (2) Taxes other than transfer Taxes and import and export Taxes on certain entities that are constituted under the laws of Mozambique; and (3) fees or charges for services that are generally applicable in Mozambique, reasonable in amount and imposed on a non-discriminatory basis.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

The Government will implement the Program in accordance with this Compact and as further specified in an agreement to be entered into by MCC and the Government dealing with, among other matters, implementation arrangements, fiscal accountability, disbursement and use of MCC Funding and procurement (the "Program Implementation Agreement" or "PIA").

Section 3.2 Government Responsibilities

(a) The Government has principal responsibility to oversee and manage the implementation of the Program.

(b) With the prior written consent of MCC, the Government may designate an entity to implement some or all of the Government's obligations or to exercise any rights of the Government under this Compact or the PIA. Such a designation will not relieve the Government of any designated obligations and rights, for which the Government will retain full responsibility.

(c) The Government will ensure that no law or regulation in Mozambique now or hereinafter in effect makes or will make unlawful or otherwise prevent or hinder the performance of any obligation under this Compact, the PIA or any other agreement related thereto or any transaction contemplated thereunder.

(d) The Government will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding will be used solely in furtherance of this Compact and the

Program unless otherwise agreed by MCC in writing.

Section 3.3 Policy Performance

In addition to the specific policy and legal reform commitments identified in Annex I, the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the Millennium Challenge Act of 2003 and the selection criteria and methodology used by MCC.

Section 3.4 Government Assurances

The Government assures MCC that:

(a) As of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects;

(b) This Compact does not, and will not, conflict with any other international agreement or obligation of the Government or any of the laws of Mozambique; and

(c) The Government will not invoke any of the provisions of its internal law to justify or excuse a failure to perform its duties or responsibilities under this Compact.

Section 3.5 Implementation Letters

From time to time, MCC may provide information to the Government through implementation letters on the frequency, form or content of requests for Disbursements or on any other matter relating to MCC Funding, this Compact or implementation of the Program (each, an "Implementation Letter"). The Government will apply such information in implementing this Compact.

Section 3.6 Procurement

The Government will ensure that the procurement of all goods, works and services by the Government or any Provider (as defined in Section 3.7(c)) in furtherance of this Compact will be consistent with the procurement guidelines (the "*MCC Program Procurement Guidelines*") of which MCC will inform the Government in writing or by posting on the MCC Web site at <http://www.mcc.gov/implementation>, or otherwise make publicly available, as the guidelines may be amended from time to time, which MCC Program Procurement Guidelines will include, but will not be limited to, the following requirements:

(a) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and

administer contracts and to procure goods, works and services;

(b) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(c) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works and services.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) Government Books and Records. The Government will maintain, and will use its best efforts to ensure that all Covered Providers (as defined in subsection (c) below) maintain accounting books, records, documents and other evidence relating to this Compact adequate to show to MCC's satisfaction the use of all MCC Funding ("*Compact Records*"). In addition, the Government will furnish or cause to be furnished to MCC upon its request all such Compact Records.

(b) Accounting. The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (ii) then prevailing in Mozambique. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) Covered Provider. Unless the Parties agree otherwise in writing, a "Provider" is (i) any entity of the Government that receives or uses MCC Funding or any other Program asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US\$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A "Covered Provider" is (i) a non-United States Provider that receives (other than pursuant to a direct contract or

agreement with MCC) US\$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US\$300,000 or more of MCC Funding from any Provider in such fiscal year, or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US\$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US\$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized United States government inspector general, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) Government Audits. Except as the Parties may otherwise agree in writing, the Government will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term, in accordance with the terms of the Program Implementation Agreement. As requested by MCC in writing, the Government will use, or cause to be used, to conduct such audits an auditor approved by MCC and named on the list of local auditors approved by the Inspector General of the Millennium Challenge Corporation (the "Inspector General") or a United States-based certified public accounting firm selected in accordance with the "Guidelines for Financial Audits Contracted by MCA" (the "Audit Guidelines") issued and revised from time to time by the Inspector General and posted on the MCC Web site at www.mcc.gov/implementation. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. An audit must be completed

and the audit report delivered to MCC no later than ninety (90) days after the first period to be audited and no later than ninety (90) days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of United States Entities. The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States organization is subject to the applicable audit requirements contained in the United States Office of Management and Budget Circular A-133. The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States organization is subject to audit by the cognizant United States Government agency, unless the Government and MCC agree otherwise in writing.

(c) Corrective Actions. The Government will use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, consider whether a Covered Provider's audit necessitates adjustment of the Government's records, and require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact, including as reflected on Annex II.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC: Millennium Challenge Corporation, Attention: Vice President for Operations (with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521-3700, Telephone: (202) 521-3600, E-mail:

VPOperations@mcc.gov (Vice President for Operations),
VPGeneralCounsel@mcc.gov (Vice President and General Counsel).

To the Government: The Government of the Republic of Mozambique, Attention: The Honorable Minister, Ministry of Planning and Development, Av. Ahmed Sekou Touré N. 21, Maputo, Mozambique, Facsimile: +258-21-495-463, Telephone: +258-21-492-268, E-mail: *aiuba@zebra.uem.mz*.

Section 4.2 Representatives

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, the Minister of the Ministry of Planning and Development of the Republic of Mozambique, and MCC will be represented by the individual holding the position of, or acting as, Vice President for Operations (each, a "Principal Representative"), each of whom, by written notice to the other Party, may designate one or more additional representatives for all purposes other than signing amendments to this Compact. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact in its entirety by giving the other Party thirty (30) days' written notice.

(b) MCC may, immediately upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Web site at <http://www.mcc.gov/implementation>) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact, the PIA or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) An event has occurred that MCC determines makes it improbable that the Program Objective or any of the Project Objectives will be achieved during the Compact Term or that the Government will be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact would violate applicable law or United States government policy, whether now or hereafter in effect;

(iv) The Government or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Mozambique ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Mozambique for assistance under the Millennium Challenge Act of 2003; and

(vii) The Government or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; *provided, however*, MCC Funding may be used, in compliance with this Compact and the PIA, to pay for (i) reasonable expenditures for goods, works or services that are properly incurred under or in furtherance of this Compact before expiration, suspension or termination of this Compact; and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within 120 days after the expiration, suspension or termination of this Compact.

(d) Subject to subsection (c) of this Section 5.1, upon the expiration, suspension or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC to the Government will be automatically released from any obligation in connection with this Compact and (ii) any amounts of MCC Funding disbursed by MCC but not expended before the expiration, suspension or termination of

this Compact, plus accrued interest thereon will be returned to MCC within thirty (30) days after the Government receives MCC's request for such return; *provided, however*, that if this Compact is suspended or terminated in part, MCC may request a refund for only the amount of MCC Funding allocated to the suspended or terminated portion.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government must use national funds (and no assets of the Program) to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the Compact Term and for a period of (i) five years thereafter or (ii) one year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

The Government's responsibilities under Sections 2.4, 2.6, 2.7, 3.7, 3.8, 5.1(c), 5.1(d), 5.2 and 5.3 of this Compact will survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex attached hereto constitutes an integral part of this Compact.

Section 6.2 Inconsistencies

In the event of any conflict or inconsistency between:

(a) Any annex to this Compact and any of Articles 1 through 8, such Articles 1 through 8 will prevail; or

(b) This Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.3 Amendments

The Parties may amend this Compact only by a written agreement signed by the Principal Representatives and subject to the respective domestic approval requirements to which this Compact was subject.

Section 6.4 Governing Law

This Compact is an international agreement and as such will be governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations and rights undertaken by, existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web site

Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

The Government will take all steps necessary to ensure that (a) this Compact and the PIA and all of the provisions of this Compact and the PIA are valid and binding and are in full force and effect in Mozambique and (b) each such agreement along with any other agreement entered into in connection with this Compact to which the Government and MCC are parties, if stipulated in such agreement, will be given the status of an international agreement.

Section 7.2 Conditions Precedent

Before this Compact enters into force:

(a) The Government and MCC must have executed the PIA and it must be effective;

(b) The Government will have delivered to MCC:

(i) A certificate signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, that the Government has completed all of its domestic requirements in order that the requirements of Section 7.1 have been satisfied;

(ii) A legal opinion from the Attorney-General of Mozambique (or other legal opinion acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) Complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to its domestic requirements for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its Web site or otherwise make publicly available; and

(c) MCC must determine that after signature of this Compact, the Government has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry into Force

This Compact will enter into force on the later of (a) the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and (b) the date that all conditions set forth in Section 7.2 have been satisfied.

Section 7.4 Compact Term

This Compact will remain in force for five years after its entry into force, unless terminated earlier under Section 5.1 (the "Compact Term").

Article 8. Additional Government Covenants

Section 8.1 Designated Entity

The Government affirms that:

(a) If and to the extent the Government elects to designate an entity to implement some or all of the Government's obligations or to exercise any rights of the Government under this Compact or the PIA (any such entity the "Accountable Entity"), the Government will create such entity in accordance with the terms described in Annex I.

(b) The Accountable Entity will have the authority to bind the Government to the full extent of the powers delegated thereto.

(c) The Accountable Entity will be a public institution under Mozambican law with distinct legal personality and administrative and patrimonial autonomy within the meaning of Law n° 9/2002 of 12 February (the SISTAFE Law) and the regulations made thereunder. The Accountable Entity will have the power fully to control its financial management as required by the PIA and any related agreement notwithstanding anything to the contrary in the SISTAFE Law.

Section 8.2 Administrative Court

The Government affirms that under the law of Mozambique:

(a) This Compact is a “cooperation agreement” within the meaning of Article 4, paragraph 1, clause c of Law n° 13/1997 of 10 July (the “Administrative Court Prior Review Law”).

(b) MCC Funding does not “generate public expenditure” within the meaning of Article 3 of the Administrative Court Prior Review Law.

Section 8.3 Certain Financial Practices

(a) The Government affirms that MCC Funding does not comprise Government funds and will be held separately from and never commingled with Government funds.

(b) The Government will make explicit provision in the law containing the annual governmental budget for Mozambique for an amount necessary and adequate to cover the value-added tax, customs duties and other tax obligations it assumes under this Compact, the PIA and any related agreement.

Section 8.4 Procurement

The Minister of Finance of the Government will adopt the MCC Program Procurement Guidelines as the rules governing procurement using MCC Funding under the terms of Article 8, paragraph 2 of Decree n° 54/2005 of 13 December and will ensure that such guidelines are published in the official gazette of Mozambique, the *Boletim da República*.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact this 13th day of July, 2007.

Done at Washington, DC.

For Millennium Challenge Corporation, on behalf of the United States of America, Name: John J. Danilovich, Title: Chief Executive Officer.

For the Government of the Republic of Mozambique, Name: Aiuba Cuereneia, Title: Minister of Planning and Development.

Annex I—Program Description

A. Overview

This Annex I to this Compact describes the Program that MCC Funding will support in Mozambique during the Compact Term and the results to be achieved using MCC Funding.

The Parties may agree to modify, amend, terminate or suspend the projects described herein (collectively, the “Projects”) or to create a new project by written agreement signed by the Principal Representative of each Party without amending this Compact;

provided, however, any such modification or amendment of a Project or creation of a new project does not (1) cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, or (2) cause the Government’s responsibilities or contribution of resources to be less than specified in this Compact, or (3) extend the Compact Term.

1. Program Background and Context—Country Background and the Poverty Reduction Strategy

With a population of 20 million people living in Mozambique, approximately 70 percent are located in rural areas. The urban population represents about 30 percent of the national total. Emerging from a devastating three-decade civil war in 1992, Mozambique has grown rapidly. Since 2000, its growth rate has stabilized between 7 and 8 percent. As the Country Partnership Strategy (2007) notes, Mozambique has achieved the highest average growth rate in the past 10 years among the non-oil producing countries in Africa. Despite Mozambique’s rapid growth, half of the Mozambican population still lives in poverty. Mozambique’s next stage of economic recovery cannot succeed without well-functioning public services in its cities, given Mozambique’s rapid urbanization.

The Government’s action plans for poverty reduction in the past decade, the Action Plan for the Reduction of Absolute Poverty (“PARPA”), PARPA I (2001–2005) and PARPA II (2005–2009) are based on the premise that broad-based economic growth is critical to poverty reduction. In PARPA I, lack of basic infrastructure services was identified as one of the major determinants of poverty in Mozambique, and it focused on infrastructure investments to meet the Government’s ambitious growth objectives detailed in PARPA I. Building on the lessons learned from PARPA I, the Government outlines investment in human capital, including water and sanitation services, as one of the three pillars to meet its sustained growth agenda in PARPA II. As PARPA II notes, investing in water and sanitation services contributes to meeting not only the short-term objectives of the Millennium Development Goals, but also Mozambique’s long-term growth and poverty reduction intentions.

2. Program Description

(a) Compact Goal.

This Compact’s goal is to reduce poverty in Mozambique through economic growth, and increase

economic opportunities for Mozambicans living in the northern region.

(b) Program Objective.

The Program Objective is to increase the productive capacity of the population in selected provinces in northern Mozambique with the intended impact of reducing the poverty rate, increasing household income, and reducing chronic malnutrition in the targeted districts.

(c) Program Results (Expected Impact).

The Program will increase regional Gross Domestic Product (GDP) across four targeted northern Mozambique provinces—Cabo Delgado, Nampula, Niassa and Zambézia—by nearly US\$75,000,000 in 2015 and US\$180,000,000 in 2025. A projected 33 percent of the population of these provinces would have been poor in 2015 without the Program. The Program can be expected to reduce the projected poverty rate by over 7 percent by 2015 and by over 16 percent by 2025. More than 270,000 persons will have been lifted out of poverty by 2015 and 440,000 persons will no longer be poor by 2025 as a result of Program implementation.

(d) Beneficiaries Description.

The Program is expected to benefit nearly 5.0 million persons by 2015 both poor and non-poor, amounting to one half of the projected population in the affected four provinces.

Over half of all the beneficiaries reside in Nampula, while the rest reside in the other provinces. Activities specifically targeted to rural areas account for around one third of Program beneficiaries, while those focused specifically on urban areas account for another one third. The roads activities benefit both rural and urban dwellers and account for the remaining beneficiaries. Approximately 20 percent of the households benefiting from the Program are headed by women. The Land Project (as defined below) alone assists 2.6 million persons, but many of these are also likely to benefit from road reconstruction, farmer income support, and improved water and sanitation. Thus, to avoid double-counting, the beneficiaries of the Land Project are not added to the 5.0 million person total.

3. Consultative Process

Consultation has been an integral part of the development of the Program. For the initial proposal submitted by the Government in July 2005, the Government conducted its MCC consultative process through two organizations, the Poverty Observatory, a group of civil society organizations

and non-governmental organizations (NGOs), and the *Confederação das Associações Económicas de Moçambique*, a private sector trade association (the “CTA”). The Poverty Observatory and CTA together represent the preponderance of NGOs, not-for-profit, and domestic for-profit businesses in Mozambique.

During the pre-Compact program preparation and definition process, ongoing consultation continued through various forms including: Input from a wide variety of stakeholders in the development of terms of reference for key consultants; information dissemination and exchange during kickoff sessions for the public of the key consultancies; and circulation of the interim and final reports of these key consultants. The Government also held informational sessions throughout this Compact development process with interested stakeholder groups, including national, provincial and municipal government representatives, private sector meetings, donor working groups and other interested parties. The Program will undergo further timely, participatory, and meaningful public consultation during the development of the environmental, social, and resettlement impact studies during implementation of the Program.

B. Water Supply and Sanitation Project

The Water Supply and Sanitation Project (the “WSS Project”) interventions include rural and urban water supply, sanitation and drainage, rehabilitation of the Nacala dam and reservoir, and capacity building and institutional strengthening for water sector entities. The objective of the WSS Project is to increase the accessibility, reliability, and quality of water and sanitation services. The WSS Project encompasses water supply and sanitation (including sewerage and drainage) in cities and towns and an extensive rural water supply program in three provinces. WSS Project activities address small rural communities and large provincial capitals—but will notably include a heretofore neglected market segment in Mozambique—small to mid-sized town water supply and sanitation. The WSS Project will reduce the onerous costs associated with the existing provision of water supply; increase the reliability of water service; and improve the health and productivity of individuals, households, and firms.

1. Background

Lack of access to water and sanitation is a major barrier to growth and health, and this critical infrastructure is a major

policy priority of the Government. Mozambique has one of the lowest levels of per-capita water consumption in the world. With an average of less than 10 liters per day, the country is far below global benchmarks. In addition, girls and women spend hours fetching water which leaves little time for child care, income-generating activities, or school attendance.

Meeting the Millennium Development Goals is a major challenge for Mozambique as coverage levels for water and sanitation services would have to almost double for all categories by 2015. The Government estimates that it would need to at least double its sector investments in the next ten years in order to meet the Millennium Development Goals for water and sanitation. Cholera is endemic in major urban areas mainly due to inadequate sanitation and sewerage services, compounded by poor water supply services. This prevalence of cholera and other health impacts caused by poor sanitation also jeopardizes meeting the Millennium Development Goal of reducing infant and child mortality.

2. Summary of Project and Related Activities

The WSS Project will improve access to safe, reliable water supply and sanitation services. This project will thereby increase productivity, reduce water-borne diseases—one of the causes of death in children under five—and specifically benefit women and girls.

The WSS Project encompasses (a) water supply and sanitation services in three large cities and three mid-sized towns in the provinces of Zambézia, Nampula and Cabo Delgado and (b) a water supply program in Nampula and Cabo Delgado provinces covering rural areas and small towns. The water supply interventions will be divided into interventions in cities where water supply services are owned and managed by the *Fundo de Investimento e Património do Abastecimento de Água* (FIPAG) and cities where they will be managed by a new Ministry of Public Works and Housing agency, the Asset Management Unit (AMU). The AMU will be created by the Government consistent with its policies and with the support of the World Bank and MCC as its key development partners by the end of March 2009. The AMU will also manage the implementation of the sanitation program.

The water supply interventions will focus on the sustainable utilization of available water resources, maximizing connections to the network, control of “unaccounted for water,” and will be

designed based on results of complete feasibility studies.

As a means of complementing the enhanced water supply, the WSS Project will improve sanitation systems by investigating feasible opportunities to expand wastewater treatment, improve the piped sewage network, and increase the usage of septic systems in the urban centers and latrines in the peri-urban areas. In addition, storm drains will be rehabilitated or added to improve drainage efficiency which protects urban land usage.

The rural water supply component is developed from the Government’s policy of demand-responsive planning, which is predicated on (a) community articulation of demand and (b) local responsibility for operations and maintenance. Taking into consideration the lack of local capacity and concerns over the availability of spare parts and specialized expertise to carry out complex repairs in rural areas, the implementation plan will include procurements of well-construction services in small lots in order to promote the development of local construction and repair businesses.

The WSS Project includes the following activities:

(a) Improve water supply networks of Nampula, Pemba, and Quelimane, currently operated by FIPAG.

(b) Build the capacity of local institutions to develop policies and manage programs.

(c) Construct or rehabilitate water supply systems in Montepuez and Monapo.

(d) Construct or rehabilitate water supply and sanitation systems in Nacala, Gurue, and Mocuba under the management of AMU.

(e) Repair and raise the Nacala Dam and reservoir, the main bulk water source for a city of 290,000 people.

(f) Install and rehabilitate approximately 600 rural water supply points in Nampula and Cabo Delgado provinces.

3. Beneficiaries

The WSS Project is expected to assist some 1.9 million beneficiaries by 2015 through improved water systems, wastewater disposal and storm water drainage. Among the beneficiaries impacted by the WSS Project by 2015, around one third is expected to be poor. Nearly 1.6 beneficiaries in six large cities—Gurue, Mocuba, Nacala, Nampula, Pemba and Quelimane—will have improved infrastructure from both water supply and sanitation interventions. Virtually the entire population of each city will be covered by effective storm water drainage

improvements. New beneficiaries covered by water systems will vary depending upon existing coverage, but, in general, water system gains are considerable with coverage rates relative to projected populations in 2015 reaching from 40 to 70 percent.

Economic benefits accrue through improved water and sanitation for a number of reasons. Households with access to house and yard connections will pay less for the water they consume and, because of easier access, are likely to use more water for cooking and bathing, thereby improving health outcomes. In particular, with better access to water and sanitation, children will benefit from reductions in morbidity and mortality from diarrhea and malaria. Adults will spend less of their time incapacitated or caring for sick children. Further, women will have more time to spend in productive activities when their sources of water are closer to home, either through house connections or neighborhood water points.

Improved water supplies also will be provided to 300,000 beneficiaries through small piped systems and rural water-points. These improvements will reduce the incidence of disabling diarrhea and save time for women that can be spent on more productive activities. Other benefits that are not easily measured include improved opportunities for girls to go to school, rather than assisting their mothers in household tasks, and reductions in other diseases such as cholera.

4. Sustainability

The WSS Project will be sustainable if it is economically justified, financially sound, and technologically appropriate and includes the appropriate institutional arrangements.

Institutional Sustainability

For urban water, the WSS Project will help promote the sector's evolution and solidify its institutions. The WSS Project will work in collaboration with the Water Services and Institutional Support Project (WASIS) funded by the World Bank to mitigate as many serious institutional risks as possible. In large cities presently under the responsibility of FIPAG, the WSS Project will facilitate graduating from the World Bank's successfully piloted management contract structure to leases that entail greater risk/reward for private operators. For smaller cities and towns, the MCC program will pilot and roll out an AMU based on the delegated management model. The AMU will be empowered to manage assets and to plan and oversee the execution of investments. The AMU

will assist in the engagement of third-party operators for these smaller cities and towns through contracts with the Provincial Water Boards established to contract services on behalf of their constituent municipalities. The AMU addresses the institutional capacity gap for smaller cities and market towns, and will be established in Zambézia, Nampula, and Cabo Delgado where the WSS Project is focused.

Financial Sustainability

Design and planning of water supply and sanitation services for the WSS Project will be based on the demand-responsive (rather than a supply-led) approach and will be based on consumer preferences and willingness to pay. In the FIPAG cities, tariffs will be set to ensure full cost recovery. In the AMU municipalities and the rural areas, tariffs will be set to recover, at a minimum, 100 percent of operations and maintenance (including the replacement of all assets with a useful economic life of less than seven years) after a period of tariff adjustments, but no later than 2015.

Environmental and Social Sustainability

The key to ensuring environmental and social sustainability of the WSS Project is ongoing public consultation. MCA-Mozambique (described below) will ensure that comprehensive public consultation plans are developed such that WSS Project stakeholders, including women and vulnerable groups, are afforded consultation and an opportunity to provide their inputs to WSS Project design and implementation. MCA-Mozambique will also take steps to ensure that the interests and views of women and vulnerable groups are represented in any of the provincial or community water boards or other entities responsible for advising on design, ownership, management, and operation of water and sanitation systems funded under this Compact.

MCA-Mozambique will ensure that environmental and social mitigation measures are followed for all Project activities in accordance with the provisions set forth in this Compact and in relevant supplemental agreements. The Stakeholders Forums (as defined in Section F of this Annex I) will incorporate representatives of civil society that will serve as a link between local NGOs and program managers.

5. Environmental and Social Issues

Overall, the WSS Project is classified as "Category A" according to MCC Environmental Guidelines due to potential social and environmental

impacts associated with several Project activities, including the rehabilitation of a large dam and the construction of municipal sanitation systems and off-site wastewater treatment facilities. However, a number of the individual Project activities will be classified "Category B" and, as such, may not require full Environmental Impact Assessments ("EIAs") as defined in the MCC Environmental Guidelines. All Project activities will require Environmental Management Plans ("EMPs") and, as applicable, Project activity-specific Resettlement Action Plans ("RAPs") will be developed and implemented in compliance with the World Bank Policy on Involuntary Resettlement (OP 4.12) prior to the start of construction activities.

Environmental and Social Impacts

The rehabilitation of the Nacala Dam (considered a "large" dam according to MCC Environmental Guidelines) has the potential for resettlement, alteration of river flows and aquatic habitat, and the significant but temporary reduction of the region's primary source of potable water during re-construction and will thus require a full EIA. Although the construction or rehabilitation of sanitation systems will provide significant positive environmental benefits, the scope of potential negative environmental and social impacts that may arise from constructing off-site wastewater treatment facilities and potential pollution problems related to discharges and operation of the systems necessitate preparation of an EIA. Investments in expanding and improving water supply networks have the potential for (a) limited resettlement, (b) rehabilitation of several small dams, (c) over-extraction of surface and/or groundwater resources, and (d) project proximity to important cultural, natural, and archeological resources. The rural water supply points activity may have potentially adverse impacts resulting from limited resettlement and over-extraction of ground water resources.

Potential direct, indirect, induced, and cumulative environmental impacts of each of the WSS Project activities will be further examined through the EIAs and environmental assessments that will be conducted during the feasibility and design phase for each WSS Project activity. For the water supply activities, MCA-Mozambique will ensure that feasibility studies include efforts to identify the most appropriate and environmentally sustainable water sources to meet future demand. In addition, MCA-Mozambique will ensure that for all WSS Project activities EMPs are developed, implemented and

monitored in accordance with the provisions of this Compact and any relevant supplemental agreements. MCA-Mozambique will ensure that environmental and social assessment responsibilities are included in the bidding documents for the design or supervisory firms, construction firms, independent technical auditing firms and any project management advisors, as needed. Disbursement of MCC Funding for the WSS Project will be contingent upon issuance of environmental licenses, as needed, or any other required permits. WSS Project activities, for which MCC disburses funds, should be consistent with the outcomes of the relevant EIAs, MCC Environmental Guidelines, and in compliance with applicable Mozambique environmental law and regulations.

To maximize the positive social impacts of the WSS Project and ensure compliance with MCC's Gender Policy, MCA-Mozambique is required to (a) develop a gender integration plan that includes approaches for meaningful and inclusive consultations with women and vulnerable/underrepresented groups; Project activity-specific gender analyses, as appropriate; and strategies for incorporating findings of the gender analyses into final Project designs; and (b) ensure that final Project activity designs are consistent with and incorporate the outcomes of the gender integration plan.

Environmental Permitting and Oversight

Through this Compact MCC has the option of providing a capacity building grant to the Ministry of Coordination on Environment ("MICOA") to facilitate their ability to respond to the increased workload arising from the Government's implementation of this Compact. This assistance would enhance MICOA's ability to, inter alia, adequately review all Compact-related environmental studies; issue environmental permits on a timely basis as provided in Mozambique environmental law and regulations; and hire, train and appropriately resource additional staff, as needed, in the provincial offices to carry-out effective environmental oversight and auditing of the implementation of Compact Projects.

6. Consultative Process

AMU operation is envisioned to have strong municipal representation through the creation of functioning Provincial Water Boards, and represents the Government's preferred alternative to delegate the management of water supply and sanitation in towns and smaller cities. This representative

structure for municipal services was the product of consultation and discussion, including forums to solicit input from stakeholders.

7. Donor Coordination

In developing the WSS Project, MCC participated in numerous donor meetings to explain and receive comments on the Government proposal as it changed over time. Through meetings with the Water Donors Working Group and the Municipal Development Working Group, MCC was able to gather information on how the WSS Project will fit into the planned activities of other donors. The geographical focus of the WSS Project complements the other water sector interventions financed by other donors. The institutional development activities funded by MCC and the World Bank will facilitate future operations by the Government and development partners in the sector.

Successful execution of the WSS Project requires close coordination with other donors and actors in the water sector. The Government and the Water Donors Working Group are developing a Rural Water Supply Sector Wide Approach and are beginning the process for an Urban Water Strategy and Sanitation Strategy (as discussed below). The Government through the WSS Project will work closely with the World Bank's WASIS project, which will support institutional development of the AMU and the Provincial Water Boards.

While United States Agency for International Development (USAID) is not directly active in the Water Sector Working Group it does participate in the Municipal Development Working Group and is active in health related issues, both of which are strongly linked to water supply and sanitation. MCC has coordinated with the USAID Mission in Maputo and with the Global Health Bureau in Washington. Although USAID will not be directly involved in the implementation of the WSS Project, close coordination will be maintained to ensure synergies between existing and future activities and to capitalize on USAID's long term in-country presence.

8. Policy, Legal and Regulatory Reforms

In order to reach the full benefits of the WSS Project:

(a) Urban Water Strategy. The Government agrees to finalize an Urban Water Strategy, which will be vetted and agreed to by the major Government stakeholders (*Direção Nacional de Água* (DNA), *Fundo de Investimento e Património do Abastecimento Água*-Water Supply Investment Fund

(FIPAG), *Conselho de Regulação de Água* (National Regulatory Authority) (CRA), *Ministério da Administração Estatal* (Ministry of State Administration (MAE), and others) and have broad consultation with the major water sector donors, as set out in the WSS Project work plans.

(b) Sanitation Strategy. The Government agrees to finalize a Sanitation Strategy, which will be vetted and agreed to by the major Government stakeholders (DNA, CRA, MAE, and others) and have consultation with the major water and sanitation sector donors, as set out in the WSS Project work plans.

(c) Creation of the Asset Management Unit. The Government will create an AMU according to the criteria set out in the PIA in the form of conditions to Disbursements of MCC Funding.

(d) Expansion of CRA. The Government agrees to expand the regulatory authority of CRA to cover delegated management under the AMU for both water supply and sanitation, in addition to undertaking other legal or regulatory measures as described in the PIA in the form of conditions to Disbursements of MCC Funding.

(e) Operation and Maintenance Costs for Sanitation. The Government agrees to develop the procedures to incorporate the operation and maintenance costs for the sanitation activities into the FIPAG's water supply billing.

(f) Rural Water Supply Strategy. The Government will create a public and publishable Rural Water Supply Implementation Manual (MIPAR).

C. Roads Project

The roads project interventions include key segments of the *Estrada Nacional*/National Route 1 ("N1") in Zambézia, Nampula and Cabo Delgado Provinces (the "Roads Project").

1. Background

Two-thirds of Mozambique's population depend on agriculture (and out of these about 90 percent on subsistence agriculture) for their livelihood. The cash crop sector is in a reconstruction stage and is experiencing development problems, especially the cashew sector. Other planted cash crops are sugar cane, tea, tobacco, and coconut. The importance of roads in agriculture is highlighted in the World Bank's Mozambique Agriculture Strategy, 2006, which notes that "Rebuilding roads and bridges is now a priority and a necessary condition for any growth in the agriculture sector."

Extraction of timber is limited because of lack of infrastructure including poor road conditions but has

a high development potential due to the richness of high quality timber species. Fisheries, particularly shrimp and prawn, are of importance, with a high potential for production increases. Mozambique has considerable mineral resources, such as coal, tantalite, ilmenite, graphite, iron ore, bauxite, salt, and potentially developable resources such as gold, petroleum, and gas. All of these sectors depend upon reliable transportation networks and roads in particular.

The *Administração Nacional de Estradas* (ANE) and the *Fundo de Estradas*, an independent agency that manages road maintenance funding (the "Road Fund"), prepared a Road Sector Strategy 2007–2011 ("RSS") report. That strategy lays out the Government's plan to enhance, improve, and preserve the classified road network of the country.

The RSS provides the broad framework for the Government's road sector development for the entire country. The Government and MCC worked together to identify appropriate investments in the provinces of the Roads Project based upon the strategic work of the Government under an MCC grant and through other donors' efforts.

2. Summary of Project and Related Activities

The objective of the Roads Project is to improve access to markets, resources, and services; reduce transport costs for the private sector to facilitate investment and commercial traffic; expand connectivity across the northern region and down towards the southern half of the country; and increase public transport access for individuals to take advantage of job and other economic opportunities.

It is planned that the Roads Project will rehabilitate 491 kilometers of high-priority roads in three (3) provinces. The road segments will include Rio Lurio—Metoro in Cabo Delgado (74 kilometers), Namialo—Rio Lurio (148 kilometers) and Nampula—Rio Ligonha (102 kilometers) in Nampula, and Nicoadala—Chimuara (167 kilometers) in Zambézia.

Specifically, MCC Funding for the Roads Project will support the following:

(a) Design, environmental assessment, as needed (to include, if necessary, supplemental ELAs), and construction activities for the improvement of the N1;

(b) Implementation of environmental and social mitigation measures as identified in the EIA, or as otherwise may be appropriate, to include compensation for physical and economic displacement of individuals, residences and businesses affected by

such rehabilitation and construction, consistent with the World Bank's Operational Policy on Involuntary Resettlement (OP 4.12), and implementation of HIV/AIDS awareness plans;

(c) Design and construction of drainage structures, as may be required;

(d) Design and construction of all necessary new bridges and rehabilitation of existing bridge structures, as may be required;

(e) Posting of signage and incorporating other safety improvements; and

(f) Project management, supervision and auditing of such improvements and upgrades.

3. Beneficiaries

In total, by 2015, nearly 2.3 million beneficiaries in districts adjoining the roads will have improved access in the three provinces affected. Over one third of those beneficiaries are likely to be poor. More than 60 percent of the beneficiaries are in Nampula; somewhat less than 40 percent are in the other two provinces. The beneficiaries in Cabo Delgado are proportional to population, while relatively fewer beneficiaries are in Zambézia. Benefits will accrue to vehicle users on the rehabilitated and resurfaced roads as vehicle operating costs go down, and time spent in travel is reduced with vehicles traveling safely at higher speeds. In addition, road improvements will induce additional growth in traffic as better roads make transportation more affordable for agriculture, industry and commerce. These benefits should result in reductions in the prices of goods and improvement in farm-gate prices if savings in fuel and other vehicle operating costs are passed on to producers and consumers. It is also expected that bus operations will become more efficient, improving access to public transportation. This should make it easier for the population to secure access to health, education, and employment. Over half of the population is of working age and will be able to take advantage of improved employment opportunities.

4. Sustainability

Sustainability on the Roads Project is dependent on three factors. First, the establishment of functional provincial ANE offices will be crucial, since road maintenance will largely be implemented by such offices. Secondly, the *Programa Integrado do Sector de Estradas* ("PRISE") is also critical to sustainability, because this sector-wide approach for the road sector is designed to support a coherent Mozambican-

owned and led road program, which should be equipped to plan, finance, implement, monitor and evaluate the road sector. Third, the Road Fund established by the Government has been designed to manage the financial resources intended for the road sector and to allocate the resources for the maintenance of various categories of roads. The Road Fund also has responsibility for road sector monitoring and evaluation.

Environmental and Social Sustainability

The key to ensuring environmental and social sustainability of the Roads Project is ongoing public consultation. MCA-Mozambique will ensure that comprehensive public consultation plans are developed such that Roads Project stakeholders, including women and vulnerable groups, are afforded consultation and an opportunity to provide their inputs to Roads Project design and implementation. MCA-Mozambique will ensure that environmental and social mitigation measures are followed for all Project activities in accordance with the provisions set forth in this Compact and in relevant supplemental agreements. The Stakeholders Forums will incorporate representatives of civil society that will serve as a link between local NGOs and program managers.

5. Environmental and Social Issues

The Roads Project is classified as "Category B" according to the MCC Environmental Guidelines given the potential for: (a) Increased deforestation and related flooding; (b) resettlement; and (c) increased human trafficking and disease transmission, including HIV/AIDS, along the routes to be upgraded. All Roads Project activities will require environmental assessments, EMPs, and, as applicable, Road-specific RAPs that will be developed and implemented in compliance with the World Bank Policy on Involuntary Resettlement (OP 4.12) prior to the start of construction activities.

Environmental and Social Impacts

It is unlikely that the proposed Roads Project activities will result in any significant negative environmental impacts given that the Roads Project involves the rehabilitation and paving of existing roads and not the construction of new roads. However, the potential direct, indirect, induced, and cumulative environmental impacts of the Roads Project activities will be further examined through the execution of environmental assessments that will be conducted during the feasibility and design phase of the Roads Project. In

addition, MCA-Mozambique will ensure that EMPs are developed, implemented and monitored during the project in accordance with the provisions of this Compact and any relevant supplemental agreements. MCA-Mozambique will ensure that environmental and social assessment responsibilities are included in the bidding documents for the design or supervisory firms, construction firms, independent technical auditing firms and any project management advisors, as needed. Disbursement of MCC Funding for the Roads Project will be contingent upon issuance of environmental licenses, as needed, or any other required permits. Roads Project activities, for which MCC disburses funds, should be consistent with the outcomes of the relevant environmental assessments, MCC Environmental Guidelines, and in compliance with applicable Mozambique environmental law and regulations.

Given the strong evidence linking transport routes to the spread of HIV/AIDS, MCA-Mozambique will also develop an action plan for incorporating sustainable and well-targeted HIV/AIDS awareness programs into all phases of road works implementation. To help address concerns that the expansion/upgrade of the road network in northern Mozambique does not exacerbate human trafficking problems in the region by opening up or improving routes used by traffickers, MCA-Mozambique will develop an action plan for incorporating targeted anti-trafficking in persons awareness programs into the execution of road activities.

To maximize the positive social impacts of the Roads Project and ensure compliance with MCC's Gender Policy, MCA-Mozambique is required to (a) develop a gender integration plan that includes approaches for meaningful and inclusive consultations with women and other vulnerable/underrepresented groups; a Project-specific gender analysis, as appropriate; and strategies for incorporating findings of the gender analysis into final Project designs; and (b) ensure that final Project activity designs are consistent with and incorporate the outcomes of the gender integration plan.

Environmental Permitting and Oversight

Through this Compact MCC has the option of providing a capacity building grant to the MICOA to facilitate their ability to respond to the increased workload arising from the Government's implementation of this Compact. This assistance would enhance MICOA's ability to, *inter alia*, adequately review

all Compact-related environmental studies; issue environmental permits on a timely basis as provided in Mozambique environmental law and regulations; and hire, train, and appropriately resource additional staff in the provincial offices to carry-out effective environmental oversight and auditing of the implementation of Compact projects.

6. Consultative Process

In addition to the process mentioned in the WSS Project section for the PARPA, the Government, in developing the PRISE, consulted a wide range of stakeholders. The consultative process was timely, meaningful, and participatory. It involved three different methods of obtaining information, including: (a) A formal survey among donors and road sector professionals; (b) consultations with provincial authorities; and (c) focus groups with road users, government officials, and other stakeholders. The stakeholder consultations included provincial consultations with provincial government leaders, provincial road authorities, directors of public works, ANE provincial delegates, provincial roads consultants, and donors. They also included 18 focus groups which were comprised of contractors, public servants, agricultural bodies, tourism operators, transporters and road users, public transport passengers, and private sector non-transporters.

7. Donor Coordination

In developing the Roads Project, MCC held coordination meetings with many stakeholders in the donor community. MCC participated actively in the planning meetings for the PRISE and, since November 2005, attended the Road Sector Donors meetings whenever MCC representatives were in Mozambique. The interventions financed by other entities do not conflict with the interventions of the Roads Project; they contribute to create a more comprehensive road network by incorporating roads that connect to the northern sections of the N1 that will be improved.

Donors with major commitments and experience in the road sector include: European Union, World Bank, Japan, the Swedish International Development Cooperation Agency, the African Development Bank, *Agence Française de Développement*, the International Fund for Agricultural Development, Irish Aid, Italian Cooperation, Germany's *Kreditanstalt für Wiederaufbau*, USAID, the United Kingdom's Department for International Development (DFID), the Danish

International Development Agency, the Norwegian Agency for Development Cooperation, the Arab Bank for Economic Development in Africa, the Islamic Development Bank, the Nordic Development Fund, and the Organization of Petroleum Exporting Countries' Overseas Fund for International Development.

USAID is involved with the Roads Sector Working Group and has historically provided technical assistance and investments in the rural road network. MCC has coordinated with the USAID Mission in Maputo. Although USAID will not be directly involved in the implementation of the Roads Project, close coordination will be maintained to ensure synergies between existing and future activities and to capitalize on USAID's long-term in-country presence.

8. Policy, Legal and Regulatory Reforms

In order to reach the full benefits of the Roads Project:

(a) The Government will ensure compliance of the roles and responsibilities of the Road Fund and ANE, as set out in the PIA in the form of conditions to Disbursement of MCC Funding.

(b) The Government will undertake the necessary policies to ensure that they continue to meet all of the PRISE Performance Assessment Framework indicators.

(c) The Government will undertake a program to ensure periodic maintenance of the entire paved road system.

D. Land Tenure Services Project

1. Background

Land is an important asset for income generation and wealth creation. Land has been at the center of a long-standing debate about different choices and visions for growth in rural areas, and is of increasing importance to urban development as well. In 1997 Mozambique adopted a new legal framework on land tenure aiming to address equitable access to land tenure security for local communities and private sector including recognition of customary rights. This new legal setup has been recognized by a broad range of actors as a good policy and legal framework. However, implementation of this framework has been slow and requires an efficient land administration system to play the primary role in increasing land tenure security and improving access to land, thereby enabling the use of this asset most effectively for economic growth.

On one hand, the lack of simple, fair and clear procedures for acquiring and

transferring rights to land is a constraining factor for private sector investment. On the other hand, there have been concerns about improving and securing local community and small farmer land-use rights. As Mozambique has moved on from post-war reconstruction toward a market-based economy, there is an increasing demand for land access and for issuance of registered titles to land rights. This is placing increased pressure on the land administration services, which are already limited in their ability to effectively implement the existing legislation.

The Land Tenure Services Project (the "Land Project") will work on improving policy, upgrading the public land administration agencies (the title registry and cadastre), and facilitating site-specific land access. These three main pillars will address concerns widely shared across private sector, the Government, and civil society with solutions that bring together their diverse perspectives. The benefits will reach private sector and local communities in the four selected provinces. The policy work and precedent set by the investments made in northern Mozambique will have a national impact, thereby contributing to an improved investment climate in the country and broader participation in the rural economy. The Land Project will enable people to increase their incomes and wealth as: (a) Risk and transactions costs are reduced; and (b) more secure access to land induces increased investment and more productive land uses.

2. Summary of Project and Related Activities

The objective of the Land Project is to establish more efficient and secure access to land particularly in the four provinces included in the Program. The Land Project will support the unified advance by the Government and stakeholders on both policy development and its implementation. This will enable the translation of local and international best practices into an improved policy and regulatory framework. At the same time, the Land Project will help specific beneficiaries meet their immediate needs for registered land rights and better access to land for investment.

The Land Project is comprised of three mutually reinforcing activity areas: (a) Support for an improved policy environment, including addressing implementation problems for the existing land law and engaging in regulatory review to improve upon it (the "Policy Activity"); (b) building the

institutional capacity to implement policies and provide quality public land-related services (the "Capacity Building Activity"); and (c) facilitating access to land use by helping people and business with (i) clear information on land rights and access; (ii) resolution of conflict with more predictable and speedy resolution of land and commercial disputes—which in turn creates better conditions for investment and business development; and (iii) registering their grants of land use (land titles to long-term or perpetual-use rights) (the "Site Specific Activity").

(a) Land Policy Monitoring (the Policy Activity)

The Land Law adopted in Mozambique in 1997 made significant improvements to the legal, institutional and technical framework for providing more secure land use rights and access to land for all groups in society. However, land policy today is also under stress due to the implications of having only partially implemented this framework. These two trends suggest that Mozambique stands to significantly benefit from a participatory engagement in monitoring progress; development of a new, coherent vision that links together all levels of responsibility and capacity for the provision of land services; and, the pursuit of an agenda of regulatory and administrative change. Additionally, an aggressive approach to non-judicial dispute resolution (conciliation, mediation and arbitration) as well as legal professional training and public education about land administration and land rights is important to the transformational goals of the Land Project. Land tenure disputes are plentiful, yet, there are few sources of legal support for rural people. Even private enterprises find it difficult to access high quality legal services related to land issues. The Policy Activity will help address these issues.

Specifically, MCC Funding will support the following five sub-activities under the Policy Activity: (i) The further development of a national land administration vision and a coherent implementation strategy based on a needs assessment that will examine regulations, administrative processes, information systems, institutional structure, and human resources; (ii) the provision of technical and logistical support for a process to assess and monitor progress on land legislation, in coordination with the Land Policy Consultative Forum created with support from the Land Project; (iii) the development and implementation of a broad campaign of public education, outreach and awareness raising of non-

judicial dispute resolution methods with partners, including but not limited to *Centro de Arbitragem, Conciliação e Mediação*, as effective cost and time-saving mechanisms to resolve disputes; (iv) investment in expanding an on-going program for legal and judicial training, training for mediators and arbitrators, studies and advocacy of the Legal and Judicial Training Center ("CFJJ"), as well as developing new curriculum on mediation and arbitration training for CFJJ's paralegal students working in the northern provinces on commercial and land issues; and (v) provision of advisory services, including international best-practice knowledge transfer, to the National Directorate of Lands and Forests.

(b) Land Administration Capacity Building (the Capacity Building Activity)

The institutional capacity to implement and enforce the present land law and its regulations and to provide high quality efficient services to clients is limited. Limitations include procedural complexity, insufficiently trained personnel and inadequate information, communications and profession-specific technology access at the national, regional and local offices. Addressing these limitations to establish an effective land registry system will yield more transparent, reliable and faster processes for accessing land and meet—as well as further motivate—a growing demand for formal land rights registration. This, in turn, will improve the investment climate while ensuring security of tenure for land-holding households and local communities. At the same time, while allowing for more affordable service fees, these improvements will generate the revenue base to sustain high quality services over time. At the municipal level, effective land administration capacity will reinforce decentralization by bolstering the information base for investment and fiscal planning. Under the Capacity Building Activity, MCC Funding will support investments and reform processes that will go a long way toward strengthening public land administration services.

Specifically, MCC Funding will support the following intervention areas: (i) Implementation of a comprehensive approach to professional development and training (including in local requirements and international best practices in cadastral and registration information systems, surveying and titling procedures, land law, and other topics) at the national, provincial and local levels, thereby increasing knowledge and awareness of

land tenure issues, land records management and surveying techniques, and providing a better understanding of development trends in land policy and in the demand for their services; (ii) the further development of the National Land Information System (LIMS), which was first funded by the Italian government but still requires strategic planning, final design and completion of implementation at the provincial level; (iii) investment in and technical assistance to the upgrading of facilities for four provincial and selected district land service offices; (iv) investment in and technical assistance for cadastral development in selected municipalities, including pilot implementation of cadastral registration in selected neighborhoods within each municipality. The Land Project will develop methods and criteria to select the particular districts, municipalities and neighborhoods. Such criteria and methods will be subject to approval by MCC.

(c) Site Specific Facilitation of Land Access (the Site Specific Activity)

In the PARPA, the Government committed to undertaking a mapping and inventory initiative to identify and record the actual legal and economic situation of land holdings including the type of land rights (by state authorization, good faith and community) and existing land uses. In the selected, more economically dynamic areas, this will result in readily available information for many purposes including for the planning and the management of access to natural resources (including land), a reduction in the risk of land disputes, and quicker and easier access to land for investors and small businesses (farm and non-farm). At the same time and often in these same dynamic areas, communities increasingly seek to enhance the security of their tenure or to engage in business relations with investors through joint ventures or the leasing out of their lands (as allowed for in the land law upon boundary delimitation and title issuance). Several donors worked with the Government to establish the Community Land Initiative. This "land fund" responds to demand with grants of financial support and technical assistance, ensuring an approach fully compliant with the technical annex to the land law and thereby reducing the risk of disputes and errors. Finally, it is important to provide immediate solutions to help investors and small businesses more expediently meet their land access and registration needs. Discussions with CTA and others suggests that some simple information

and facilitation services will allow progress within the current institutional and regulatory climate while the other Land Project activities work to transform the land administration system.

Specifically, MCC Funding will support: (i) The implementation of the mapping and inventory exercise and, as part of that process, the piloting of a sound approach to area-wide registration of land rights in selected areas characterized as more dynamic and/or conflictive; (ii) provision of additional funding to the existing program of support for the Community Land Initiative to allow its operation in Zambézia, Nampula and Niassa Provinces (the land fund is already operating in Gaza, Manica and Cabo Delgado with support from other donors); and (iii) make available simple informational tools to streamline investor and farmer access to land in northern Mozambique, such as legal information, guidelines regarding the requirements for negotiating land access with local communities, printed site maps showing land use and existing titles, and other tools, e.g., specialized seminars.

3. Beneficiaries

The Land Project supports the national policy monitoring and reform process by introducing improved approaches to land registration and records management. Broadly speaking, the Project will assist anyone (local community and private sector) who has or acquires land-use rights. In particular, the Land Project is projected to benefit 1.9 million people by 2015 and 2.6 million people by 2029 by assisting four groups of beneficiaries. As a result, the value of investment on land affected by the Project will increase and the time and cost to register a land use right will be reduced.

Local communities that solicit assistance from the Community Land Initiative will benefit from registration of land rights and reduced transaction costs through improved security for productive activities on their land and increased opportunity for arrangements with outside investors for business development. Approximately 200 communities are projected to have their lands delimited over four years under the Land Project, enabling an estimated average of 3000 hectares per community to become available for commercial uses. Urban households in selected municipalities and rural smallholders in selected districts and sites selected for land service upgrading and mapping will save time and expense when accessing and/or registering land rights.

These beneficiaries include nearly half a million urban parcel holders and over 220,000 rural smallholders. Investors (both local and foreign), who currently can face high transactions costs in gaining access to a registered land use right, will also have substantial savings. Benefits are expected to accrue to more than 150 firms. Additional value added can be expected from reduced conflict and increased job creation over time as a result of new commercial investments encouraged by a more efficient land use regime; however, these benefits are not easily quantifiable.

4. Sustainability

The Land Project addresses sustainability by supporting the development of an overall strategy for modernization of land services that emphasizes client service, adoption of technology solutions adapted to the local context, and financial and human resource capacity. Re-establishing trust and creating efficiency in public land services will increase citizen and business use of services, thereby contributing to records being kept up-to-date. The increased ability to collect land rents from leases of public land and expanded collection of rationalized service fees will provide a major improvement in capacity to fund public land services at the national, provincial, and municipal levels. Finally, the program will enable significant progress toward access to and security of land tenure, which will help facilitate sustainable economic development.

5. Environmental and Social Issues

The Land Project is classified as "Category C" according to the MCC Environmental Guidelines as Project activities are unlikely to have immitigable, adverse environmental or social impacts.

Environment and Social Impacts

Given that the major proposed interventions in the Land Project do not contemplate the construction of new, or the significant expansion of existing buildings or structures, or the introduction of new technologies or productive processes, this Project is unlikely to generate any significant adverse environmental, health or safety impacts or risks. While the implementation of the Land Project will likely lead to an increase in the demand of certain public services (e.g., electricity, potable water, waste disposal) and products (e.g., office supplies, printed materials) for the operation of new equipment or the performance of training, consultation and information activities, this increase

in demand would be negligible. Thus, neither specific environmental studies nor environmental impact management measures are anticipated for the Land Project.

The Land Project includes several activities that will deliver positive social impacts, such as the delimitation of 'common hold' land rights held by local communities, which can protect the long-term tenure security of many rural dwellers and reduce the potential for conflict with smallholders and investors. However, several Land Project activities could potentially induce some negative social and gender-based impacts. This risk will be managed through adequate approaches to implementation and the impacts properly mitigated during implementation. For example, plans to adjudicate and register individual titles to smallholder plots may pose risks to the tenure security of certain vulnerable groups including women and those affected indirectly or directly by HIV/AIDS. Adjudication and registration of plots can lead to cancellation of access agreements and therefore greater tenure insecurity for these vulnerable groups. Initial project design has taken into account most of these potential negative impacts and gender-based constraints to participation. These issues will be further explored and appropriate mitigation strategies incorporated into final activity/sub-activity designs, which will be reflected in the gender integration plan. Finally, the Land Project is not expected to negatively impact public health and safety, child labor or human trafficking.

6. Consultative Process

In addition to the overall Compact development consultative process, extensive consultations were conducted on the conceptual framework for the Land Project objectives and approaches, as well as on specific aspects of the design. Consultations were conducted at both an individual-level with representatives of the proposed implementing agents, NGOs and the private sector, as well as at a national and provincial level, in all four of the northern provinces, usually through the Permanent Secretaries in the office of the Provincial Governor. Donors were also involved in the consultations, such as the National Program for Agrarian Development ("PROAGRI") Working Group and donor focus groups at a Southern African Development Community (SADC) conference.

7. Donor Coordination

MCC has consulted with many donors, most extensively with USAID,

DFID and the World Bank. As designed, the Land Project builds on prior initiatives and complements existing ones. For example, this Compact will support the expansion of a multi-donor program called the Community Land Initiative (which is supported by DFID, the Swiss Agency for Development and Cooperation, the Danish Embassy, The Swedish International Development Cooperation Agency and the Development Cooperation Ireland). The Land Project also benefited from technical support from Food and Agriculture Organization of the United Nations (FAO), Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the United Nations Development Programme, and USAID. As a part of this Compact's support to expand a paralegal training and legal education through the CFJJ, MCC will be working alongside FAO and the Government of the Netherlands. The African Development Bank is supporting efforts to make the registry of deeds more efficient and this will link to the land administration strategy and information system development under this Compact. Finally, the Land Project indirectly complements the Government use of budget support (e.g., from the Irish and Spanish Cooperation and previous initiatives of the Italian Cooperation, GTZ, the International Fund for Agricultural Development (IFAD) and others). In fact, measures such as the ones to be supported under this Land Project are consistent with discussions held by the donor working group on agriculture (PROAGRI) under the Program Aid Partnership's (G-18) joint review of progress on the PARPA in 2007 as well as in previous years' joint review of progress on the PARPA.

USAID was particularly engaged throughout the development and review of the Land Project. Improved efficiency and security of land access is relevant to its programs in private sector development, trade, rural incomes, and municipal development. USAID and its stakeholders provided information useful to the design of activities, including technical guidance from USAID Washington. An area for potential coordination under this Compact will be the USAID funded pilot cadastre activity in five municipalities in northern Mozambique.

8. Policy, Legal and Regulatory Review

The Government agrees to engage in a process of regulatory and administrative reform to significantly improve the efficiency, transparency and security of the processes for transferring and acquiring land rights, in both rural and urban areas. The

Government also agrees to support a related regulatory reform, which will result from a list of targeted reforms proposed in the design study "Land Tenure Services Final Report (February 2007)" and as refined by additional analyses and efforts under this Compact.

E. Farmer Income Support Project

1. Background

Mozambique is an internationally significant exporter of coconuts and coconut products. These are grown in Zambézia and Nampula Provinces. Coconut is one of the few crops growing on the impoverished, sandy, and sometimes saline coastal soils of northern Mozambique. It has unique value as a low input, environmentally beneficial, year-round source of nutrition, income and shelter for coastal communities. In the late 1990s, outbreaks of Coconut Lethal Yellowing Disease ("CLYD") were confirmed in areas of commercial smallholder plantings in coastal Zambézia. By 2003 about one percent of the total area was affected but with several new disease foci in both provinces. Disease-affected areas in Zambézia have expanded considerably since 2003, and new foci are present in Nampula as well. At the present rate of spread, more than 50 percent of the coconut area is likely to be lost over the next nine years. As the infection rate is considerably slower than that experienced in Florida and the Caribbean, the disease could be controlled by the same type of phytosanitary measures that were used in Ghana. Currently, about five percent of the total coconut area of Zambézia is likely to be affected, although in certain areas there is no remaining production. Trees that are no longer productive must be removed and replaced. Technical support is necessary to assist farm enterprises in recovering income that they formerly had from coconut trees. Unless sustained measures are taken over a large area, coconut cultivation will cease in large areas of central Mozambique, with the resulting loss of export earnings and rural livelihood for over 1.7 million people in coastal Zambézia and Nampula.

In conjunction with tree removal and replacement, this Project would assist farmers to adopt new cropping systems and develop alternative sources of cash income during the time the coconut trees reach productive age at seven years and beyond (the "Farmer Income Support Project"). Chickpeas, pigeon peas, cowpeas and pineapples have the potential to generate alternative income for these farm enterprises, compatible with rehabilitation of coconut and

diversification to reduce risks and improve livelihood options. Pulses have become increasingly significant exports, increasing by over 400 percent per year from 2000–2004. Like coconuts, they are suited to the sandy and loamy soils that are dominant in the coastal region. They are advantageous because they fix nitrogen in the soil. At the same time, crop yields in the region are extremely low due to poor practices including lack of crop rotation, poor seed selection, inadequate field preparation, untimely weeding, and other practices. Technical support to introduce better practices would increase yields considerably.

2. Summary of Project and Related Activities

The objective of the Farmer Income Support Project is to improve productivity of coconut products and encourage diversification into other cash crop production. The Project will eliminate biological and technical barriers hindering economic growth among farms and targeted enterprises located in this Compact area's eastern coastal belt (Zambézia and Nampula provinces), and it will increase incomes lost to CLYD through crop diversification and improved farming practices.

The Project will deliver two essential services to farm enterprises over the duration of this Compact to significantly improve and sustain incomes derived from cash crops and newly introduced crop diversification options: (a) CLYD control and mitigation will provide the short-term control measures of surveillance, prompt eradication of diseased palms and replanting with the less susceptible Mozambican Green Tall coconut variety. The Project will replant all cleared coconut trees. In the endemic areas, this activity will support planting 160,000 new coconut seedlings, the equivalent of 2,000 hectares, benefiting 7,500–10,000 smallholder families. In the epidemic areas, this activity will support clearing and also replanting of 650,000 seedlings on 6,100 hectares; and (b) Technical Advisory Services will introduce alternate crop-diversification options that demonstrate strong market demand and income generation potential, especially for farm enterprises participating in the CLYD control and mitigation program that are seeking short-term income alternatives during period of coconut tree re-growth. These services will supply productive inputs and training to small farm enterprises operating on some 4,000 hectares (2,000 in epidemic areas and 2,000 in endemic areas).

The Farmer Income Support Project activities are as follows:

(a) Activity 1 (CLYD Control and Mitigation Services)

The objective of this activity is to control and mitigate the spread of CLYD among the holdings of commercial farmers in Zambézia and Nampula Provinces. The first step under this activity will be a Government-led public awareness campaign about the disease and the measures needed to mitigate its effects. Short-term control measures include surveillance and scouting to detect early cases of disease; prompt eradication of diseased palms (by cutting and burning); and replanting with selected seedlings from local Mozambique Green Tall coconut types (some of which show a measure of resistance).

CLYD control and mitigation strategies will be tailored to different stages of the disease epidemic and are likely to be most effective at, or in advance of, the margins of active spread of disease. Infected trees must be culled since they attract populations of rhinoceros beetle that breed in dead palm trunks and will kill or damage replacement palms. There is thus a need for collective and continuous action—by all growers and over a sustained period—not just to prevent infection moving from diseased to healthy palms, but also to remove and destroy dead palm trunks. Three sub-activities are envisioned: (i) In the endemic zone, help smallholders to clear their land of dead palms and replant with selected Mozambique Green Tall seedlings and alternative short-term crops; (ii) in the epidemic zone, control spread of disease by prompt removal and destruction of infection sources and provision of new planting material; and (iii) a research initiative that will emphasize germplasm resistance screening, epidemiological analysis, and early disease detection.

(b) Activity 2 (Technical Advisory Services)

The Farmer Income Support Project will target smallholders impacted by CLYD control and mitigation measures to engage in crop diversification to generate income during the period of coconut tree re-growth. Emphasis will be given to improving farming practices that will increase yields and link farmers to processors and other buyers in the supported value chains. They will be provided options to diversify their production in response to proven market demand, which will lead to additional revenue streams. Dissemination of improved farming practices and market linkages will be done by experienced field agents to: (i)

Support demonstration trials; (ii) strengthen producer organizations' marketing capacities; and (iii) provide extensive on-farm training in intercropping methods, integrated pest management practices, and CLYD surveillance capabilities. The principal sub-activities will be: (i) In zones with lower risk profiles, improve the productivity and yield of existing aging and under-productive palms in smallholder plantings; and (ii) enable stakeholders, through business development support, to help safeguard and/or improve profitability of the coconut industry for smallholders through innovative strategies, including linking them to carbon offset credit investment initiatives.

The Farmer Income Support Project Manager will be located in MCA-Mozambique. The Coconut Working Group, composed of Government entities in the agricultural area, will provide the Project Manager with guidance on technical matters concerning project implementation.

DNEA is the entity responsible for Government public outreach to communities about the CLYD mitigation and control activities. DNEA will mobilize the outreach campaign through media (radio, television, bulletins, posters), extension agents, coconut estate employees and other means of information dissemination as appropriate.

3. Beneficiaries

The Farmer Income Support Project benefits 1.7 million smallholders in the coconut belts of Zambézia and Nampula who depend on coconut tree-products for cash and in-kind income. Half of these smallholders would be in poverty by 2015 even without income losses from CLYD. If CLYD is allowed to proliferate, the poverty rate would undoubtedly be higher. Coconuts are also produced on estates, which account for some 5,000 workers as additional Project beneficiaries. In addition, the Farmer Income Support Project provides targeted technical assistance to over 3,000 smallholders to mitigate significant income loss due to CLYD and assist them in improving the quality of other crops planted on their holdings. With their families, over 15,000 persons directly benefit from this technical assistance. While about two thirds of the financial benefits accrue to the estates, the estates do not receive technical assistance and benefit entirely from disease eradication. If eradication were not to include infected trees on both smallholder plots and the larger estates, CLYD would continue to spread.

4. Sustainability.

The Farmer Income Support Project is envisioned as a short-term intervention to eliminate significant biological and technical barriers to economic growth of farm enterprises located in the Program target areas. Through the delivery of the CLYD control and mitigation service, the spread of a highly contagious disease that could have significant negative repercussions on the coconut industry, a key agricultural business in the coastal belt, will be halted. This, in turn, will help ensure the sustainability of a healthy coconut industry in Zambézia and Nampula Provinces. Without ridding the area of the disease, healthy coconut groves will be susceptible to infection or re-infection, thereby affecting the continued commercial viability of the raw material suppliers and processors. Applied research and replanting of the selected variety will improve productivity of the region's "coconut economy." Research on varietal improvements will be done in conjunction with the Ministry of Agriculture, thereby transferring skills and technology in coconut-resistance trials, screening and selection. Sustainability is linked to the overall market performance of coconuts and alternate crops. The market for coconuts and its processed products is growing domestically and internationally, as are markets for targeted alternate crops. Yield improvements will be sustainable through smallholders' adoption of improved farming practices and crop diversification, which reduces their risks and vulnerability. And, there may be opportunities to improve smallholder incomes through carbon offset, which may be monetizable over five years to supplement smallholders' income until replanted trees reach productive age. MCC is consulting with carbon credit experts and will be providing MCA-Mozambique with guidance on options for Mozambique to pursue to qualify for carbon offset credits.

Environment and Social Sustainability

The key to ensuring environmental and social sustainability of the Farmer Income Support Project is ongoing public consultation. MCA-Mozambique will ensure that comprehensive public consultation plans are developed such that Project stakeholders, including women and vulnerable groups, are afforded consultation and an opportunity to provide their inputs to Project design and implementation. MCA-Mozambique will ensure that environmental and social mitigation measures are followed for all Project activities in accordance with the

provisions set forth in this Compact and in relevant supplemental agreements. MCA-Mozambique will serve as the point of contact for comments and concerns of parties affected by the implementation of all Project activities under this Compact and will lead the effort to find feasible resolutions to those problems. MCA-Mozambique will convene periodic public meetings to provide implementation updates and to identify and address public concerns. The Stakeholders Forum for this Project will also incorporate representatives of civil society that will serve as a link between local NGOs and program managers.

5. Environmental and Social Issues

The Farmer Income Support Project is classified as "Category B" according to the MCC Environmental Guidelines. An environmental assessment and an EMP that includes provisions to address (a) safety and health risks related to the handling, use, and disposal of pesticides and fertilizers; (b) tree-cutting and disposal equipment; and (c) integrated pest and nutrient management strategies will be developed prior to full Project implementation.

Environmental and Social Impacts

Although it is unlikely that the Farmer Income Support Project will generate any significant environmental, health or safety hazards, the potential negative direct, indirect, induced, and cumulative environmental impacts of the Project will be assessed through an environmental assessment that will be conducted prior to the implementation of the Project. A number of positive environmental and social benefits should emerge from this Project. As stated, coconut is regarded as an environmentally benign and often beneficial, low-input, crop which tolerates and can help to stabilize nutrient-poor and saline soils, especially in coastal regions that are often subject to periodic floods that destroy other crops. In addition, MCA-Mozambique will ensure that a Project-specific EMP is developed, implemented and monitored during the Project in accordance with the provisions of this Compact and any relevant supplemental agreements.

Per the MCC Environmental Guidelines, the use of the following pesticides is prohibited under the Project: (a) Persistent Organic Pollutants that the United States Environmental Protection Agency has identified as of greatest concern to the global community; or (b) any pesticide listed by the United States Environmental Protection Agency as "banned" or

"severely restricted" under the Prior Informed Consent Program. MCA-Mozambique will ensure that Project operators require pesticides to be handled, stored, applied, and disposed of in accordance with FAO's International Code of Conduct on the Distribution and Use of Pesticides.

To maximize the positive social impacts of the Farmer Income Support Project and ensure compliance with MCC's Gender Policy, MCA-Mozambique is required to: (a) Develop a gender integration plan that includes: (i) Approaches for meaningful and inclusive consultations with women and vulnerable/under-represented groups; (ii) Project-specific gender analyses, as appropriate; and (iii) strategies for incorporating findings of the gender analyses into final Project designs; and (b) ensure that final Project activity designs are consistent with and incorporate the outcomes of the gender integration plan. MCA-Mozambique will also take steps to ensure that the interests and views of women and vulnerable groups are represented in any entities responsible for advising on design, ownership, management, and operation of the Project activities.

Environmental Permitting

MCA-Mozambique will ensure that environmental and social assessment responsibilities are included in the bidding documents for the procurement of Project implementers and advisors, as needed. Disbursement of MCC Funding for activities under this Project requiring environmental licenses will be contingent upon issuance of such environmental licenses, as needed, or any other required permits. Project activities, for which MCC disburses funds, should be consistent with the outcomes of the relevant environmental assessments, and MCC Environmental Guidelines, and comply with applicable Mozambique environmental law and regulations.

6. Consultative Process

During the development of the Farmer Income Support Project in the pre-Compact program definition process, the consultant, working on behalf of the Government, consulted with a broad spectrum of stakeholders, including government officials (national and provincial), NGOs and the private sector, through local Chambers of Commerce and the coconut trade association. Ongoing consultation is envisioned through the Project Advisory Group that will be established during the Compact Implementation Funding period.

7. Donor Coordination

Although the *Centre de coopération internationale en recherche agronomique pour le développement* (CIRAD) has provided support to combat against CLYD in Zambézia in the past, there are currently no other donors providing support to address this issue in the northern provinces. Through the Farmer Income Support Project, there are opportunities to work with other donors in the future. In particular, USAID provides assistance through its Title II Implementing Partners in Zambézia to introduce nutrient-rich crops as a means of improving their food security. In addition, USAID is providing technical assistance to the Ministry of Agriculture for strengthening institutional capacity in policy analysis. USAID also adapted one new agricultural technology in 2006 through continued assistance to the National Agricultural Research Institute and the agricultural zonal research centers and its continued funding is helping to replicate the producer-owned trading company model in other geographic areas. Moreover, USAID will continue to provide technical assistance in management and marketing to farmers and rural enterprises.

F. Overview of Implementation Framework

1. Overview of Implementation

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation and fiscal accountability for the use of MCC Funding is summarized below and will be described in more detail in the internal regulations of MCA-Mozambique ("Internal Regulations") or as otherwise agreed in writing by the Parties.

2. Government

The Government will empower the Minister of Planning and Development in conjunction with the Minister of Finance to create a public institution within the Ministry of Planning and Development ("MCA-Mozambique"), which will be the Accountable Entity and will be authorized to act on behalf of the Government in order to manage and oversee the implementation of this Compact and the Program. MCA-Mozambique will have administrative and patrimonial autonomy, in addition to the financial control to engage in practices such as (a) establishing an account in a financial institution in the name of MCA-Mozambique and holding MCC funds in that account; (b) expending MCC funds without an

appropriation in the national budget; (c) engaging a fiscal agent to undertake expenditures and to account for them; (d) engaging a procurement agent who will act on behalf of MCA-Mozambique to manage the acquisition of the goods, works and services requested by MCA-Mozambique to implement the activities funded by this Compact; and (e) engaging an auditor competitively to conduct audits of its accounts.

The Government will grant the Minister of Planning and Development oversight authority or "tutela" over MCA-Mozambique, whereby the Minister will ensure that MCA-Mozambique is complying with the terms of this Compact, fulfilling the Government's responsibilities under this Compact, and other duties of MCA-Mozambique as described in the Internal Regulations.

MCA-Mozambique will be headquartered in Maputo, with initially one regional office in Nampula, and other provincial offices in northern Mozambique, as determined in the Internal Regulations.

MCA-Mozambique will be composed of (a) a supervisory decision-making body, the Board of Directors (the "Board"); (b) a smaller working group of representatives from the Board or an executive committee (the "Executive Committee"); and (c) the day-to-day management body or management unit (the "Management Unit"). The Internal Regulations will define the governance details of MCA-Mozambique.

3. MCC

MCC will provide technical oversight and accountability in the implementation of the Program. MCC will establish a small office in Mozambique, designed to provide feedback and increased communication between MCC and the Government throughout Compact implementation.

MCC will require prior approval of certain transactions, activities, agreements and documents, as described in the PIA.

4. MCA-Mozambique Description

(a) Board of Directors.

(i) Composition.

The Board will be composed of nine voting members; six of which are governmental representatives, two civil society representatives and one private sector representative. There will be three non-voting members, consisting of an MCC representative, a representative from an environmental NGO and the executive director of the Management Unit. The governmental representatives will be Ministers from certain Ministries involved in the Program, as agreed and

defined in the Internal Regulations. The Minister of Planning and Development will serve as the chair of the Board, while the executive director of the Management Unit will serve as secretary. The civil society representatives and the private sector representatives will be determined as defined in the Internal Regulations. In the event that one of the civil society voting members is not from an environmentally focused NGO, an additional observer from such an organization, subject to the prior receipt of a no-objection notice from MCC, will be appointed. No remuneration will be paid to any Government representative on the Board, although other Board members may receive remuneration as set out in the Governance Guidelines (as defined in the PIA).

(ii) Location.

The Board will be based in Maputo, but may also conduct rotating meetings in one of the four northern provinces from time to time.

(iii) Roles and Responsibilities.

The Board will be responsible for exercising oversight and taking major decisions, such as approving annual implementation plans, Disbursement requests, annual progress reports, key contracts and policy reforms, as well as other responsibilities defined in the Internal Regulations. The Board will meet once every three months and may meet more frequently as necessary for extraordinary meetings. The specific roles of the voting and non-voting members will be set out in the Internal Regulations.

(b) Executive Committee.

(i) Composition.

The Executive Committee will be composed of seven members, who represent certain Ministries or organizations on the Board, as further defined in the Internal Regulations. The Secretariat of the Executive Committee will be the executive director of the Management Unit. Governmental members on the Executive Committee will be represented by the relevant Ministries' National Director. The private sector representative will be the same as on the Board.

(ii) Location.

The Executive Committee will be located in Maputo, but may also conduct rotating meetings in one of the four northern provinces from time to time.

(iii) Roles and Responsibilities.

The Executive Committee is a smaller working group of the Board that will be empowered to take certain limited actions normally required to be taken by the Board, such as approving quarterly implementation plans, quarterly

progress reports, certain procurement decisions, as well as other actions defined in the Internal Regulations. The Executive Committee will meet as often as necessary to adequately perform its functions.

(c) Management Unit.

(i) Composition.

The Management Unit will be responsible for assisting the Board and the Executive Committee in managing and overseeing the day-to-day operations of the Program. The Management Unit will be composed of staff, competitively selected. Key staff members of the Management Unit include: The executive director, deputy director, chief financial officer, M&E/planning officer, procurement officer, environmental and social manager, legal advisory service, and Project managers for each of the four Projects will be defined in the Internal Regulations.

(ii) Location.

The Management Unit will have offices in at least two locations. One office will be based in Maputo and initially one office will be located in Nampula. If justified, other regional offices may be opened in the northern provinces, as provided for in the Internal Regulations.

(iii) Roles and Responsibility.

The Maputo office of the Management Unit will provide "back office support" services, such as financial management, legal, procurement, administrative, public relations and other activities defined in the Internal Regulations. The Nampula office and other provincial offices that may be established as part of the Management Unit will provide direct support to the programs being implemented in the provinces. The regional Management Unit offices will be responsible for preparing reports, implementation plans and budgets, preparing Disbursement requests, reviewing and approving bidding and contract documents, monitoring and evaluating project implementation, ensuring technical support to

Implementing Entities (as defined in the PIA), coordinating stakeholder participation and other functions as defined in the Internal Regulations of MCA-Mozambique.

(d) Stakeholders' Participation.

Stakeholders will continue to be involved and participate throughout Compact implementation. Through semi-annual and/or annual participatory monitoring and evaluation forums, stakeholders will be able to provide feedback to the overall Program (the "Stakeholders Forums"). In addition, the mechanisms for ensuring this consultative process occurs will be structured at a Project-level, allowing representatives of the private sector, civil society and local and regional governments to provide advice and input to MCA-Mozambique. In the WSS Project, autonomous Provincial Water Boards will be created, which will incorporate stakeholder participation on their respective boards.

In the Roads Project, stakeholder participation will be incorporated through the Stakeholders Forums.

In the Land Project, there are two forums designed to facilitate feedback and input from interested stakeholders. First, the Land Policy Consultative Forum, comprised of relevant governmental ministries, civil society organizations and academic institutions will conduct regular semi-annual meetings. Secondly, the National Land Project Advisory Group provides a forum for both national and local governmental representatives to provide meaningful feedback throughout Compact implementation.

In the Farmer Income Support Project, stakeholder participation is incorporated through the Coconut Working Group, whereby relevant governmental agencies, the private sector and civil society organizations may provide regular input to the implementation of the Project.

Annex II—Summary of Multi-Year Financial Plan

1. General

The Multi-Year Financial Plan Summary below sets forth the estimated annual contribution of MCC Funding for Program administration, Program monitoring and evaluation, and implementing each Project. The Government's contribution of resources will consist of "in-kind" and other contributions or amounts required effectively to satisfy the requirements of Section 2.5(a) of this Compact. In accordance with the PIA, the Government will develop and adopt on a quarterly basis a detailed financial plan (as approved by MCC) setting forth annual and quarterly funding requirements for the Program (including administrative costs) and for each project, projected both on a commitment and cash requirement basis.

2. Modifications

To preserve administrative flexibility, the Parties may by written agreement (or as otherwise provided in the PIA), without amending this Compact, change the designations and allocations of funds among the Projects, the Project activities, or any activity under Program administration or monitoring and evaluation, or between a Project identified as of the entry into force of this Compact and a new project; *provided, however*, that any such change (a) is consistent with the Program Objective and Project Objectives and the PIA, (b) does not materially adversely affect the applicable Project or any activity under Program administration or monitoring and evaluation, (c) does not cause the amount of MCC Funding to exceed the aggregate amount specified in Section 2.1(a) of this Compact, and (d) does not cause the Government's obligations or responsibilities or overall contribution of resources to be less than specified in Section 2.5(a) of this Compact.

MULTI-YEAR FINANCIAL PLAN SUMMARY *

Projects	Year 1 **	Year 2	Year 3	Year 4	Year 5	Total
1. Water Supply and Sanitation:						
A. Technical Assistance and Capacity Building to Water Supply and Sanitation Project	6,675,220	5,095,804	3,293,268	3,137,075	2,814,675	21,016,042
B. Rehabilitation/expansion of water supply systems in urban areas	6,377,175	6,783,982	34,182,450	25,553,040	18,187,233	91,083,880
C. Rehabilitation/expansion of six municipal sanitation and drainage systems	2,291,750	19,294,284	19,770,123	20,563,193	20,576,077	82,495,427
D. Construction/reconstruction of wells and bore holes (rural water points)	906,441	2,312,470	3,108,668	2,324,169	338,296	8,990,044
Sub-Total	16,250,586	33,486,540	60,354,509	51,577,477	41,916,281	203,585,393
2. Rehabilitation/Construction of Roads:						
A. Technical Assistance for Roads Project	507,700	688,914	710,817	733,374	374,925	3,015,730

MULTI-YEAR FINANCIAL PLAN SUMMARY *—Continued

Projects	Year 1 **	Year 2	Year 3	Year 4	Year 5	Total
B. Rehabilitation Costs	4,922,862	3,731,628	39,023,067	78,845,125	46,769,068	173,291,750
Sub-Total	5,430,562	4,420,542	39,733,884	79,578,499	47,143,993	176,307,480
3. Land Tenure Services:						
A. Support for National Policy monitoring process	2,186,408	2,521,723	2,049,460	1,929,674	1,757,958	10,445,223
B. Land administration capacity building	1,812,980	5,552,512	3,769,560	1,534,915	757,829	13,427,796
C. Site specific secure land access	1,261,886	4,295,706	3,722,369	3,359,342	2,555,985	15,195,288
Sub-Total	5,261,274	12,369,941	9,541,389	6,823,931	5,071,772	39,068,307
4. Farmer Income Support:						
A. Rehabilitation of endemic areas	704,022	676,612	624,771	636,683	210,505	2,852,593
B. Control of epidemic disease	2,099,262	1,660,535	1,450,524	868,610	914,518	6,993,449
C. Research and Development Support	444,405	435,548	519,295	513,503	529,612	2,442,363
D. Improvement of productivity	252,728	427,022	737,993	1,097,880	1,168,584	3,684,207
E. Business Development Support	254,000	291,915	519,295	258,770	135,619	1,459,599
Sub-Total	3,754,417	3,491,632	3,851,878	3,375,446	2,958,838	17,432,211
5. Monitoring and Evaluation:						
Monitoring and Evaluation	2,195,000	955,000	1,880,000	920,000	2,255,000	8,205,000
Sub-Total	2,195,000	955,000	1,880,000	920,000	2,255,000	8,205,000
6. Program Administration and Oversight						
A. MCA-Mozambique	9,651,474	5,012,630	5,583,165	5,254,627	5,379,999	30,881,895
B. Fiscal and Procurement Agent	12,300,000	4,800,000	3,300,000	2,550,000	2,050,000	25,000,000
C. Bank Contract	10,000	5,000	5,000	5,000	5,000	30,000
D. Auditing	1,440,000	1,140,000	1,140,000	1,140,000	1,140,000	6,000,000
E. Environmental Management—MICOA Capacity Building	176,000	57,344	58,720	60,130	61,573	413,767
Sub-Total	23,577,474	11,014,974	10,086,885	9,009,757	8,636,572	62,325,662
Total Estimated MCC Contribution	56,469,313	65,738,629	125,448,545	151,285,110	107,982,456	506,924,053

* It is anticipated that there will be at least a one-quarter lag in disbursements of these budget totals.

** Year 1 amounts include amounts for Compact Implementation Funding.

Annex III—Description of The Monitoring And Evaluation Plan

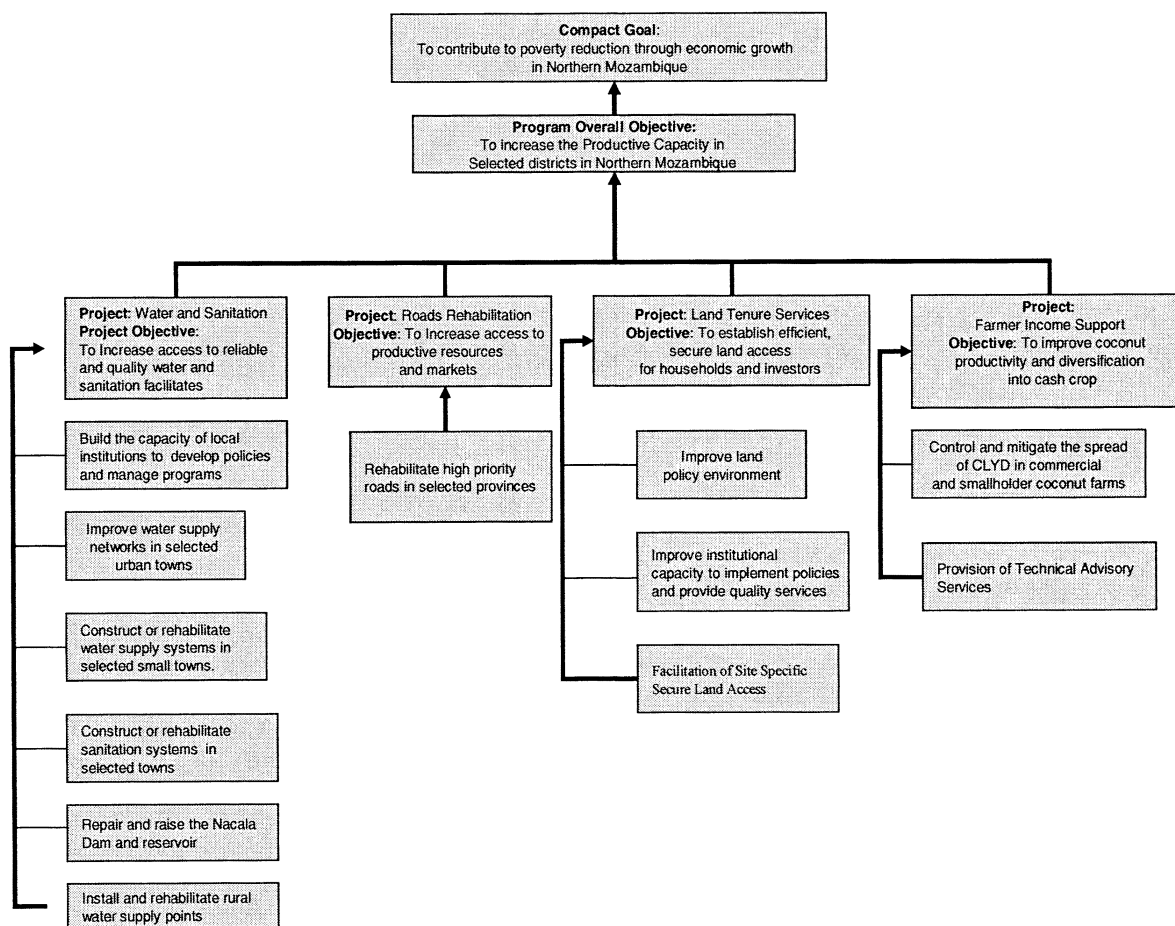
This Annex III to this Compact (the “M&E Annex”) generally describes the components of the monitoring and evaluation plan for the Program (the “M&E Plan”). Each capitalized term in this Annex III will have the same meaning given such term elsewhere in this Compact.

1. Overview.

MCC and the Government (or a mutually acceptable Government affiliate or permitted designee) will formulate, agree to and the Government will implement, or cause to be implemented, an M&E Plan that specifies (a) how progress toward the program goal and Program Objective will be monitored (“Monitoring Component”); (b) process and timeline for the monitoring of planned, ongoing, or completed Project activities to

determine their efficiency and effectiveness; and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (“Evaluation Component”). Information regarding the Program’s performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the MCA-Mozambique Web site and elsewhere.

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2. Program Logic

The Mozambique M&E Plan will be built on the program logic model described above showing how the Program is intended to work. The program logic is a visual representation of the Program showing the sequence of outcomes and intended causality from the Project Objectives. The overall goal of the Program is to contribute to poverty reduction in Mozambique through economic growth. The stated Program Objective is to increase the productive capacity of the population in selected districts of northern Mozambique with the intended impact of reducing the poverty rate, increasing household income, and reducing chronic malnutrition in the targeted districts.

3. Monitoring Component

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) the indicators, (b) the definitions of the

indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, (f) the timeline and format for reporting on each Indicator (as defined below) to MCA-Mozambique, and (g) the method by which the reported data will be validated.

(a) Indicators. The M&E Plan will measure the results of the Program using quantitative, objective and reliable data ("Indicators"). Each Indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved ("Target"). The M&E Plan will be based on a logical framework approach that classifies indicators as impact, outcome, output, process and input. The impact indicators ("Goal and Program Objective Level") will measure the results for the overall Program. Second, the outcome indicators ("Project Objective Level") will measure the final and the intermediate results of the Projects in order to monitor their success in meeting each of the Project Objectives, including results for the intended

beneficiaries identified in accordance with Annex I (collectively, the "Beneficiaries"). Third, output indicators ("Project Activity Level") will measure the direct outputs of the Project activities in order to provide an early measure of the likely impact of the Project activities. A fourth level of indicators, input and process indicators ("Institutional Process Level") will be included in the M&E Plan to measure the delivery of materials, goods and actions necessary to carry out the primary Project activities. All Indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Mozambique may add Indicators or refine the Targets of existing Indicators.

(i) Impact Indicators (Goal and Program Objective Level). The M&E Plan will contain the impact indicators listed in the table below, with their definitions and unit of observation, baseline, and targets for the end of the compact year.

Indicator	Definition of indicators	Unit of observation	Baseline	Year 5
Poverty Rate	Percentage of the population in northern Mozambique who lack the ability and opportunity to have access to satisfy the necessary basic nutritional and non-nutritional requirements (2150 nutritional calories plus basic non food items).	Household	45.80%	36.64%
Increased Household Income.	The total value of household food production for consumption, all crop and livestock sales, cash and in-kind pay received from off-the-farm activities and remittances, net cash and in-kind payments made to hired members of household.	Household	\$202.30	\$264.12
Percent of stunted children, 0-59 months (height/age z-score).	Percentage of children under 5 years in northern Mozambique who show chronic malnutrition as a result of cumulative inadequacies in nutrition status.	Household	41%	28%

(ii) Outcome Indicators (Project Objective Level). The M&E Plan will contain the outcome indicators which will measure the results at the project objective levels. The outcome indicators for the four main Projects are listed below with their definitions and units of observation.

Indicators	Definition	Unit of observation	Baseline	Year 5
Project I: Water and Sanitation				
Value of productive days gained due to less diarrhea illness.	Value of time gained by household members due to not having to attend to other household members with diarrhea or not being absent from productive activities due to incidence of diarrhea (number of days multiplied by the value of average adult household consumption).	Household	0	US\$3.04
Value of productive days gained due to less malaria.	Value of time gained by household members due to not having to attend to household members with malaria or not being absent from productive activities due to incidence of malaria (number of days multiplied by the value of average adult household consumption).	Household	0	US\$3.04
School attendance days gained due to less diarrhea.	Days gained by each school-aged child in household to attend school due to less incidence of diarrhea.	Number of school-aged children in household.	0	3
School attendance days gained due to less malaria.	Days gained by each school-aged child in household to attend school due to less incidence of malaria.	Number of school-aged children in household.	0	3
Number of businesses connected to an improved water source.	Number of formal businesses in target districts with water connection.	Business	495	947
Time to get to water source (Urban- /Rural).	Number of minutes to water source, by source	Household	32/39	15/27
Percent of urban population with improved water sources (percent increase).	Proportion of the urban population in the target districts with access to improved water sources, defined as access to private connections or standpipes.	Urban households	30%	47% (17%)
Percent of rural population with access to improved water sources (number of persons).	Proportion of the rural population in the target districts with access to improved water sources, defined as access to potable water from a deep-well.	Rural households	31% (1,417,439)	33% (1,657,439)
Percent of urban population with improved sanitation facilities.	Proportion of urban population with access to improved sanitation facilities, defined as access to networked sanitation, septic tanks, or an improved pit-latrine.	Urban households	TBD	TBD

Project II: Road Rehabilitation

Value of net agricultural production (yield per hectare).	Net value of new agricultural production for both cash and subsistence crops in the road economic area of influence (15km radius each side of targeted roads).	Rural households	TBD	TBD
Change in vehicle operating cost (\$\$/vehicle-km).	Average change in the fixed and variable cost of operating vehicles on a km of target upgraded roads.	Target roads	0.47	0.37
Total time savings (US\$m)	Value of travel time savings for road users due to change in speed on target roads.	Target Roads	0	US\$1.15
Change in International Roughness Index (IRI).	Measurement of pavement roughness on targeted roads (correlated with vehicle operating costs).	IRI units of either m/km or m/mi.	10	3.5

Indicators	Definition	Unit of observation	Baseline	Year 5
Average annual daily traffic volume.	Number of vehicles by type on the target upgraded roads.	Target roads (disaggregated by vehicle type).	1908	2558
Project III: Land Tenure Services				
Percent increase in value of new investments on land.	Summation of investments including agricultural investments, fixed investments, and improvements to existing structures.	Rural households (small-medium-holder); businesses; urban parcels; communities.	0	10%
Number of new businesses	Number of new businesses formally registered and established.	Businesses (small, medium, large).	TBD	TBD
Percent reduction in time to get land usage rights (DUAT).	Number of days required to obtain land usage rights (DUAT), disaggregated by beneficiary type.	Community, individual, urban, commercial.	0	50%
Percent reduction in costs to get land usage rights (DUAT).	Amount of money required, in local currency, to obtain land usage rights (DUAT), disaggregated by beneficiary type.	Community, individual, urban, commercial.	0	50%
Project IV: Farmer Income Support				
Reduction in loss of coconut and coconut products' sales.	Total household and estate sales of coconuts and coconut products within a calendar year.	Rural households (small-medium holders) & Estates.	0	3.75%
Percent increase in sales from intercropping.	Total household sales of surplus crops intercropped in replanted coconut farms.	Rural households (small-medium-holders).	US\$65,000	167%
Percent increase in yield among fertilized coconut trees in risk areas (number of fruits per tree).	Additional production of coconuts per tree resulting from adoption of CLYD control and mitigation measures.	Rural households (small-medium-holders).	0 (30)	167% (80)
Percent increase in yield of selected intercropping crops.	Additional production of cash and food crops intercropped in replanted coconut farms.	Rural households (small-medium-holders).	0	TBD
Increase in improved coconut trees 2 years old or greater.	Total number of recently planted resistant, healthy coconut trees that are 2 or more years old.	Rural households (small-medium-holders).	0	224,000
Percent change of the area infested by CLYD.	Total endemic and epidemic land area, in trees per hectare, with CLYD control and mitigation measures.	Rural land (trees per hectare).	5036 hectares	71%
Destruction of infected coconut palms.	Total number of CLYD infected palms cleared (in millions).	Trees	0	1.225
Number of farmers adopting improved varieties of coconut trees.	Total number of rural holders adopting the planting of the improved variety of coconuts.	Rural households (small-medium-holders).	0	2260

TBD = To be determined.

*Targets for water and sanitation indicators are for end of year 5/start of year 6.

(iii) Process and Output Indicators. The M&E Plan will describe the process and timeline for developing a full and comprehensive activity monitoring plan that will outline most of the process and output indicators, the instruments for collecting data for the indicators, and the frequency for collecting and reporting on those indicators. The M&E Plan budget will make provision for resources to support and build on the capacity of service providers and other service agencies to collect and report the output and process indicators that will be outlined in the activity monitoring plan. Technical assistance will be provided when needed to facilitate the development of the activity monitoring plan.

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and a reporting framework, including a schedule of Program reporting and responsible

parties. The M&E Plan will use both qualitative and quantitative methods for data collection. The plan will outline various data collection methodologies, assessments, and surveys necessary to reporting on the results of the outcome indicators. It will also develop and establish instruments and procedures as part of the regular project monitoring activities to track Project activity output indicators. It will also draw quantitative information from the INE (National Statistics Institute) surveys such as the IAF (*Household Survey*), QUIBB (*Questionnaire on Basic Indicators of Well-Being*), and DHS (*Demographic and Health Survey*) and the TIA (*National Agricultural Survey*) for most of the outcome and impact indicators.

(c) Collaboration with National Statistic Institute and the National Directorate of Studies and Policy Analysis, Ministry of Planning and Development. The M&E Plan will

identify areas of collaboration with INE and the National Directorate of Studies and Policy Analysis, Ministry of Planning and Development (MPD) on surveys and other data collection initiatives. The plan will specify and contain an agreement with the INE and MPD on a schedule of surveys and other data collection activities and the types of economic analysis that will be obtained by MCA-Mozambique as part of reporting requirements. The M&E Plan budget will make provision for funding for such collaborative initiatives.

(d) Data Quality Reviews. From time to time, as determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the

consistency of performance data, across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(e) Participatory Monitoring and Evaluation. The M&E Plan will outline a process for encouraging participation of program stakeholders in the collection and dissemination of the information about progress being made towards the achievement of the program objectives. The effectiveness and efficiency of the Program will be jointly monitored with the beneficiary population and various stakeholders at different levels of decision-making. The M&E Plan will foster national "ownership" of the Program and will periodically disseminate program results and achievement through transparent strategies and a format of communication with the public.

(f) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the program information is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with MCC existing systems, other service providers, and government ministries.

4. Evaluation Component

The Evaluation Component of the M&E Plan will contain two types of evaluations: Project-Level impact evaluations and Program-Level impact evaluations. The evaluation plans will be finalized before disbursement for specific Program or Project activities. The Evaluation Component will contain a methodology and timeline for analyzing data in order to assess planned, ongoing, or completed Project activities to determine their contribution to the Program's intended impact.

(a) Impact Evaluation. The M&E Plan will outline rigorous design methods that will be used to evaluate the impact of the Program's four components. Based on in-country consultation with stakeholders, the following strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Final impact evaluation strategies are to be jointly determined before the approval of the M&E Plan and before entry into force (EIF) of this Compact. The following are a summary

of the potential impact evaluation methodologies:

(i) The WSS Project could be evaluated using rigorous randomized design methods. In the rural water component, communities could be selected randomly over time to allow for comparison between unbiased control and treatment groups. In the urban water and sanitation components, randomized allocation of instruments such as private connection subsidies (where subsidy demand outstrips subsidy supply) and health and hygiene outreach efforts, but not direct services, could serve as the basis for an instrumental variable approach to evaluating the urban and peri-urban W&S interventions.

(ii) The Roads and Land Projects could be evaluated using propensity score matching methods with treatment and control groups. Additionally, the Land Tenure Services Project also demonstrated potential, contingent on favorable conditions at EIF, for randomized evaluations of the site specific interventions.

(iii) The Farmer Income Support Project's inter-cropping and Technical Advisory Services components could be evaluated through rigorous randomized design methods. Favorable conditions at EIF permitting randomized allocation of particular interventions such as agricultural information will allow for comparison between unbiased control and treatment groups.

(iv) Additionally, linkages between the water, roads, and land interventions could be rigorously evaluated. For example, areas that receive more than one intervention will be compared to areas that only receive one of the interventions.

Impact evaluations will be used to assess Program and Project progress and effectiveness. The M&E Plan will take into consideration the time period various projects will demonstrate their benefits and impacts. It is anticipated that the impact evaluations' lifespan could extend well beyond the five-year implementation period and flexibility of design should be a priority. The M&E Plan also will specify different modes of contracting to carry out the evaluations, including independent and specialized contractors and agreements where necessary. If deemed appropriate, MCC or MCA-Mozambique may request ad-hoc evaluations or special studies of Projects, Project activities, or the Program as a whole at any time during or after the implementation.

(b) Program-Level Evaluation. The M&E Plan will make provision for program-level evaluation. MCA-Mozambique, with the prior written

approval of MCC, will engage an independent evaluator to conduct an evaluation at the expiration or termination of the Compact Term ("Final Evaluation") or at MCC's election, MCC will engage such an independent evaluator. The program-level evaluation must at a minimum (i) evaluate the efficiency and effectiveness of the Program activities; (ii) estimate, quantitatively and in a statistically valid way, the causal relationship between the expected impact (to the extent possible), the intended outcomes and outputs; (iii) determine if and analyze the reasons why the Compact goal, Program Objective and Project Objectives were or were not achieved; (iv) identify positive and negative unintended results of the Program; (v) provide lessons learned that may be applied to similar projects; (vi) assess the likelihood that results will be sustained over time; and (vii) any other guidance and direction that will be provided in the M&E Plan. To the extent engaged by MCA-Mozambique, such an independent evaluator will enter into an auditor/reviewer agreement with MCA-Mozambique in accordance with this Compact.

(c) Special Studies. The M&E Plan will identify and make provision for special studies, ad-hoc evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or MCA-Mozambique may request special studies or ad-hoc evaluations of Projects, Project activities, or the Program as a whole prior to the expiration of the Compact Term. If MCA-Mozambique engages an evaluator, the evaluator will be an externally contracted independent source selected by MCA-Mozambique, subject to the prior written approval of MCC, following a tender in accordance with the MCC Program Procurement Guidelines, and otherwise in accordance with any relevant Implementation Letter or supplemental agreement. The cost of an independent evaluation or special study may be paid from MCC Funding.

(d) Government Request for Ad hoc Evaluation or Special Study. If MCA-Mozambique requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Project activity or to seek funding from other donors, no MCC Funding or MCA-Mozambique resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan

In addition to the Monitoring and Evaluation Components, the M&E Plan will include the following components for the Program, Projects and Project activities, including, where appropriate, roles and responsibilities of the relevant parties and Providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan.

(b) Assumptions and Risks. Any assumptions and risks external to the Program that underlie the accomplishment of the Program and Project Objectives and Project activity outcomes; *provided, however*, such

assumptions and risks will not excuse performance of the Parties, unless otherwise expressly agreed to in writing by the Parties.

6. Implementation of the M&E Plan

(a) Approval and Implementation. The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with this M&E Annex, the PIA, and any other relevant supplemental agreement.

(b) Modifications. Notwithstanding anything to the contrary in this Compact, including the requirements of this M&E Annex, MCC and the

Government (or a mutually acceptable Government Affiliate or Permitted Designee) may modify or amend the M&E Plan or any component thereof, including those elements described herein, without amending this Compact; *provided*, any such modification or amendment of the M&E Plan has been approved by MCC in writing and is otherwise consistent with the requirements of this Compact and any relevant supplemental agreement between the Parties.

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Federal Register

**Wednesday,
July 25, 2007**

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Designation of Critical Habitat for
the Sierra Nevada Bighorn Sheep (*Ovis
canadensis californiana*) and Proposed
Taxonomic Revision; Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AV05

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) and Proposed Taxonomic Revision**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 417,577 acres (ac) (168,992 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in Tuolumne, Mono, Fresno, Inyo, and Tulare counties, California. We also propose a taxonomic revision of the listed entity from distinct population segment (DPS) to subspecies, *Ovis canadensis sierrae*, based on recent published information.

DATES: We will accept comments from all interested parties until September 24, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 10, 2007.

ADDRESSES: If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods:

1. By mail or hand-deliver to Robert D. Williams, Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502-7147.

2. By electronic mail (e-mail) to snbighorn@fws.gov. Please see the Public Comments Solicited section below for other information about electronic filing.

3. By fax to the attention of Robert D. Williams, Field Supervisor at 775-861-6301.

4. Via the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, at the address or telephone number listed under **ADDRESSES**. If you use a telecommunications device for the deaf

(TDD), 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 will be as accurate and as effective as possible. Therefore, we seek comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on:

- The amount and distribution of Sierra Nevada bighorn sheep habitat,
- What areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the subspecies and why, and
- What areas not occupied at the time of listing are essential to the conservation of the subspecies and why;

(3) Any proposed critical habitat areas covered by existing or proposed conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request comment on the appropriateness of including or excluding lands covered by: (a) The Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Bighorn Sheep Interagency Advisory Group 1984); (b) The Bighorn Sheep Management Plan (National Park Service 1986); (c) the Inyo National Forest Resource & Management Plan (U.S. Forest Service 1988); and (d) the Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997). We request comment on how these plans do or do not benefit or protect the Sierra Nevada bighorn sheep, or its primary constituent elements, and if the benefit or protection provided by these plans is equal to or greater than the benefit that would be provided by designation of critical habitat;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and information about the benefits of

including or excluding any areas that exhibit those impacts; and

(6) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include "Attn: Sierra Nevada bighorn sheep" in your e-mail subject header. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Nevada Fish and Wildlife Office at 775-861-6300. Please note that comments must be received by the date specified in the **DATES** section in order to consider them in our final determination and that the e-mail address snbighorn@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 can ask us in your comments 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 designation of critical habitat in this proposed rule. For more information on the Sierra Nevada bighorn sheep, refer to the final listing rule published in the **Federal Register** on January 3, 2000 (65 FR 20). However, some of this information will need to be cited or discussed in the substantive analyses below, where appropriate, such as the description of the primary constituent elements (PCEs) and proposed critical habitat units.

The bighorn sheep (*Ovis canadensis*) is a large mammal in the family Bovidae described by Shaw in 1804 (Shackleton 1985, p. 1). Cowen (1940, pp. 519-569) recognized several subspecies based on geography and skull measurements. Recent genetic (Ramey 1993, pp. 82-86; 1995, pp. 432-434; Boyce *et al.* 1996, pp. 423-426, 429; Gutierrez-Espeleta *et al.* 1998, pp. 7-9, 11) and morphological data (Wehausen and Ramey 1993, pp. 4-8; 2000, pp. 148-153), and review and reanalysis of Cowan's data (Ramey 1993,

p. 83), do not support Cowan's original subspecies differentiation. Ramey (1993, pp. 71–72; 1995, p. 432) found, based on mitochondrial DNA, bighorn sheep from the Sierra Nevada to be more allied with sheep occupying the adjacent desert area than those to the north. Ramey (1993, pp. 67–68; 1995, pp. 433, 435) also found Sierra Nevada bighorn sheep to be a distinctive group in the desert region extending east to Utah and New Mexico and south to northern Mexico. Recent morphometric analyses of skull shape confirm genetic results (Wehausen and Ramey 2000, pp. 148–153). Based on both genetic and morphometric data, Wehausen and Ramey (2000, p. 156) reassigned California bighorn sheep populations outside of the Sierra Nevada to other subspecies, thus recognizing bighorn sheep in the Sierra Nevada as its own subspecies. In a recent investigation of the taxonomy of Sierra Nevada bighorn sheep, Wehausen *et al.* (2005, p. 217) reexamined the history of bighorn sheep nomenclature and concluded, based on the original type specimen, that the correct nomenclature for native sheep in the central and southern Sierra Nevada mountains of California is *Ovis canadensis sierrae*.

Sierra Nevada bighorn sheep inhabit portions of the Sierra Nevada located along the eastern boundary of California in Tuolumne, Mono, Fresno, Inyo, and Tulare counties. Habitat occurs from the eastern base of the range as low as 4,790 feet (ft) (1,460 meters (m)) to its peaks above 14,100 ft (4,300 m) (Wehausen 1980, pp. 3, 82). Based on recent modeling efforts, discussed further in the Criteria Used To Identify Critical Habitat section, Sierra Nevada bighorn sheep habitat, as well as areas necessary to provide connectivity between winter and summer ranges, occur as low as 4,000 ft (1,219 m) in the southern portion of its range (Johnson *et al.* 2005). Sierra Nevada bighorn sheep inhabit open areas where the land is rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5). Wehausen (1980, pp. 18–25) provides a detailed description of Sierra Nevada bighorn sheep habitat throughout its range. They prefer open ground to better detect predators and allow enough time to reach steep, rocky terrain (escape habitat) (Wehausen 1980, p. 81). Forests and thick brush are usually avoided if possible (65 FR 21; January 3, 2000). Most of the sheep live at higher elevations (10,000 to 14,000 ft (3,050 to 4,270 m)) in the subalpine and alpine areas during the summer (65 FR

21; January 3, 2000). During winter, these sheep occupy high elevation, windswept ridges and tend to prefer south-facing slopes where snow melts more readily (Jones 1950, pp. 44–45; McCullough and Schneegas 1966, p. 71; Wehausen 1980, pp. 86–87) or migrate to lower elevations (4,800 ft (1,460 m)) in the sagebrush-steppe areas to avoid deep snow and to find forage.

Sierra Nevada bighorn sheep are gregarious with group size and composition depending on gender and season. Spatial segregation by gender occurs outside of the mating season. Ewes generally remain with the same band in which they were born (Cowan and Geist 1971, pp. 80–81). Males older than two years of age remain apart from females and younger males for most of the year (Jones 1950, p. 50; Cowan and Geist 1971, p. 65; Wehausen 1980, p. 109). During the winter, the groups come together and concentrate in suitable winter habitat.

Breeding takes place in late fall, generally November and December (Jones 1950, pp. 63–64; Cowan and Geist 1971, p. 64; Wishart 1978, p. 165). Lambing occurs between late April and early July (Wehausen 1996, p. 475), on safe, precipitous, rocky slopes (Wehausen 1980, p. 95); most lambs in the Sierra Nevada are born in May and June (Wehausen 1980, p. 94; 1996, p. 475). Ewes and lambs often occupy steep terrain that provides a diversity of exposures and slopes for escape cover (65 FR 21; January 3, 2000). The average lifespan is 9 to 11 years for both males and females (Cowan and Geist 1971, p. 68; Wehausen 1980, p. 76).

Bighorn sheep are primarily diurnal (Jones 1950, pp. 54–57). They are primarily grazers; however, they may browse woody vegetation at times. Plants consumed include various grasses, browse, and herbaceous plants, depending on season and location (Wehausen 1980, pp. 80–93). Naturally occurring salt/mineral licks provide necessary minerals for bone and muscle growth.

While distribution of bighorn sheep is naturally fragmented on the landscape, the maintenance of migration corridors (space) is important to allow genetic exchange between Sierra Nevada bighorn sheep herds. The population ecology of bighorn sheep has been described as a metapopulation with geographically distinct herds interacting in a network (Schwartz *et al.* 1986, p. 184; Bleich *et al.* 1990, pp. 384–388). The movements by rams between herds can counteract the effects of inbreeding that can develop with small, isolated populations (Schwartz *et al.* 1986, pp. 182–185).

Previous Federal Actions

On April 20, 1999, we published an emergency rule listing the Sierra Nevada DPS of the California bighorn sheep (SNBS) as endangered (64 FR 19300) providing emergency protections to the DPS until such time that we could complete the normal listing process. We also published a proposed rule to list the DPS on the same date (64 FR 19333). On January 3, 2000, we published a final rule listing the SNBS DPS as endangered (65 FR 20). The emergency rule stated that the designation of critical habitat was not determinable due to lack of information sufficient to perform the required analysis of impacts of the designation. In the final listing rule we stated our revised determination: That there is sufficient information to perform the required impact analysis and that the designation of critical habitat is prudent. During our current efforts to propose critical habitat for the Sierra Nevada bighorn sheep, we noticed that the final listing rule published in 2000 (65 FR 20) inadvertently listed this entity as a subspecies rather than as a DPS. While the listing rule addressed the DPS question, we failed to include the DPS language in the table found in the regulatory section of the rule. However, as stated above, based on the work of Wehausen and Ramey (2000, p. 156) and Wehausen *et al.* (2005, p. 217), the Sierra Nevada bighorn sheep is recognized as a subspecies, and the correct nomenclature is *Ovis canadensis sierrae*. Therefore, we are formally proposing a taxonomic revision to amend the final listing rule from DPS to subspecies, *Ovis canadensis sierrae*. Therefore, within this proposed critical habitat designation rule we will refer to the listed entity as a subspecies and not as a DPS.

On July 30, 2003, we made available the Service's Draft Recovery Plan for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) (68 FR 44808). On October 9, 2003, we re-opened the comment period for the draft Recovery Plan (68 FR 58355). We are currently working with land management agencies and stakeholders to finalize the Recovery Plan by the summer of 2007.

On December 8, 2005, the Center for Biological Diversity filed a complaint based on the Service's failure to designate critical habitat for this subspecies within the time mandated under the Act (*Center for Biological Diversity v. U.S. Fish and Wildlife Service, et al.* Case No. 2:05-CB-02492-DFL-KJM). On June 6, 2006, the Service entered into a settlement agreement with the Center for Biological Diversity

to submit a proposed critical habitat designation for this subspecies for publication in the **Federal Register** by July 17, 2007, and to submit a final determination on the proposed critical habitat designation for publication by July 17, 2008.

For more information on previous Federal actions concerning Sierra Nevada bighorn sheep, refer to the final listing rule published in the **Federal Register** on January 3, 2000 (65 FR 20).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) 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

(a) essential to the conservation of the species and

(b) that may require special management considerations or protection; and

(2) 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.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect 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 of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

For inclusion in a critical habitat designation, the habitat within the geographical 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 within the geographical area occupied by the species at the time of listing may be included in critical habitat only if the habitat has essential features that may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the PCEs and the species. (As discussed below, such areas may also be excluded from critical habitat under to section 4(b)(2) of the Act.)

We can designate unoccupied areas as critical habitat. However, 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.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our 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 may be designated as critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of the Information Quality Act and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species. For these

reasons, a critical habitat designation does not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of Sierra Nevada bighorn sheep, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject 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 agency 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 (HCPs), 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 data available in determining areas occupied at the time of listing that contain the features essential to the conservation of Sierra Nevada bighorn sheep, and areas unoccupied at the time of listing that are essential to the conservation of the subspecies. We have also reviewed available information pertaining to the habitat requirements of this subspecies. These data include: information from the final listing rule (65 FR 20, January 3, 2000); information published in peer-reviewed literature, provided in academic theses and agency reports, and published in a Resource Selection Probability Functions model; location data and survey information provided in agency status and monitoring reports and on Geographic Information System (GIS) maps; information provided in the subspecies' draft recovery plan (Service 2003); material submitted during section 7 consultations; discussions with members of California Department of Fish and Game's (CDFG's) Sierra Nevada Bighorn Sheep Recovery Program and the Sierra Nevada Bighorn Sheep Recovery Team; and regional GIS coverages.

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 geographical areas occupied by the

species at the time of listing, we consider the primary constituent elements to be those physical and biological features that are essential to the conservation of the species and which may require special management considerations and 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.

We derive the specific primary constituent elements required for Sierra Nevada bighorn sheep from its biological needs.

Space for Individual and Population Growth and for Normal Behavior

In general, Sierra Nevada bighorn sheep inhabit open areas where the land is rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5). In the Sierra Nevada, these bighorn sheep occur within a wide range of elevations, from alpine peaks in excess of 14,100 ft (4,300 m) to the base of the eastern escarpment as low as 4,790 ft (1,460 m) (Wehausen 1980, pp. 3 and 82). Recent modeling efforts have clarified and supported our knowledge that Sierra Nevada bighorn sheep habitat occurs as low as 4,000 ft (1,219 m) in the southern portion of its range (Johnson *et al.* 2005). Within this elevational range, a variety of vegetation communities exists, including: (1) Great Basin sagebrush-bitterbrush-bunchgrass scrub; (2) pinyon-juniper woodland and mountain mahogany scrub; (3) mid-elevation and subalpine forests, woodlands, and meadows; and (4) alpine meadows and other alpine habitats varying from cliffs to plateaus (Service 2003, p. 3). Sierra Nevada bighorn sheep prefer Great Basin scrub and alpine communities due to their visual openness. Because of the aridity of the eastern slope of the Sierra Nevada, many of the mid-elevation vegetation communities have some locations near precipitous rocks with sparse plant cover that allow use by bighorn sheep (Wehausen 1980, pp. 18–25, 80–100). The extreme visual openness and the steep, rocky nature of alpine environments in the Sierra

Nevada provide large expanses of habitat broken by canyons containing forests and willow stands. These areas of forests and willow stands are unlikely to be used by bighorn sheep. In contrast, low elevation winter habitat has been limited to small areas where topographic and visual features are suitable (Riegelhuth 1965, pp. 34–38; McCullough and Schneegas 1966, pp. 71–72, 74–75; Wehausen 1979, pp. 36–53; 1980, pp. 81–88). Large expanses lacking precipitous escape terrain can represent substantial barriers to movement (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5).

Male and female bighorn sheep commonly live in separate groups during much of the year, and often occupy different habitats (Geist and Petocz 1977, pp. 1802–1803; Bleich *et al.* 1997, pp. 7–14, 22–34, 36–42; Wehausen 1980, p. 109). In the Sierra Nevada, both sexes may share common winter ranges, but they become more segregated as spring nears (Wehausen 1980, pp. 112–113). During winter, bighorn sheep occupy high, windswept ridges if forage is available or move to lower elevation sagebrush-steppe habitat (as low as 4,790 ft (1,460 m)) to escape deep winter snows and find nutritious forage. In winter, they show a preference for south-facing slopes where snow melts more readily (Jones 1950, pp. 44–45; McCullough and Schneegas 1966, p. 71; Wehausen 1980, pp. 86–87). During summer, the two sexes utilize different habitats, with females restricted largely to alpine environments along the crest and males often at somewhat lower elevations in subalpine habitats (Wehausen 1980, pp. 112–113). Males again join females during the breeding season in late fall. Both males and females will inhabit open slopes where the area is rough, rocky, sparsely vegetated, and characterized by steep slopes and canyons (Wehausen 1980, p. 81; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5).

An indication of winter and summer range size for male and female Sierra Nevada bighorn sheep was provided by Wehausen (1980) and Chow (1992). Wehausen (1980, p. 84) determined winter and summer range sizes for the Baxter and Williamson herds. He estimated that total winter range was 2,632 ac (10.65 square kilometers (km²)) and 3,291 ac (13.32 km²), respectively. Summer range for ewes, lambs, and yearlings was estimated at 13,005 ac (52.63 km²) and 3,808 ac (15.41 km²), respectively. Fall range was estimated at 11,073 ac (44.81 km²) and 3,242 ac (13.12 km²), respectively. Chow (1992,

p. 37) estimated home range size for the Lee Vining herd (winter/spring and summer/fall for rams and ewes) using the minimum convex polygon method (completely enclose all data points by connecting the outer locations in such a way as to create a convex polygon) during 1986 to 1989. During this period, ewes covered an area of 1,038 to 4,473 ac (4.2 to 18.1 km²) during winter/spring, and rams covered an area of 2,941 to 6,919 ac (11.9 to 28.0 km²). During this same period, ewes covered 2,347 ac to 5,535 (9.5 to 22.4 km²) during summer/fall while rams covered 3,623 to 8,747 ac (14.7 to 35.4 km²). The mean minimum convex polygon home range was 7,759 ac (31.4 km²) for ewes and 20,979 ac (84.9 km²) for rams from Mount Warren/Mount Gibbs, Wheeler, Sawmill, and Baxter herds (Sierra Nevada Bighorn Sheep Recovery Program 2004, pp. 9, 17).

Bighorn sheep have developed philopatric behaviors (reluctance to disperse from their home range) such that they are slow to colonize unoccupied habitat (Geist 1971, pp. 98–99; Cowan and Geist 1971, p. 81). This is likely an adaptation to the naturally fragmented habitats that bighorn sheep occupy. Both male and female Sierra Nevada bighorn sheep demonstrate seasonal philopatry (Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 7). While both males and females show a tendency to use the same ranges year after year, males show exceptions and demonstrate long-distance movements (Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 7). Annual home range diameter provides an indication of the extreme distances the bighorn sheep can travel. Maximum diameters for home ranges for female Sierra Nevada bighorn sheep from the Mount Warren/Mount Gibbs, Wheeler, and Baxter herds ranged from 3.95 to 10.41 mi (6.35 to 16.75 km); males from the Mount Warren/Mount Gibbs, Wheeler, and Sawmill herds ranged from 5.5 to 36.9 mi (8.9 to 59.4 km) (Sierra Nevada Bighorn Sheep Recovery Program 2004, pp. 9, 17).

Bighorn sheep exhibit a variety of behavioral adaptations to avoid predation. Bighorn sheep are primarily diurnal (Jones 1950, pp. 54–57; Krausman *et al.* 1985, pp. 24–26). Coupled with their strong reliance on keen eyesight to detect predators, diurnal behavior minimizes predation risks. Due to their keen eyesight and agility on rocky slopes, bighorn sheep in general select open habitats that allow predator detection at distances great enough to allow time to reach steep, rocky terrain (escape habitat) (Wehausen 1980, p. 81). This

precipitous, rocky terrain is generally near foraging and resting areas. Bedding areas are needed for resting or sleeping purposes. During the day, bedding areas are generally wherever the individual is feeding. Bedding areas are made in the open but not necessarily in a place with a view of the surrounding area; during the night, bedding areas are generally among or near rugged, chuted cliffs (Jones 1950, p. 49). Bighorn sheep may venture a short distance away from rocky escape terrain to feed; the distance they venture from safer habitat varies and is apparently influenced by visual openness, wind, gender, season, and abundance of predators (Service 2003, p. 6).

Sites for Breeding, Reproduction, and Rearing of Offspring

In the Sierra Nevada, ewes and rams come together in late fall or early winter (November and December) (Jones 1950, pp. 63–64; Cowan and Geist 1971, p. 64; Wishart 1978, p. 165) to breed, usually at high elevations. Bighorn sheep generally give birth to single young (Wishart 1978, p. 165). Most bighorn sheep births in the Sierra Nevada occur in May and June (Wehausen 1980, p. 94; 1996, p. 475). Lambing habitat is in areas of precipitous rocks away from trees (Wehausen 1980, p. 95), providing safe areas from predators. Ewes with newborn lambs are solitary for a short period of time before joining nursery groups (65 FR 21; January 3, 2000).

Mortality Factors

Bighorn sheep die from a variety of causes including predation, disease, and accidents. Various predators, including wolves (*Canis lupus*), mountain lions (*Felis concolor*), coyotes (*Canis latrans*), bobcats (*Lynx rufus*), and golden eagles (*Aquila chrysaetos*) kill wild sheep in North America (Cowan and Geist 1971, p. 75; Bleich 1999, p. 283). Jones (1950, pp. 67–68) listed golden eagles, mountain lions, coyotes, wolverines (*Gulo luscus*), bobcats, and ravens (*Corvus corax*) as likely predators of Sierra Nevada bighorn sheep, but thought none of these predators caused anything but small losses on the population under normal circumstances. He thought predation overall was thought to be light except during abnormally unfavorable winters. In recent years in the Sierra Nevada, mountain lions have been the primary predator of bighorn sheep, accounting for 96 percent of losses attributed to predation (Service 2003, p. 10). Of 147 bighorn sheep deaths recorded in the Sierra Nevada during 1975 to 2000, a minimum of 54.5 percent could be

attributed to predation (Service 2003, p. 10).

Numerous diseases of bighorn sheep have been documented (Bunch *et al.* 1999, pp. 209–237). Bighorn sheep show a high susceptibility to pneumonia, usually caused by bacteria of the genus *Pasteurella* (some species now called *Mannheimia*) (Post 1971, pp. 98–101). Pneumonia caused by *Pasteurella* alone, or with other pathogens, is an important disease threat for bighorn sheep (Bunch *et al.* 1999, p. 210). Lungworms of the genus *Protostrongylus* can be important contributors to pneumonia and mortality in bighorn sheep in the Rocky Mountains (Forrester 1971, p. 158; Woodard *et al.* 1974, pp. 773–774). Bighorn in the Sierra Nevada carry *Protostrongylus* lungworms, but parasite loads have been too low to be considered a management concern (Wehausen 1980, p. 191).

Although die-offs of bighorn sheep due to disease have occurred unrelated to domestic sheep (Miller *et al.* 1991, pp. 534–540), a substantial amount of circumstantial evidence is available that indicates that contact with domestic sheep is associated with respiratory disease outbreaks resulting in significant morbidity and mortality in wild bighorn sheep (Martin *et al.* 1996, pp. 72, 74). The history of bighorn sheep in the United States provides numerous examples of major die-offs following believed contact with domestic sheep (Foreyt and Jessup 1982, pp. 163–164, 166; Singer *et al.* 2001, p. 1352; Coggins 2002, pp. 166–170), and these pneumonia epizootics can extirpate entire populations (Martin *et al.* 1996, pp. 72, 75). Diseases transferred through contact with domestic sheep are suspected to have played a major role in the disappearance of certain bighorn sheep herds in the Sierra Nevada beginning about 1870 (Wehausen 1988b, p. 100).

Many early die-offs of bighorn sheep, including some in the Sierra Nevada, were attributed to scabies contracted from domestic sheep (Jones 1950, p. 69; Buechner 1960, p. 111). In 1987, Clark *et al.* (1988, p. 13) found scabies in three desert bighorn sheep in California east of the Sierra Nevada. In a large sampling of 50 populations of bighorn sheep in California between 1980 and 1990, 25 populations were designated as scabies-positive because at least 1 seropositive animal occurred at the low or high cutoff values, though no clinical evidence of scabies was noted (Mazat *et al.* 1992, pp. 543–545).

Other infectious diseases may be of concern for bighorn sheep in selected instances. Domestic goats are occasionally used as pack animals in the

back country or for brush control. This use could cause concern if it occurs in or near bighorn sheep habitat. For example, a recent outbreak of infectious keratoconjunctivitis (inflammation of the eye) linked to domestic goats resulted in blindness and several deaths (exacerbated by the blindness) in bighorn sheep in Arizona, demonstrating the risk of disease outbreak in bighorn sheep from interactions with domestic goats (Heffelfinger 2004, cited in Sierra Nevada Bighorn Sheep Recovery Program 2004, p. 2).

Sierra Nevada bighorn sheep remaining at high elevations year-round likely contributed to population losses over winter (Wehausen 1996, pp. 474–477). Those losses included reduced lamb survival over winter and losses of all sex and age classes in snow avalanches (Service 2003, pp. 10–11). A survey of the Wheeler Ridge herd during the heavy winter of 1995 found 12 sheep had died in a single snow avalanche (Torres *et al.* 1996, p. 28).

Metapopulation Structure

Within mountain ranges like the Sierra Nevada, bighorn sheep habitat is patchy and the population structure is one of natural fragmentation (Bleich *et al.* 1990, p. 384). This fragmentation has led to the application of a broad landscape approach to their population ecology which groups geographically distinct herds into metapopulations, which are networks of interacting herds (Schwartz *et al.* 1986, pp. 182–183; Bleich *et al.* 1990, p. 386). This approach considers long-term viability not of individual herds but rather of entire metapopulations; thus both genetic and demographic factors are considered. Decreasing population sizes, over time, can lead to decreasing levels of heterozygosity (presence of different forms of a gene at a particular location on a chromosome) that may have negative demographic effects through inbreeding depression (Lande 1988, p. 1456) and loss of adaptability. A small amount of genetic exchange among herds by movements of males can counteract inbreeding and associated increases in homozygosity (presence of identical forms of a gene at a particular location on a chromosome) that might otherwise develop within small, isolated populations (Schwartz *et al.* 1986, p. 185). Males have a much greater tendency than females to explore new ranges, which males may do in search of other females with which they will breed. If geographic distances between female groups within metapopulations are not great, gene migration by males occurs readily. In

the absence of such a metapopulation structure, populations will be isolated. Because the distribution of bighorn sheep in the Sierra Nevada, is naturally fragmented, maintenance of migration corridors is important to allow for genetic exchange between herd units. In the Sierra Nevada this exchange may be more difficult because the metapopulations occur mostly in a linear geographic distribution pattern; thus fewer populations may have provided sources of colonists (Service 2003, p. 40).

Substructuring also can occur within what are often thought of as single herds of bighorn sheep (Festa-Bianchet 1986, pp. 327–330; Andrew *et al.* 1997, pp. 74–75; Rubin *et al.* 1998, pp. 543–548). Such substructuring is defined by separate home range patterns. Although demonstrated more with females, it can occur in both sexes. For example, what was once considered the Mount Baxter herd is now recognized as two herds, the Mount Baxter and Sawmill Canyon herds.

Another important long-term process in metapopulation dynamics is the balance between rates of natural extinction and colonization among populations. Colonization rates must exceed extinction rates for a metapopulation to persist (Hanski and Gilpin 1991, pp. 8–9). This balance has not occurred for Sierra Nevada bighorn sheep since about 1850 due to the high rate of local extinctions resulting in an increasingly fragmented distribution. In addition to fragmentation from past extinctions, remaining herds are small, isolated groups of bighorn sheep. Because of their small population size, these small groups are more vulnerable

to extirpation due to random naturally occurring events, disease, or predation (Shaffer 1987, pp. 71–73; Meffe and Carroll 1994, pp. 190–197; Service 2003, p. 8).

Food and Nutritional Requirements

Bighorn sheep are ungulates that consume a wide variety of plant species. Due to a large rumen and reticulum relative to body size, they are able to have flexibility in the plants they consume which includes graminoids (grasses, sedges, and rushes) in different phenological stages (Hanley 1982, p. 148). Bighorn sheep consume a wide variety of plant species. While they prefer grasses, sedges, and forbs, different browse species become important food during the fall and winter (Wishart 1978, p. 167).

Bighorn sheep exhibit seasonal changes in habitat use due to seasonal changes in resource availability, habitat and resource requirements. Sierra Nevada bighorn sheep rarely utilize surface water; instead, these bighorn sheep generally obtain moisture from their forage or the occasional consumption of snow. Altitudinal migration by Sierra Nevada bighorn sheep allows them to maximize nutrient intake during the year (Wehausen and Hansen 1988, pp. 256–257, 265–267; Wehausen 1996, pp. 476–477), as the relationship between elevation and temperature (Major 1977, pp. 44–45) influences plant growth (Wehausen 1980, p. 86–91, 133–135). In general, temperatures decrease with increasing altitude (Major 1977, p. 44). In the Sierra Nevada, every 56 ft (17 m) of elevation gain causes 1 day delay in the onset of plant growth (Wehausen and

Hansen 1988, p. 257). Bighorn sheep are able to take advantage of early spring growth (usually cold-season grasses) and then later change their diet to include warm-season plants that may have higher nutrient concentrations than grasses (Wehausen and Hansen 1988, p. 257). Sierra Nevada bighorn sheep use low-elevation ranges extensively in winter and early spring, alpine ranges in summer and fall, and some intermediate ranges during transition periods (Wehausen 1980, pp. 80–100).

In the following section plant nomenclature has been updated to conform to treatments in Hickman (1993). Common names generally conform to those given in Hickman (1993) and/or Abrams *et al.* (1923–1960). Cited scientific names are retained in brackets for ease of reference. The following plant species were found to be important winter/spring forage for Sierra Nevada bighorn sheep: *Achnatherum speciosum* [*Stipa speciosa*] (desert needlegrass), *Eriogonum fasciculatum* (California buckwheat), *Artemisia tridentata* (sagebrush), *Ephedra viridis* (green ephedra), *Keckiella breviflora* (gaping keckiella), *Purshia glandulosa* (Mojave antelope bush), *P. tridentata* (northern antelope bush), and *Ceanothus cordulatus* (mountain whitethorn) (Wehausen 1980, p. 87). McCullough and Schneeegas (1966, p. 72) and Riegelhuth (1965, p. 38) provide similar lists of plant species observed consumed by Sierra Nevada bighorn sheep during winter and/or summer (TABLE 1). Wehausen (1980, pp. 124–126) provides a list of plants consumed by both sexes in summer (TABLE 1).

TABLE 1.—PLANT SPECIES OBSERVED CONSUMED BY SIERRA NEVADA BIGHORN SHEEP DURING SUMMER AND FALL MONTHS (MCCULLOUGH AND SCHNEEGAS (1966, P. 72); RIEGELHUTH (1965, P. 38); WEHAUSEN 1980, P. 124–126).

Sex	Season	Scientific name	Common name
Ewes and Lambs ...	Summer and fall ...	<i>Polemonium eximium</i>	sky pilot.
		<i>Hulsea algida</i>	alpine hulsea.
		<i>Carex helleri</i>	Heller's sedge.
		<i>C. rossii</i>	Ross' sedge.
		<i>C. leporinella</i>	Sierra hare sedge.
		<i>Elymus elymoides</i> ssp. <i>elymoides</i> [<i>Sitanion hystrix</i>]	bottlebrush squirreltail.
		<i>Phacelia hastata</i> [<i>frigida</i>]	timberline phacelia.
		<i>Silene sargentii</i>	Sargent's campion.
		<i>Aquilegia pubescens</i>	Coville's columbine.
		<i>Ivesia pygmaea</i>	dwarf ivesia.
		<i>Juncus parryi</i>	Parry's rush.
		<i>Achnatherum</i> [<i>Stipa</i>] <i>pinetorum</i>	pine needlegrass.
		<i>Lupinus formosus</i>	summer lupine.
Rams	Summer and fall ...	<i>Juncus parryi</i>	Parry's rush.
		<i>Carex filifolia</i> var. <i>erostrata</i> [<i>exserta</i>]	(no common name).
		<i>C. rossii</i>	(no common name).
		<i>C. aurea</i>	golden-fruited sedge.
		<i>Luzula comosa</i>	hairy wood rush.
		<i>Poa cusickii</i> ssp. <i>epilis</i> [<i>epilis</i>]	mountain bluegrass.
		<i>Elymus elymoides</i> ssp. <i>elymoides</i> [<i>Sitanion hystrix</i>]	(no common name).

TABLE 1.—PLANT SPECIES OBSERVED CONSUMED BY SIERRA NEVADA BIGHORN SHEEP DURING SUMMER AND FALL MONTHS (MCCULLOUGH AND SCHNEEGAS (1966, P. 72); RIEGELHUTH (1965, P. 38); WEHAUSEN 1980, P. 124–126).—Continued

Sex	Season	Scientific name	Common name
		<i>Danthonia intermedia</i>	mountain oatgrass.
		<i>Achnatherum lemmonii</i> [<i>Stipa columbiana</i>]	Lemmon's stipa.
		<i>Eriogonum latens</i>	onion-flowered eriogonum.
		<i>Trifolium monanthum</i>	carpet clover.
Both sexes	Summer	<i>Holodiscus microphyllus</i>	small-leaved cream bush.
		<i>Jamesia americana</i>	cliff bush.
		<i>Ribes montigenum</i>	alpine prickly currant.
		<i>Potentilla fruticosa</i>	shrubby cinquefoil.

In addition to forage needs, salt/mineral licks are specific sites where bighorn sheep have access to important minerals to meet nutritional needs. These licks contain minerals such as sodium, calcium, iron, and phosphorus. Sites are generally found in granite rock outcroppings in the Sierra Nevada. Some known areas occur in the vicinity of Gilcrest Peak and Tioga Road (Chow 1992, p. 52), Baxter Pass (Jones 1950, p. 63; Hicks and Elder 1979, p. 911; Wehausen 1980, p. 151), and Mayfield Canyon (Stephenson 2007).

Historical and Geographic Distribution of the Species

Historically, the range of the Sierra Nevada bighorn sheep included the eastern slope of the Sierra Nevada, and for at least one subpopulation, a portion of the western slope, from Sonora Pass in Mono County to Walker Pass in Kern County, a total distance of approximately 346 km (215 miles (mi)) (Jones 1950, pp. 33–35; Wehausen 1979, p. 1). The extant range of the Sierra Nevada bighorn sheep begins in the Lee Vining area in Mono County and extends south to the Mount Langley area in Inyo County. This is a linear distance of approximately 110 mi (177 km).

All currently occupied units that are proposed for designation were occupied at the time of listing and contain the physical and biological features essential to the conservation of the subspecies and may require special management considerations or protection. The areas proposed for designation that are currently unoccupied were also not occupied at the time of listing, however these areas are representative of the historical and geographical distribution of the Sierra Nevada bighorn sheep and were all historically occupied (Ober 1914, p. 125; Ober 1931, p. 32; Jones 1950, pp. 35, 38–40; Buechner 1960, p. 69; Barrett 1965, p. 43; Riegelhuth 1965, p. 35; Dunaway 1971, p. 19; Wehausen et al. 1987, p. 66; Wehausen 1988a, pp. 100–

101; Wehausen 1988b, p. 100; Berger 1990, p. 94). Furthermore, we have determined that all proposed unoccupied habitat is essential for the conservation of the subspecies and will decrease the degree of fragmentation within the current geographic distribution of the subspecies. For further information on occupancy status see Table 3 and the Unit Description sections below.

Primary Constituent Elements for Sierra Nevada Bighorn Sheep

Under the Act and its implementing regulations, we are required to identify the known physical and biological features (primary constituent elements or PCEs) within the geographical area occupied, which may require special management considerations or protection. All areas proposed as critical habitat for Sierra Nevada bighorn sheep are within the subspecies' historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the subspecies, we have determined that the Sierra Nevada bighorn sheep's PCEs are:

(1) Non-forested habitats or forest openings within the Sierra Nevada from 4,000 ft (1,219 m) to 14,500 ft (4,420 m) in elevation with steep (greater than or equal to 60 percent slope), rocky slopes that provide for foraging, mating, lambing, predator avoidance, and bedding and allow for seasonal elevational movements between these areas.

(2) Presence of a variety of forage plants as indicated by the presence of grasses (e.g., *Achnanthera* spp.; *Elymus* spp.) and browse (e.g., *Ribes* spp.; *Artemisia* spp., *Purshia* spp.) in winter, and grasses, browse, sedges (e.g., *Carex* spp.) and forbs (e.g., *Eriogonum* spp.) in summer.

(3) Presence of granite rock outcroppings containing minerals such

as sodium, calcium, iron, and phosphorus that could be used as salt licks/mineral licks in order to meet nutritional needs.

We determined that these PCEs contained within the proposed critical habitat units discussed below provide for the physiological, behavioral, and ecological requirements of the Sierra Nevada bighorn sheep. The first PCE provides for the general biotic communities that are known to support Sierra Nevada bighorn sheep habitat in the Sierra Nevada of California. Sierra Nevada bighorn sheep are not known to occur outside of the communities/elevations described in this PCE. This PCE further provides the components necessary for foraging (summer and winter), breeding, lambing, predator avoidance, and bedding, and allows for seasonal elevational movements among these areas.

The second PCE describes the types of food necessary to meet the biological needs of the Sierra Nevada bighorn sheep related to seasonal range movements. Altitudinal migration by Sierra Nevada bighorn sheep allows them to maximize nutrient consumption during the year (Wehausen and Hansen 1988, pp. 256–257, 265–267; Wehausen 1996, pp. 476–477), as the relationship between elevation and temperature (Major 1977, pp. 44–45) influences plant growth (Wehausen 1980, pp. 86–91, 133–135), as discussed earlier. Wehausen (1980, p. 86) found winter diet quality was improved with warmer winter temperatures that aided plant growth; he found summer diet quality was improved, apparently, by the amount of snowfall the previous winter, which may influence soil moisture for alpine plants (Wehausen 1980, p. 133).

The third primary constituent element provides for additional nutritional needs. Mineral licks provide necessary nutrients, important in meeting dietary requirements.

We have designed this proposed designation for the conservation of PCEs

necessary to support the life history functions that were the basis for our proposal and the areas containing those PCEs. Because not all life history functions require all the PCEs, not all areas proposed as critical habitat will contain all the PCEs.

We propose units for designation based on sufficient PCEs being present to support one or more of the subspecies' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the subspecies' particular use of that habitat. This applies to both occupied and unoccupied units proposed in this designation.

Criteria Used To Identify Critical Habitat

We propose to designate critical habitat in areas that we have determined were occupied at the time of listing and that contain sufficient PCEs to support life history functions essential for the conservation of the subspecies and may require special management considerations or protection. Some lands contain only a portion of the PCEs necessary to support the particular use of that habitat during that portion of the life process. We propose to designate critical habitat on some specific unoccupied areas outside of the geographical area occupied by the subspecies at the time of listing, but these areas were historically occupied, and we have determined that they are essential for the conservation of the subspecies.

In our analysis, we reviewed existing data to determine the distribution of areas occupied by the subspecies at the time of listing. We also reviewed available information related to the habitat requirements of the subspecies. We used information from literature cited in the final listing rule (65 FR 20; January 3, 2000), the recovery plan, site records, reports prepared by CDFG, and other published scientific literature.

We used the following criteria to select areas occupied by the Sierra Nevada bighorn sheep at the time of listing for inclusion in critical habitat:

(a) Those areas occupied by the Sierra Nevada bighorn sheep at the time of listing (1999–2000) as indicated in the final listing rule (65 FR 20; January 3, 2000). In the final rule, we identified five subpopulations of Sierra Nevada bighorn sheep that existed: (1) Lee Vining Canyon (=Mount Warren, Mt. Gibbs Herd Units), (2) Wheeler Crest (=Wheeler Ridge Herd Unit), (3) Mount Baxter (=Sawmill Canyon, Mount Baxter Herd Units), (4) Mount Williamson

(=Mount Williamson Herd Unit), and (5) Mount Langley (=Mount Langley Herd Unit) in Mono and Inyo counties, California (Wehausen 1999, pp. 1–7; 2000, pp. 1–6);

(b) areas that are representative of the distribution of the Sierra Nevada bighorn sheep throughout the geographical range occupied at the time of listing with the goal of maintaining the subspecies' range of habitat and genetic variability; and

(c) areas that allow for the continued existence of viable subpopulations under varying environmental conditions and that can serve as locations for source populations. The locations of all five subpopulations identified in the original listing rule continue to remain occupied today.

Current population estimates of the Sierra Nevada bighorn sheep in 2006 indicate 350 to 400 individuals occur throughout its range (Wehausen and Stephenson 2006, p. 7); this is an increase from the 125 individuals estimated at the time of listing (65 FR 20; January 3, 2000). Current individual herd numbers in the different subpopulations range from 8 to 113 individuals (Wehausen and Stephenson 2006, p. 7). Current occupancy of these herd units is supported by agency reports (Wehausen and Stephenson 2004, pp. 2–10; 2005, pp. 2–6; 2006, pp. 2–6), status reports (Wehausen 1999, pp. 1–7; 2000, pp. 1–6), and monthly CDFG monitoring reports based on GPS/telemetry/monitoring data collected during 2001 through 2006. We have determined that the areas occupied at the time of listing continue to be occupied, contain features essential to the conservation of the subspecies (possess one or more PCEs such that the area supports one or more of the Sierra Nevada bighorn sheep's life processes), and provide sufficient habitat to protect these populations.

We further propose to designate critical habitat on lands that were historically occupied by the Sierra Nevada bighorn sheep, but were not occupied at the time of listing and are not currently occupied. These areas were all historically occupied within the past 90 years (Jones 1950, pp. 33–35) and are essential to the conservation of the subspecies. Based on the best available information, we have determined that without protection and management of these unoccupied areas, conservation of the subspecies will not be possible.

We applied each of the following criteria to select areas historically occupied, but not known to be occupied at the time of listing by the Sierra

Nevada bighorn sheep, for inclusion in critical habitat:

(1) Areas where habitat contains sufficient PCEs (e.g., characteristics such as non-forested, steep, rocky slopes and foraging areas) to support life history functions;

(2) Areas where habitat has been known to have been occupied by the subspecies. In some areas this was as long ago as 90 years (Jones 1950, pp. 33–35). In all of the areas the habitat has not changed appreciably in size or quality during that time;

(3) Areas where appropriate habitat for Sierra Nevada bighorn sheep has been predicted by CDFG based on Resource Selection Probability Functions modeling (Johnson *et al.* 2005) (i.e., contains habitat with the PCEs and additional, more specific characteristics that allow for a range of the subspecies' biological needs, such as sites for feeding);

(4) Areas where there is potential for reoccupation by the subspecies, either through natural means of dispersal from currently occupied areas or by future re-introduction efforts; and

(5) Areas that are geographically separated from currently occupied units by approximately 0.5 to 8 mi (0.8 to 12.9 km) to provide redundancy of habitat in the event of a natural catastrophe removing habitat (PCEs) from currently occupied units.

The designation of these unoccupied areas would decrease the degree of fragmentation within the current geographic distribution of the Sierra Nevada bighorn sheep. We believe that the designation of these additional areas is essential for the conservation of the subspecies because:

(1) Population increases, either through natural means or reintroductions into the additional units, are expected to increase the viability of the herds within occupied areas as well as the existence of the Sierra Nevada bighorn sheep as a whole (i.e., increase the likelihood of persistence at the local population level and of this subspecies' rangewide);

(2) The Sierra Nevada bighorn sheep is recognized as a unique subspecies (Wehausen and Ramey 2000, p. 156; Wehausen *et al.* 2005, p. 217), and the additional units will serve to decrease the degree of fragmentation of the current geographic distribution of the sheep (i.e., increase connectivity between areas known to be currently occupied). Fragmented distribution across the landscape reduces the connectivity between subpopulations. If small populations are isolated and remain small, there is an increased risk of genetic drift and risk to persistence

due to naturally occurring events (Gilpin and Soule 1986, pp. 25, 33). Maintenance of genetic variation is important in reducing inbreeding depression and the ability to respond to environmental changes over time especially in small populations (Schwartz *et al.* 1986, pp. 180–186; Lande 1988, pp. 1456–1457). Establishing additional units/subpopulations in unoccupied areas would fill in range gaps between the other occupied units/subpopulations. All of the unoccupied units lie within 8 mi (12.9 km) of an occupied area. This would reduce migration distances and increase the opportunity for genetic exchange between the subpopulations. The addition of these unoccupied units would ensure the full geographic distribution of the Sierra Nevada bighorn sheep is represented; and

(3) The current overall population size of the Sierra Nevada bighorn sheep is small, and it must increase to insure the long-term survival of this subspecies in the Sierra Nevada, as small populations are more vulnerable to extinction (Meffe and Carroll 1994, pp. 190–197; Shaffer 1987, pp. 71–73). While the occupied units provide habitat for current populations, additional units would provide habitat for population growth either through natural means or through re-introductions. Population increase in the additional units would assist in reducing the risk of extinction of the subspecies through stochastic events, such as wildfire, disease (Miller *et al.* 1991, pp. 534–540; Martin *et al.* 1996, pp. 72, 74; Bunch *et al.* 1999, pp. 209–237), or avalanches (Torres *et al.* 1996, p. 28), as the current isolated populations are few in number and small in size and at risk from such stochastic events. Establishing additional subpopulations, increasing a subpopulation's size, and increasing the overall distribution of subpopulations across the landscape are fundamental in reducing the significance of losing any single subpopulation.

We have determined that the proposed but unoccupied Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas, as identified in the draft recovery plan (Service 2003), are not essential for the conservation of the Sierra Nevada bighorn sheep. During the recovery team's continuing efforts to finalize the draft recovery plan, an additional herd unit, Bubbs Creek, is to be included in the recovery plan due to bighorn sheep occupying this area (Wehausen and Stephenson 2004, p. 5; Benz 2007, p. 1). These four herd units are considered not essential for the following reasons:

(1) We believe that the 12 units we propose for critical habitat would provide the necessary habitat and area to insure the viability and long-term survival of the Sierra Nevada bighorn sheep at the local and subspecies levels as well as provide for sufficient resiliency, representation and redundancy;

(2) There is uncertainty whether viable Sierra Nevada bighorn sheep herds can become established in the proposed Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas due to the lack of historic evidence regarding the number of animals that may have occurred in these areas and/or our limited understanding of the availability and connectivity between foraging habitats in these areas. Thus, there is a question as to whether there is a potential for reoccupation by the subspecies, either through natural means of dispersal or by future re-introduction efforts. As a result, the three proposed herd unit areas do not meet our criteria number 4 for identification of critical habitat outlined above. Therefore, the proposed Twin Lakes, Green Creek, and Coyote Ridge Herd Unit areas are not considered essential for recovery; and

(3) Bighorn sheep were discovered in the Bubbs Creek Herd Unit in 2001 and were likely a result of a recent colonization. That herd unit is west of the crest of the Sierra Nevada where snowfall is much greater than the east side of the range. Because there are no historical records of bighorn sheep winter ranges in the Bubbs Creek area, there is uncertainty as to the long-term viability of this herd unit. Consequently the Bubbs Creek Herd Unit is not considered essential for recovery.

Further, the concern for disease transmission from domestic sheep to Sierra Nevada bighorn sheep is reduced by not including the unoccupied herd units as essential to the recovery of the subspecies. Twin Lakes and Green Creek overlap with portions of a few currently active domestic sheep allotment boundaries. Bubbs Creek and Coyote Ridge Herd Units do not occur near any domestic sheep allotments.

We delineated polygon boundaries for each unit proposed for critical habitat designation within the Sierra Nevada bighorn sheep's historic range and around areas occupied at the time of listing, or known to have been historically occupied and considered essential for the conservation of the subspecies. We based our consideration of boundary delineation on the knowledge that bighorn sheep are naturally philopatric and fit a metapopulation model. Separate female

groups tend to be geographically segregated, and these groups can be defined by separate home range patterns. The existing herds provided information related to home range and habitat use patterns. Low elevation winter range habitat is an important, and an apparently limiting, factor in the Sierra Nevada that occurs in disjunct patches. We defined unit boundaries around those patches and geographically connected habitat that provides visually open habitat on steeper slopes (Wehausen 2006, p.1). We also considered, factors such as knowledge of the range of elevations used by Sierra Nevada bighorn sheep, topographic features known to be needed by the subspecies, sighting records, published literature, and the expertise of bighorn sheep biologists of the local conditions (high elevation, snow-free winter habitat; lower elevation, south or east-facing habitat; visual openness; and high elevation, summer habitat) during boundary delineation. In addition, a Resource Selection Probability Functions model for winter and summer habitat was developed that can quantitatively evaluate habitat conditions (Johnson *et al.* 2005). This modeling effort was used to support and refine unit boundaries (Wehausen 2006, p. 2) which contain the PCEs and additional, more specific characteristics. The model included variables such as: elevation, slope, aspect, hillshade, terrain ruggedness, distance to escape terrain, and vegetation to determine visibility (Johnson *et al.* 2005, pp. 8–9). Pixels (smallest element of an image that can be individually processed in a video display system) in the study area that received a relative winter and summer probability of use value in the 90–100 percent quartile were considered winter and summer ranges. Each unit boundary surrounds the areas we consider to be winter and summer range, as well as areas necessary to provide connectivity between these ranges. These boundary lines translate onto the ground by roughly following elevation and geomorphic features. As one progresses from south to north along the Sierra Nevada, the low elevation of the units increases. The elevation of the boundary lines begins at a low of 4,000 ft (1,219 m) for Unit 12 (Olancho Peak) at the southern end of the Sierra Nevada. From this unit northward, the remaining units begin at a low elevation of 4,500 ft (1,372 m) or higher.

When determining proposed critical habitat boundaries for this proposed rule, we made every effort to avoid including developed areas such as lands

covered by buildings, paved areas, and other structures that lack PCEs for the Sierra Nevada bighorn sheep. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

We propose to designate critical habitat on lands that we have determined were occupied at the time of listing that contain the primary constituent elements that support life history functions essential for the conservation of the subspecies (7 units) that may require special management considerations or protection, and additional areas not occupied at the time of listing that we have determined to be essential to the conservation of the subspecies (5 units). The 12 units that we propose as critical habitat encompass about 417,577 ac (168,992 ha) within Tuolumne, Mono, Fresno, Inyo, and Tulare counties, California. The proposed units contain habitat that supports biological and population-level functions of the Sierra Nevada bighorn sheep. A brief discussion of each unit proposed as critical habitat is provided in the unit descriptions below.

Units both occupied and unoccupied at the time of listing are proposed for designation based on sufficient PCEs being present to support Sierra Nevada bighorn sheep life processes. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to support the Sierra Nevada bighorn sheep's particular use of that habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to minimize and mitigate the impacts of the taking on the species. We often exclude from designated critical habitat, under section 10(a)(1)(B) of the Act, non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) because the benefits of exclusion outweigh the

benefits of inclusion as discussed in section 4(b)(2) of the Act. There are no existing operative HCPs that meet our issuance criteria within the areas proposed for designation as critical habitat.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas that we determined to be occupied at the time of listing and that contain the features that are essential to the conservation of the subspecies and which may require special management considerations or protection. As described in more detail in the unit descriptions below, we find that the PCEs within the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection due to threats to the Sierra Nevada bighorn sheep or its habitat. All of these units occur almost exclusively on Federal lands managed by the Forest Service, National Park Service, and the Bureau of Land Management. Management considerations and protection may include review of various activities proposed in Sierra Nevada bighorn sheep habitat requiring a permit from these agencies. These activities can include habitat enhancement projects to reverse fire suppression effects, development activities, livestock grazing, mining actions, and recreational activities. In addition, because all of the herds are relatively small, management actions to protect Sierra Nevada bighorn sheep habitat from catastrophic, naturally occurring events (e.g., wildfires, disease, avalanches) may be necessary.

Fire suppression can modify the structure of Sierra Nevada bighorn sheep habitat by allowing taller vegetation, such as trees, to become established, resulting in cover for predators. Mountain lions, a primary predator of Sierra Nevada bighorn sheep, use vegetative cover and terrain to conceal themselves prior to attacks. Fires may have burned more frequently in the past in bighorn sheep habitat. Old ground and aerial photographs show habitats in the eastern Sierra Nevada had little vegetation tall enough to obstruct the vision of bighorn sheep; pinyon pine woodlands have mostly developed since 1860 (Miller and Tausch 2001, pp. 15–16). Continued suppression of fires in Sierra Nevada bighorn sheep range is a threat, as habitat succession alters the abundance of suitable bighorn sheep habitat and increases bighorn sheep vulnerability to mountain lion predation (Torres *et al.* 1996, p. 29). Performing habitat

enhancements, such as prescribed burning, or enabling “let burn” policies, helps to provide open habitats. Opening up habitat will help to reduce predation by decreasing the effectiveness of ambushing from predators (such as mountain lions) from cover. Providing more open habitat will allow more opportunity for connectivity among herd units and likely promote greater gene flow to conserve genetic diversity. According to Johnson *et al.* (2005, p. 34), all of the herd units would benefit from forest reduction in winter range; those units that would benefit the most are Units 8 and 10. Thus, the PCEs in all of the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection to reverse the impacts of fire suppression.

There is limited development within Sierra Nevada bighorn sheep habitat because most habitat occurs on Federal lands; however, there is some recreational development (e.g., resorts). There are several paved and unpaved roads that access Federal lands within Sierra Nevada bighorn sheep habitat. For example, State Highway 120 is located primarily between Units 1 and 2, but some sections lie within Unit 1. Bighorn sheep have been killed due to collisions with vehicles on this road (65 FR 28; January 3, 2000). State Routes 158 and 190 occur in or adjacent to portions of Unit 2 and Unit 10, respectively. The PCE's in Units 1, 2, 4, and 10 require special management considerations or protection to address the impacts from development activities, including road construction and maintenance within Sierra Nevada bighorn sheep habitat.

Management of domestic sheep and goat grazing practices that result in overgrazing or allow for contact between these domestic species and Sierra Nevada bighorn sheep is a threat. Although die-offs of bighorn sheep due to disease have occurred unrelated to domestic sheep (Miller *et al.* 1991, pp. 534–540), a major contributing factor responsible for the decline of Sierra Nevada bighorn sheep populations over the years is thought to be the introduction of diseases by domestic livestock (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 5; 65 FR 25, January 3, 2000). Clifford *et al.* (2007, p. 18) indicate concern for the probability of a respiratory disease case occurring from disease transmission between domestic sheep and Sierra Nevada bighorn sheep, especially in the northern part of bighorn sheep range. Grazing allotments within the vicinity of Sierra Nevada bighorn sheep habitat should be reviewed and activities

modified as necessary to prevent competition and contact between the two species. These modifications could include such variables as the number of domestic sheep allowed on an allotment, where the domestic sheep may graze on an allotment, and the length and timing of the grazing period. These variables can assist in reducing resource competition as well as a means to reduce contact between the two species. The PCEs within Units 1, 2, and 4 may require special management considerations or protection to address the potential impacts of sheep and goat grazing within Sierra Nevada bighorn sheep habitat.

Patented mining claims occur within habitat used by the Sierra Nevada bighorn sheep, but the acreage is small. Mining activities and associated facilities threaten bighorn sheep by causing the loss of vegetation structure required for foraging activities; the destruction of habitats used for escape, bedding, lambing, or connectivity between ranges; or the possible disturbance of due to ongoing mining activities. Disturbance could modify bighorn sheep behavior or cause them to flee an area. Mining occurs within the habitat of Sierra Nevada bighorn sheep in Unit 4. These mines are underground, thus reducing some impacts of habitat loss. PCEs within this unit may require special management considerations or protection to address mining and associated facility development impacts within Sierra Nevada bighorn sheep habitat.

It remains unclear how significantly Sierra Nevada bighorn sheep may be affected by human disturbance (Jones 1950, pp. 71–72; Dunaway 1971, p. 19; Wehausen *et al.* 1977, p. 31; Hicks and

Elder 1979, p. 914; Wehausen 1980, pp. 200–201; MacArthur *et al.* 1982, p. 356; Papouchis *et al.* 2001, pp. 579–580). Additional investigations are needed to identify areas of conflict as situations arise where the increased presence of humans could be detrimental to the Sierra Nevada bighorn sheep or its habitat. These areas of use could be displacing Sierra Nevada bighorn sheep from important habitats.

Increases in human uses of bighorn sheep habitat, including recreational activities such as rock and ice climbing, mountaineering, ski touring, hiking, camping, and pack station establishment, may disturb Sierra Nevada bighorn sheep in key areas. This could result in abandonment of these areas or disruption of feeding and cause reduced nutrient intake. A cost in biological energetics could also occur due to flight. These losses could translate into reduced reproductive success. Impacts to the habitat could occur through trampling and reduced vegetation structure due to grazing by pack animals. The presence of dogs accompanying recreationists is also a concern in bighorn sheep habitat as dogs may cause strong alarm reactions by bighorn sheep (MacArthur *et al.* 1982, p. 356).

The PCEs within the units occupied at the time of listing (Units 1, 2, 4, 6, 7, 8, and 10) may require special management considerations or protection to protect Sierra Nevada bighorn sheep and its habitats from recreational activities. While recreation could be a threat factor throughout an occupied herd unit, it is more likely in some portions of units due to their inclusion of these higher use areas or their proximity to these areas. These

areas include the Virginia Lakes, Lundy Lake, Saddlebag Lake, and Lee Vining Canyon recreational areas associated with Unit 1; Lee Vining Canyon associated with Unit 2; the Rock Creek recreational area associated with Unit 4; Baxter Pass and Onion Valley recreational area associated with Unit 7; and the Whitney Portal and Trailhead and the Cottonwood Lakes recreational areas associated with Units 8 and 10.

Management actions to protect Sierra Nevada bighorn sheep habitat from catastrophic, naturally occurring events may be necessary. Events such as wildfire and avalanches could temporarily destroy large areas that provide summer or winter foraging habitat.

Proposed Critical Habitat Designation

We are proposing 12 units as critical habitat for the Sierra Nevada bighorn sheep. The critical habitat areas described below constitute our best current assessment of areas determined to be occupied at the time of listing, that meet the definition of critical habitat for the Sierra Nevada bighorn sheep, and those additional areas that were not occupied at the time of listing but were found to be essential to the conservation of the Sierra Nevada bighorn sheep. The 12 areas designated as critical habitat are: Mount Warren, Mount Gibbs, Convict Creek, Wheeler Ridge, Taboose Creek, Sawmill Canyon, Mount Baxter, Mount Williamson, Big Arroyo, Mount Langley, Laurel Creek, and Olancho Peak.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—PROPOSED CRITICAL HABITAT UNITS FOR SIERRA NEVADA BIGHORN SHEEP

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (Hectares)
1. Mount Warren	Federal	35,279 (14,277)
	Private	568 (230)
	Local Government	165 (67)
2. Mount Gibbs	Federal	29,702 (12,020)
3. Convict Creek	Federal	36,497 (14,770)
	Private	17 (7)
4. Wheeler Ridge	Federal	80,568 (32,605)
	Private	398 (161)
5. Taboose Creek	Federal	28,805 (11,657)
6. Sawmill Canyon	Federal	30,508 (12,346)
7. Mount Baxter	Federal	32,198 (13,030)
	Private	22 (9)
8. Mount Williamson	Federal	32,560 (13,177)
9. Big Arroyo	Federal	24,987 (10,112)
10. Mount Langley	Federal	32,845 (13,292)
11. Laurel Creek	Federal	22,037 (8,918)
12. Olancho Peak	Federal	30,421 (12,311)
Subtotal	Federal	416,407 (168,518)

TABLE 2.—PROPOSED CRITICAL HABITAT UNITS FOR SIERRA NEVADA BIGHORN SHEEP—Continued
[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (Hectares)
	Private	1,005 (407)
	Local Gov't	165 (67)
Grand Total*		417,577 (168,992)

*Columns may not sum exactly due to rounding of values.

TABLE 3.—OCCUPANCY OF SIERRA NEVADA BIGHORN SHEEP BY PROPOSED CRITICAL HABITAT UNITS.

Unit	Occupied at time of listing?	Currently occupied?	Size of unit in acres (Hectares)
1. Mount Warren	Yes	Yes	36,013 (14,574)
2. Mount Gibbs	Yes	Yes	29,702 (12,020)
3. Convict Creek	No	No	36,514 (14,777)
4. Wheeler Ridge	Yes	Yes	80,966 (32,766)
5. Taboose Creek	No	No	28,805 (11,657)
6. Sawmill Canyon	Yes	Yes	30,508 (12,346)
7. Mount Baxter	Yes	Yes	32,220 (13,039)
8. Mount Williamson	Yes	Yes	32,560 (13,177)
9. Big Arroyo	No	No	24,987 (10,112)
10. Mount Langley	Yes	Yes	32,845 (13,292)
11. Laurel Creek	No	No	22,037 (8,918)
12. Olancha Peak	No	No	30,421 (12,311)
*Total			417,578 (168,992)

*Columns may not sum exactly due to rounding of values.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Sierra Nevada bighorn sheep, below.

Universal Transverse Mercator (UTM) coordinates and more precise legal descriptions of each unit are provided in the Proposed Regulation Promulgation section.

Sierra Nevada bighorn sheep throughout their range utilize a range of elevations from about 4,790 ft (1,460 m) to above 14,100 ft (4,300 m) (Wehausen 1980, pp. 3, 82). As described in the "Criteria Used To Identify Critical Habitat" section above, the Service used modeling to further refine and clarify our knowledge of those areas that may be essential to the conservation of the subspecies. Based on these modeling efforts, Sierra Nevada bighorn sheep habitat is known to be available as low as elevation 4,000 ft (1,219 m) in the southern portion of its range (Johnson et al. 2005). Within this elevational range, a variety of vegetation communities occur including from lowest to highest, sagebrush-bitterbrush-bunchgrass scrub; pinyon-juniper woodland and mountain mahogany scrub; mid-elevation and subalpine, meadows, forests, and woodlands; and alpine meadows and other habitats from cliffs to plateaus (Service 2003, p. 3). All units contain one or more of these habitat types in varying amounts.

Unit 1: Mount Warren

Unit 1 consists of approximately 36,013 ac (14,574 ha) in Tuolumne and Mono Counties. Unit 1 is generally located within an area bounded on the east by U.S. Highway 395 (located about 1 mi (1.6 km) away), on the south by State Route 120, on the north by Green Creek and on the west by the ridge connecting Ragged Peak in the south to Camiaca Peak in the north. It is located northwest of the town of Lee Vining. Land ownership within the unit includes approximately 35,279 ac (14,277 ha) of Federal land, 165 ac (67 ha) of Los Angeles Department of Water and Power lands, and 568 ac (230 ha) of other private land. The Federal land is administered by the Humboldt-Toiyabe and Inyo National Forests, Yosemite National Park, and Bureau of Land Management.

Unit 1 begins at a low elevation of about 7,500 ft (2,286 m) on the eastern slope and rises to about 12,000 ft (3,658 m) on the west. It encompasses some areas from 12,000 to over 14,000 ft (3,658 to 4,267 m). It is the northernmost unit proposed for critical habitat designation for the Sierra Nevada bighorn sheep. This unit was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 6, 8; 2000, pp.

5–7) and is currently occupied with a minimum population estimate of 26 individuals (Wehausen and Stephenson 2006, p. 7). Unit 1 contains all of the features essential to the conservation of the Sierra Nevada bighorn sheep. It contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson et al. 2005, pp. 4–14, 31–32, 34, 37–38) and mineral licks (PCE 3) (Chow 1992, p. 52). This unit has good high-and-low elevation winter habitat in the area north of Lee Vining Canyon. Mount Warren has a minimum winter range elevation of about 7,546 ft (2,300 m), while Tioga Crest has this type of habitat at 9,515 ft (2,900 m). In the Lundy Canyon area there is good low-elevation south-facing winter range near 8,038 ft (2,450 m). Dunderberg Peak can provide large areas free of snow in the winter. It does not connect to low-elevation winter range but does connect to summer range in Lundy Canyon; visual winter range condition is mixed to open (Service 2003, pp. 112, 114).

PCEs within unit 1 may require special management considerations or protection to ameliorate the threats of overgrazing and the possible occurrence of disease transmission due to the

proximity of this unit to Forest Service grazing allotments (Clifford *et al.* 2007, pp. 13–14). Additionally, the PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation, and for recreation (e.g., Virginia Lakes, Lundy Lake, Lee Vining Canyon) and development activities (Sections of State Highway 120 are located in this unit). Furthermore, PCEs within unit 1 may require special management considerations or protection in the form of avalanche control to protect against catastrophic events.

Unit 2: Mount Gibbs

Unit 2 consists of approximately 29,702 ac (12,020 ha) in Tuolumne and Mono Counties. Unit 2 is generally bounded on the north by State Route 120 with U.S. Highway 395 located approximately 4 mi (6.4 km) to the east. Route 158 lies along a portion of the southeastern boundary of this unit. The unit is bounded on the west, in part, by Lyell Canyon. It is immediately south of Unit 1 (Mount Warren) and is located southwest of the town of Lee Vining. Land ownership within the unit includes approximately 29,702 ac (12,020 ha) of Federal land. Federal land is administered by the Inyo National Forest and Yosemite National Park.

Unit 2 begins at a low elevation of about 7,500 ft (2,286 m) on the eastern slope and rises to 9,000 to 12,000 ft (2,743–3,658 m) on the west. It encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). Unit 2 was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 7–8; 2000, pp. 6–7) and is currently occupied, with a minimum population estimate of 8 individuals (Wehausen and Stephenson 2006, p. 7). Unit 2 contains all of the features essential to the conservation of the Sierra Nevada bighorn sheep. It contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38) and mineral licks (PCE 3) (Chow 1992, p. 52). An area between Mount Dana and Mount Wood provides considerable high-elevation habitat that is blown free of snow in the winter and connects to south-facing slopes that decline to lower elevations. Winter habitat occurs at a

minimum elevation of 2,775 m (9,105 ft) around Mount Gibbs, 8,859 ft (2,700 m) around Mount Lewis, and 7,546 ft (2,300 m) around Mount Wood; visual winter range condition is open (Service 2003, p. 112). The south-facing side of Mount Lewis is steep and supports little snow in winter. The slopes above Silver Lake offer low-elevation east-facing winter range to 7,599 ft (2,316 m). This area may provide birthing habitat in spring during some years (Service 2003, p. 115).

PCEs within unit 2 may require special management considerations or protection to ameliorate the threats of overgrazing and the possible occurrence of disease transmission due to the proximity of this unit to Forest Service grazing allotments (Clifford *et al.* 2007, pp. 13–14). Additionally, PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation, and for recreation (e.g., Lee Vining Canyon) and development activities (Sections of State Highway 120 is located along the northern boundary of this unit; Route 158 lies along a portion of the southeastern boundary of this unit). Furthermore, PCEs within unit 2 may require special management considerations or protection in the form of avalanche control to protect against catastrophic events.

Unit 3: Convict Creek

Unit 3 consists of approximately 36,514 ac (14,777 ha) in Mono and Fresno Counties. Unit 3 is generally located within an area bounded on the northeast by U.S. Highway 395 (located about 2 mi (3.2 km) away), by Fish Creek and the boundary between Inyo and Sierra National Forests on the west, and by Mono Creek on the south. This unit is located about 3 mi (4.8 km) south of the town of Mammoth Lakes. Land ownership within the unit includes approximately 36,497 ac (14,770 ha) of Federal land and 17 ac (7 ha) of private land. Federal land is administered by the Inyo and Sierra National Forests.

Unit 3 begins at a low elevation of about 7,500 ft (2,286 m) and rises to about 10,500 to 12,000 ft (3,200–3,658 m). The unit encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating,

lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). Mineral licks (PCE 3) may or may not occur in this unit. This unit contains south-facing winter habitat above Convict Lake that descends down to 7,874 ft (2,400 m). This habitat is connected to high-elevation windswept patches on Laurel and Bloody Mountains. McGee Mountain has south-facing winter habitat down to about 8,005 ft (2,440 m) but only a small amount of high-elevation habitat. Nevahbe Ridge has windblown habitat but it is east-facing and occurs down to 8,530 ft (2,600 m) (Service 2003, pp. 112, 116). Visual winter range condition is open (Service 2003, p. 112).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Ober 1931, p. 32; Jones 1950, p. 40; Buechner 1960, p. 69; Barrett 1965, p. 43; Dunaway 1971, p. 19; Wehausen *et al.* 1987 p.66; Wehausen 1988a, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for, increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 4 (Wheeler Ridge) and 2 (Mount Gibbs), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 4: Wheeler Ridge

Unit 4 consists of approximately 80,966 ac (32,766 ha) in Fresno, Inyo, and Mono Counties. Unit 4 is generally located within an area bounded by U.S. Highway 395 (located about 5 to 17 mi (8 to 27.4 km) to the east), by Evolution Creek on the south, by Pavilion Dome, Pilot Nob, and Mills Creek on the west, and by Mono Creek on the north. This unit is located about 12 mi (19.3 km) west of the town of Bishop. Land ownership within the unit includes approximately 80,568 ac (32,605 ha) of Federal land and 398 ac (161 ha) of private land. Federal land is administered by the Inyo and Sierra National Forests, Kings Canyon National Park, and the Bureau of Land Management.

Unit 4 begins at a low elevation of about 5,500 ft (1,676 m) on the eastern slope and rises to about 12,000 ft (3,658

m) on the west. It encompasses numerous areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 5–6, 8; 2000, pp. 3–5, 7) and is currently occupied with a minimum population estimate of 113 individuals (Wehausen and Stephenson 2006, p. 7). Unit 4 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38) and mineral licks (PCE 3, Stephenson 2007, p. 1). The area around Wheeler Ridge provides minimum winter habitat at 5,578 ft (1,700 m) and is visually open (Service 2003, p. 112). Mount Tom is located south of Wheeler Ridge and provides an open winter visual condition and winter habitat at a minimum elevation of 6,398 ft (1,950 m) in Elderberry Canyon (Service 2003, p. 112, 115–116). High-elevation winter habitat is extensive on the west side of Mount Tom's north ridge. Narrow ridges on the south side can be snow free. Between Basin Mountain and Mount Humphreys, the plateau remains snow free and is accessible to sheep traveling ridge lines from Mount Tom by Four Gables and along the crest.

PCEs within unit 4 may require special management considerations or protection to ameliorate the threats of overgrazing and the possible occurrence of disease transmission due to the proximity of this unit to Forest Service grazing allotments (Clifford *et al.* 2007, pp. 13–14). Additionally, PCEs within this unit may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. Finally, PCEs within unit 4 may require special management considerations or protection for the threats due to mining, development, and recreation (e.g., Pine Creek area) and avalanche control may be needed to protect against catastrophic events.

Unit 5: Taboose Creek

Unit 5 consists of approximately 28,805 ac (11,657 ha) in Inyo and Fresno Counties. Unit 5 is generally located within an area bounded on the north by Big Pine Creek and on the south by

Taboose Creek. U.S. Highway 395 is about 8.5 mi (13.7 km) to the east, and Marion and Observation Peaks are located to the west. This unit is located about 5 mi (8 km) southwest of the town of Big Pine. Land ownership within the unit includes approximately 28,805 ac (11,657 ha) of Federal land. Federal land is administered by the Inyo National Forest and Kings Canyon National Park.

Unit 5 begins at a low elevation of about 6,000 ft (1,829 m) on the eastern slope and rises to 12,000 to over 14,000 ft (3,658–4,267 m) on the west. This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). Mineral licks (PCE 3) may or may not occur in this unit. High windblown areas (9,187 ft (2,800 m)) occur on Birch and Kid Mountains that may support bighorn sheep. There appears to be limited low-elevation south- or east-facing habitat unless animals move south to Red Mountain or Taboose Creeks. Taboose Creek offers patches of high-elevation winter habitat and south-facing low-elevation habitat where it occurs as low as 6,398 ft (1,950 m). The northeast side of Kid Mountain provides some low habitat near 7,218 ft (2,200 m) (Service 2003, pp. 113, 118). The winter range visual condition is open in these areas (Service 2003, p. 113).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Ober 1914, p. 125; Jones 1950, p. 38; Buechner 1960, 69; Dunaway 1971 p. 19; Wehausen *et al.* 1987 p.66; Wehausen 1988a, p. 101; Berger 1990, p.94). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 6 (Sawmill Canyon) and 4 (Wheeler Ridge), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 6: Sawmill Canyon

Unit 6 consists of about 30,508 ac (12,346 ha) in Fresno and Inyo Counties. Unit 6 is generally located within an area bounded on the east by U.S. Highway 395 (located about 3 mi (4.8 km) away), on the south by Unit 7 (Mount Baxter) and Sawmill Pass and Creek, on the west by Woods Creek and the South Fork of Woods Creek, and on the north by Taboose Creek. Land ownership within the unit includes approximately 30,508 ac (12,346 ha) of Federal land. Federal land is administered by the Inyo National Forest and Kings Canyon National Park.

Unit 6 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to about 10,500 to 12,000 ft (3,200–3,658 m). It encompasses a few areas from 12,000 to over 14,000 ft (3,658–4,267 m). Unit 6 was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 4–5, 8; 2000, pp. 3, 7) and is currently occupied with a minimum population estimate of 36 individuals (Wehausen and Stephenson 2006, p. 7). Unit 6 has features that are essential to the conservation of the Sierra Nevada bighorn sheep. It contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is not known if mineral licks (PCE 3) occur on this unit. Unit 6 provides foraging habitat at the northern boundary near Mount Pinchot (Service 2003, p. 118). In addition, minimum elevations of winter habitat occur in the Goodale Creek area at 6,890 ft (2,100 m) and in the Sawmill Creek area at 4,922 ft (1,500 m); winter visual condition is open (Service 2003, p. 113).

PCEs within unit 6 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. Unit 6 PCEs also may require special management considerations or protection for threats due to recreation, and avalanche control may be needed to protect against catastrophic events.

Unit 7: Mount Baxter

Unit 7 consists of approximately 32,220 ac (13,039 ha) in Fresno and Inyo Counties. Unit 7 is generally located within an area bounded on the east by U.S. Highway 395 (located about 3 mi

(4.8 km) away), on the south by Bubbs Creek and the Road 13S17 to Independence, on the west by Mount Bago, Gardiner Lakes, and Mount Clarence King, and on the north by Unit 6 (Sawmill Canyon) and Sawmill Pass and Creek. This unit is located about 6 mi (9.7 km) west of the town of Independence. Land ownership within the unit includes approximately 32,198 ac (13,030 ha) of Federal land and 22 ac (9 ha) of private land. Federal land is administered by the Inyo National Forest and Kings Canyon National Park.

Unit 7 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to about 10,500 to 12,000 ft (3,200–3,658 m) on the west. It encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). Unit 7 was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 3–4, 8; 2000, pp. 2–3, 7) and is currently occupied with a minimum population estimate of 69 individuals (Wehausen and Stephenson 2006, p. 7). Unit 7 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. It contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38) and mineral licks (PCE 3) (Jones 1950, p. 63; Hicks and Elder 1979, p. 911). This unit provides foraging habitat along the ridges and in drainages of Mount Baxter. Minimum elevations of winter habitat in the Thibaut-Sand Mountain area occur at 5,003 ft (1,525 m), and in the Onion Valley area at 7,546 ft (2,300 m); winter visual condition is open (Service 2003, p. 113).

In addition to containing the features essential to the conservation of the Sierra Nevada bighorn sheep, Unit 7 has additional conservation value as it served as a source population, due to its size and productivity, for reintroductions to the Wheeler Crest area (1979, 1980, 1982, 1986, 1988), Mount Langley (1980 and 1982), and Lee Vining Canyon area (1986, 1988) (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, p. 6). Individuals from this population may be used for future translocations within the range.

PCEs within unit 7 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more

open habitat and potentially reduce predation. PCEs within unit 7 also may require special management considerations or protection for threats due to recreation (e.g., Baxter Pass and Onion Valley), and avalanche control may be needed to protect against catastrophic events.

Unit 8: Mount Williamson

Unit 8 consists of about 32,560 ac (13,177 ha) in Inyo and Tulare Counties. Unit 8 is generally located within an area bounded on the east by U.S. 395 (located about 9 mi (14.5 km) away), on the south by Tulainyo Lake, on the west by the Kern River (located about 3.5 miles (5.6 km) away), and on the north by Road 13S17 to Independence about 1.5 mi (2.4 km) away. This unit is located southwest of the town of Independence and northwest of the town of Lone Pine. Land ownership within the unit includes approximately 32,560 ac (13,177 ha) of Federal land. Federal land is administered by the Inyo National Forest and Sequoia and Kings Canyon National Parks.

Unit 8 begins at a low elevation of about 6,000 ft (1,829 m) on the eastern slope and rises to 12,000 to over 14,000 ft (3,658–4,267 m) on the west. Unit 8 was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 2–3, 8; 2000, pp. 1–2, 7) and is currently occupied with a minimum population estimate of 20 individuals (Wehausen and Stephenson 2006, p. 7). Unit 8 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is not known if mineral licks (PCE 3) occur in this unit. The Shepherd Creek-Pinyon Creek area in this unit offers winter habitat at a minimum elevation of 6,808 ft (2,075 m); the George Creek-North Bairs Creek provides this habitat at 6,234 ft (1,900 m) (Service 2003, p. 113). The winter visual condition is mixed (Service 2003, p. 113).

PCEs within unit 8 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. This unit could provide an estimated additional 1,433 ac (5.8 km²) of winter range with a relative

probability of equal to or greater than 10 percent use if forests were reduced by burning (Johnson *et al.* 2005, p. 34). Furthermore, PCEs within unit 8 also may require special management considerations or protection for threats due to recreation (e.g., Whitney Portal and Trailhead), and avalanche control may be needed to protect against catastrophic events.

Unit 9: Big Arroyo

Unit 9 consists of approximately 24,987 ac (10,112 ha) in Tulare County. Unit 9 is generally located within an area bounded on the east by the Kern River, on the north by Kern-Kaweah River, Junction Meadow, and Wallace Creek area, and on the west and south by the Big Arroyo Creek. Land ownership within the unit includes approximately 24,987 ac (10,112 ha) of Federal land. Federal land is administered by Sequoia National Park.

Unit 9 begins at a low elevation of about 6,500 ft (1,981 m) on the eastern slope and rises to about 12,000 ft (3,658 m) on the west. The northern boundary encompasses areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is not known if mineral licks (PCE 3) are located within this unit. This unit contains no high-elevation wind-swept areas (Service 2003, p. 121). Winter habitat is provided at a minimum elevation of 6,890 ft (2,100 m) with a mixed visual condition due to scattered trees (Service 2003, pp. 113, 121). From the upper end of the Big Arroyo drainage, sheep could find access to alpine habitat on Kaweah Peaks.

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Jones 1950, p. 35; Buecher 1960, p. 69; Barrett 1965, p. 43; Riegelhuth 1965, p. 35; Wehausen 1988b, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Units 10 (Mount Langley) and 8 (Mount Williamson), increasing

opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 10: Mount Langley

Unit 10 consists of approximately 32,845 ac (13,292 ha) in Inyo and Tulare Counties. Unit 10 is generally located within an area bounded on the east by Route 190 located from immediately adjacent to the unit to 7 mi (11.3 km) away, on the south by Muah Mountain, on the west by Cirque Peak and Perrin Creek area, and on the north by Lone Pine Creek. This unit is located about 7 mi (11.3 km) southwest of the town of Lone Pine. Land ownership within the unit includes approximately 32,845 ac (13,292 ha) of Federal land. Federal land is administered by the Inyo National Forest, Sequoia National Park, and Bureau of Land Management.

Unit 10 begins at a low elevation of about 4,500 ft (1,372 m) on the eastern slope and rises to 9,000 to 12,000 ft (2,743–3,658 m) on the west side. It encompasses areas between 12,000 and 14,000 ft (3,658–4,267 m). Unit 10 was occupied at the time of listing (65 FR 20, January 3, 2000; Wehausen 1996, p. 477; Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 6–7; Wehausen 1999, pp. 1–2, 8; 2000, pp. 1, 7) and is currently occupied with a minimum population estimate of 90 individuals (Wehausen and Stephenson 2006, p. 7). Unit 10 contains features that are essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is not known if mineral licks (PCE 3) occur in this unit. The unit provides low elevation (5,742 ft (1,750 m)) mixed winter range in the Carroll Creek-Turtle Creek area. It also provides low-elevation (4,757 ft (1,450 m)), open winter range in the Slide Canyon-Cottonwood Creek area (Service 2003, pp. 113, 119). From this area it is thought bighorn sheep could cross a short distance of the open south-facing forest by Wonoga Peak to access the large open plateau country. It is also possible that bighorn sheep using the Cottonwood Creek area use summer range to the southeast of the Kern Plateau where elevations are about

10,000 ft (3,048 m) (Service 2003, pp. 119–120).

PCEs within unit 10 may require special management considerations or protection to reverse the impacts of fire suppression which would provide more open habitat and potentially reduce predation. This unit could provide an estimated additional 1,161 ac (4.7 km²) of winter range with a relative probability of equal to or greater than 10 percent use if forests were reduced by burning (Johnson *et al.* 2005, p. 34). PCEs within unit 10 also may require special management considerations or protection for threats due to recreation (*e.g.*, Whitney Portal and Trailhead), and development (Route 190 crosses a portion of this unit). Furthermore, PCEs within unit 10 may require special management considerations or protection in the form of avalanche control to protect against catastrophic events.

Unit 11: Laurel Creek

Unit 11 consists of approximately 22,037 ac (8,918 ha) in Tulare County. Unit 11 is generally located within an area bounded on the east by the Kern River, on the south by Pistol, Laurel, and Golden Trout Creeks, on the west by a portion of Little Kern River, and on the north by Soda Creek. Land ownership within the unit includes approximately 22,037 ac (8,918 ha) of Federal land. Federal land is administered by the Sequoia National Forest and Sequoia National Park.

Unit 11 begins at a low elevation of about 6,500 ft (1,981 m) on the eastern slope and rises to 10,500 to 12,000 ft (3,200–3,658 m) on the west. It includes a few small areas from 12,000 to over 14,000 ft (3,658–4,267 m). This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is unknown whether mineral licks (PCE 3) occur in this unit. This unit contains no high-elevation wind-swept areas (Service 2003, p. 121). Winter habitat is provided at a minimum elevation of 6,808 ft (2,075 m) with a mixed visual condition due to scattered trees (Service 2003, pp. 113, 121). Laurel Creek provides access to summer range.

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area

historically (Buechner 1960 p. 69; Barrett 1965, p. 43; Wehausen 1988b, p. 100). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Unit 10 (Mount Langley), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Unit 12: Olancho Peak

Unit 12 consists of approximately 30,421 ac (12,311 ha) in Tulare and Inyo Counties. Unit 12 is generally located within an area bounded on the east by U.S. Highway 395, on the south by Falls and Walker Creeks, on the west by portions of the Pacific Crest National Scenic Trail, and on the north by Muah Mountain. This unit is located west of the towns of Cartago and Olancho. Land ownership within the unit includes approximately 30,421 ac (12,311 ha) of Federal land. Federal land is administered by the Inyo National Forest and Bureau of Land Management.

Unit 12 begins at a low elevation of about 4,000 ft (1,219 m) on the eastern slope and rises to about 9,000 to 10,500 ft (2,743–3,200 m) on the west. It is the southernmost unit proposed for critical habitat designation for the Sierra Nevada bighorn sheep. This unit was not occupied at the time of listing and is not currently occupied, but is essential to the conservation of the Sierra Nevada bighorn sheep. The unit contains a range of vegetation types, and steep, rocky terrain which provides for foraging (summer and winter), mating, lambing, predator avoidance, and bedding and allows for seasonal elevational movements (PCE 1 and PCE 2) (Service 2003, pp. 3–7; Johnson *et al.* 2005, pp. 4–14, 31–32, 34, 37–38). It is not known if mineral licks (PCE 3) occur within this unit. This unit provides bighorn sheep habitat in the areas of Ash, Braley, Cartago, Olancho, and Falls Creeks. Carago, Olancho and Falls Creeks connect by Olancho Canyon to Olancho Peak (12,123 ft (3,695 m)) which provides some alpine summer habitat (southernmost in the Sierra Nevada) (Service 2003, p. 120). Winter range occurs as open, low-elevation (4,757 ft (1,450 m)), south-facing slopes (Service 2003, pp. 113, 120).

While this unit was not occupied at the time of listing, Sierra Nevada bighorn sheep occupied the area historically (Jones 1950, p. 39; Wehausen *et al.* 1987, p. 66; Wehausen 1988a, p. 101). This unit is essential to the conservation of the Sierra Nevada bighorn sheep for increasing the number of herds to reduce the significance of losing any particular herd, increasing population viability, decreasing the degree of fragmentation of the current geographic distribution between this unit and Unit 10 (Mount Langley), increasing opportunities for genetic exchange between these units, and increasing overall herd numbers to reduce extinction risk from stochastic events. Conservation of this unit is necessary to achieve the long-term viability of this subspecies within its range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (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. Under current national policy and the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing under the Act or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to allow a

Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing the proposed action because of the section 7(a)(2) compliance process, should we list those species or designate the critical habitat.

We may provide advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We may conduct either an informal or a formal conference. We typically use an informal conference if the proposed action is not likely to have any adverse effects to the species proposed for listing or proposed critical habitat. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to cause adverse effects to species proposed for listing or proposed critical habitat, inclusive of those that may cause jeopardy or adverse modification.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed critical habitat according to 50 CFR 402.14, as if the proposed critical habitat were already 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 the 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, we document compliance with the requirements of section 7(a)(2) through our 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. We define "Reasonable and prudent alternatives" 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,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, 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 we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's 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 Sierra Nevada bighorn sheep 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 U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also 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 "Adverse Modification" Standard

The analytical framework described in the Director's December 9, 2004, memorandum will be used to complete section 7(a)(2) analysis for Federal actions affecting Sierra Nevada bighorn sheep critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for Sierra Nevada bighorn sheep. Generally, the conservation role of Sierra Nevada bighorn sheep 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, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for Sierra Nevada bighorn sheep include, but are not limited to:

(1) Actions that would significantly reduce ongoing management and conservation efforts that benefit the Sierra Nevada bighorn sheep on public lands. Such activities could include, but are not limited to, the sale, exchange, or lease of lands managed by the United States Forest Service (USFS) or other Federal agency. These activities could reduce the amount of space that is available for individual and population growth and normal behavior, as well as reduce or eliminate the number and extent of sites for foraging, breeding, reproduction, and rearing of offspring. These activities could also reduce the opportunities available to Federal agencies to exercise their section 7(a)(1) responsibilities to carry out programs to conserve listed species.

(2) Actions that would significantly reduce the availability of or accessibility to summer and winter ranges. Such activities could include, but are not limited to, grazing, mining, and road construction activities. These activities could degrade, reduce, fragment or eliminate available foraging resources or

alter current foraging activities of Sierra Nevada bighorn sheep.

(3) Actions that would result in the significant expansion of tall, dense vegetation such as timber within bighorn sheep habitat. Such activities could include, but are not limited to, fire suppression. These activities could allow expansion of vegetation cover such that movement patterns of bighorn sheep are altered by avoidance of these areas. Tall, dense vegetation provides cover for predators such as the mountain lion, a common predator of Sierra Nevada bighorn sheep.

(4) Actions that would create significant barriers to movement. Such activities could include, but are not limited to, road construction, and resort or campground facility development or expansion. These activities could interfere with movement within and between habitats reducing the availability of habitat for foraging, breeding, reproduction, sheltering, and rearing of offspring. These activities could also reduce opportunities for movement between existing populations. Dispersal and interaction between populations could be affected, restricting gene flow and jeopardizing the integrity of the gene pool. Road construction can result in the direct mortality of individuals through collisions with vehicles.

(5) Actions that would significantly degrade habitat or cause a disturbance to Sierra Nevada bighorn sheep. Such activities could include, but are not limited to, recreational activities, such as off-road vehicle use, hiking, camping, rock climbing, and outfitter guides and pack animal expeditions. These activities could impact the quality and quantity of forage across landscape or displace animals from key foraging areas. These activities could also impact the accessibility to key habitats such as escape terrain, breeding sites, or lambing areas. If animals flee these areas as a result of these activities, energy is expended which can negatively impact the animal's body condition, resulting in possible reduced reproductive success.

We consider all of the units proposed as critical habitat to contain features essential to the conservation of the Sierra Nevada bighorn sheep, including those units which were not occupied at the time of listing. All units are within the historic geographic range of the subspecies, and those units which were not occupied at the time of listing have been determined to be essential for the conservation of the Sierra Nevada bighorn sheep. Detailed descriptions of the units and their occupancy status can be found in each of the Unit

descriptions or within Table 3. Under section 7 of the Act, Federal agencies already consult with us on activities in areas currently occupied by the Sierra Nevada bighorn sheep, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the Sierra Nevada bighorn sheep.

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, 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 Congressional record is clear that the Secretary has 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 we consider an exclusion 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 are considering. In addition, we are conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment when it is complete. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, the Secretary may exclude from critical habitat additional areas beyond those identified in this assessment under the provisions of section 4(b)(2) of the Act. This is also addressed in our implementing regulations at 50 CFR 242.19.

Currently, we are aware of four documents related to the conservation and recovery of the Sierra Nevada bighorn sheep. We reviewed these documents, but we are not currently

proposing the exclusion of lands covered by them for reasons indicated below. These documents include the Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1984), the Bighorn Sheep Management Plan (National Park Service 1986), the Inyo National Forest Resource & Management Plan (U.S. Forest Service 1988), and A Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997). All of these documents were prepared prior to the emergency listing of the Sierra Nevada bighorn sheep in 1999.

The goal of the Sierra Nevada Bighorn Sheep Recovery and Conservation Plan (Sierra Bighorn Sheep Interagency Advisory Group 1984, pp. 1–2) was to improve the status of the Sierra Nevada bighorn sheep by (1) maintaining the health and viability of existing populations, and by promoting the establishment of at least 3 populations that exceeded 100 animals and were geographically distant from one another; (2) restoring bighorn sheep to former ranges within the Sierra Nevada where ecologically, economically, and politically feasible and where favorable to their success; and (3) ensuring genetic integrity by using only bighorn from existing Sierra Nevada populations to restock historic ranges. Conservation recommendations made in A Conservation Strategy for Sierra Nevada Bighorn Sheep (Sierra Nevada Bighorn Sheep Interagency Advisory Group 1997, pp. 11–14) related to restoration of the Sierra Nevada bighorn sheep in a distribution that assures long-term viability and reestablishment throughout its native range and included preservation of current populations, predator control, fire (let burn policy), grazing by domestic sheep and goats, genetic diversity, reintroductions and augmentations, and research and monitoring. The goal of the Bighorn Sheep Management Plan (National Park Service 1986, pp. 1–2) was to restore and perpetuate bighorn sheep and to protect the integrity of the ecosystem. Management was directed toward restoring and maintaining populations of bighorn sheep for ecological, scientific, educational, aesthetic, and recreational values. The Inyo National Forest's Land & Resource Management Plan (U.S. Forest Service 1988, pp. 101–102) provided guidance to maintain existing sheep habitat, expand the range of bighorn sheep by transplanting animals into suitable unoccupied habitats within the historic

range, maintain the health of existing herds by not allowing an increase in livestock use if disease transmission was shown to be harmful to bighorn sheep, and prohibit the conversion of livestock type from cattle to sheep on or adjacent to existing or approved reintroduction sites for the bighorn sheep.

The Inyo National Forest also established two California Bighorn Sheep Zoological Areas for the Mount Baxter and Mount Williamson herds. These areas totaled 4,505 acres (1,823 hectares) in addition to existing wilderness lands (36,235 acres (14,664 hectares)) occupied by bighorn sheep. In 1981, forest officials issued Order No. 04–81–3, which prohibited entrance into these areas without a valid visitor use permit, and restricted entrance into closed portions of the zoological areas during certain time periods, and the presence of dogs, or the discharge of firearms unless taking a game animal legally permitted by the State of California (U.S. Forest Service 1981, p. 1). Exemptions were allowed for certain individuals and duties/activities. This order was issued during a time when recreational use was thought to be having a detrimental impact on the Mount Baxter and Mount Williamson herds.

While these plans were prepared to assist in the restoration and recovery and habitat protection of the Sierra Nevada bighorn sheep, they were written prior to the listing of this subspecies, which occurred in 1999 and 2000, and they generally offer only guidance and recommendations related to translocations, research, monitoring, education, and habitat management with little specificity of actions to be implemented. The guidance provided in these documents and the recreational prohibitions in the California Bighorn Sheep Zoological Areas did not provide sufficient, nor necessarily appropriate, protections, to the Sierra Nevada bighorn sheep or its habitat to prevent its listing under the Act.

Economic Analysis

We are preparing an analysis of the economic impacts of proposing critical habitat for the Sierra Nevada bighorn sheep. 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://www.fws.gov/nevada>, or by contacting the Nevada Fish and Wildlife Office directly (see **ADDRESSES** section). We may exclude areas from the

final rule based on the information in the economic analysis.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, our final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if we receive any requests for hearings. Per 4(b)(5)(e), a request for hearing must be received within 45 days of publication of the proposal. 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 before the first hearing.

Required Determinations

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.

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues, but we do not anticipate that it will 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. In order to determine the economic consequences of designating the specific area as critical habitat we are preparing a draft economic analysis of this proposed action, which will be available for public comment. This economic analysis also will be used to determine compliance with E.O. 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, E.O. 12630, E.O. 13211, and E.O. 12875.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A-4, September 17, 2003). Under Circular A-4, once an agency determines that the Federal regulatory action is appropriate, the agency must 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 pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both constitutes our regulatory alternative analysis for designations.

We will announce the availability of the draft economic analysis in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis will also be available on the Internet at <http://www.fws.gov/>

nevada, or at the Nevada Fish and Wildlife Office (see **ADDRESSES**).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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. SBREFA amended 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, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, 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. We have 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 we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use

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. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule to designate critical habitat for the Sierra Nevada bighorn sheep is a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues, we do not expect it 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. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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 onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the vast majority of the lands involved in the proposed designation are Federal (e.g., U.S. Forest Service, National Park Service, and Bureau of Land Management). As such, a Small Government Agency Plan is not required. However, as we conduct our economic analysis, we will further evaluate this issue and revise this assessment if appropriate.

Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Sierra Nevada bighorn sheep in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Sierra Nevada bighorn sheep 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 E.O. 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 critical habitat designation

with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Sierra Nevada bighorn sheep imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Sierra Nevada bighorn sheep.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 *et seq.*) 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 Circuit Court of the United States for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (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), E.O. 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. We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation, and no tribal lands that are essential for the conservation of the Sierra Nevada bighorn sheep. Therefore, we have not proposed designation of critical habitat for the Sierra Nevada bighorn sheep on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary authors of this package are staff from the Nevada Fish and Wildlife and the Ventura Fish and Wildlife Offices.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for “Sheep, Sierra Nevada bighorn” under “MAMMALS” in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Sheep, Sierra Nevada big-horn.	<i>Ovis canadensis sierrae</i> .	U.S.A. (western States), Canada, Mexico (north).	conterminous (south-west), U.S.A. (CA)—Sierra Nevada.	E	660E, 675	17.95(a)	NA
*	*	*	*	*	*		*

3. In § 17.95(a), add an entry for “Sierra Nevada bighorn sheep (*Ovis canadensis sierrae*)” in the same alphabetical order in which the subspecies appears in the table in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Sierra Nevada Bighorn Sheep (*Ovis Canadensis Sierrae*)

(1) Critical habitat units are depicted for Mono, Fresno, Inyo, Tulare, and Tuolumne counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Sierra Nevada bighorn sheep are the habitat components that provide:

(i) Non-forested habitats or forest openings within the Sierra Nevada from 4,000 ft (1,219 m) to 14,500 ft (4,420 m) in elevation with steep (greater than or

equal to 60 percent slope), rocky slopes that provide for foraging, mating, lambing, predator avoidance, and bedding and allow for seasonal elevational movements between these areas.

(ii) Presence of a variety of forage plants as indicated by the presence of grasses (e.g., *Achnanthera* spp.; *Elymus* spp.) and browse (e.g., *Ribes* spp.; *Artemisia* spp., *Purshia* spp.) in winter, and grasses, browse, sedges (e.g., *Carex* spp.) and forbs (e.g., *Eriogonum* spp.) in summer.

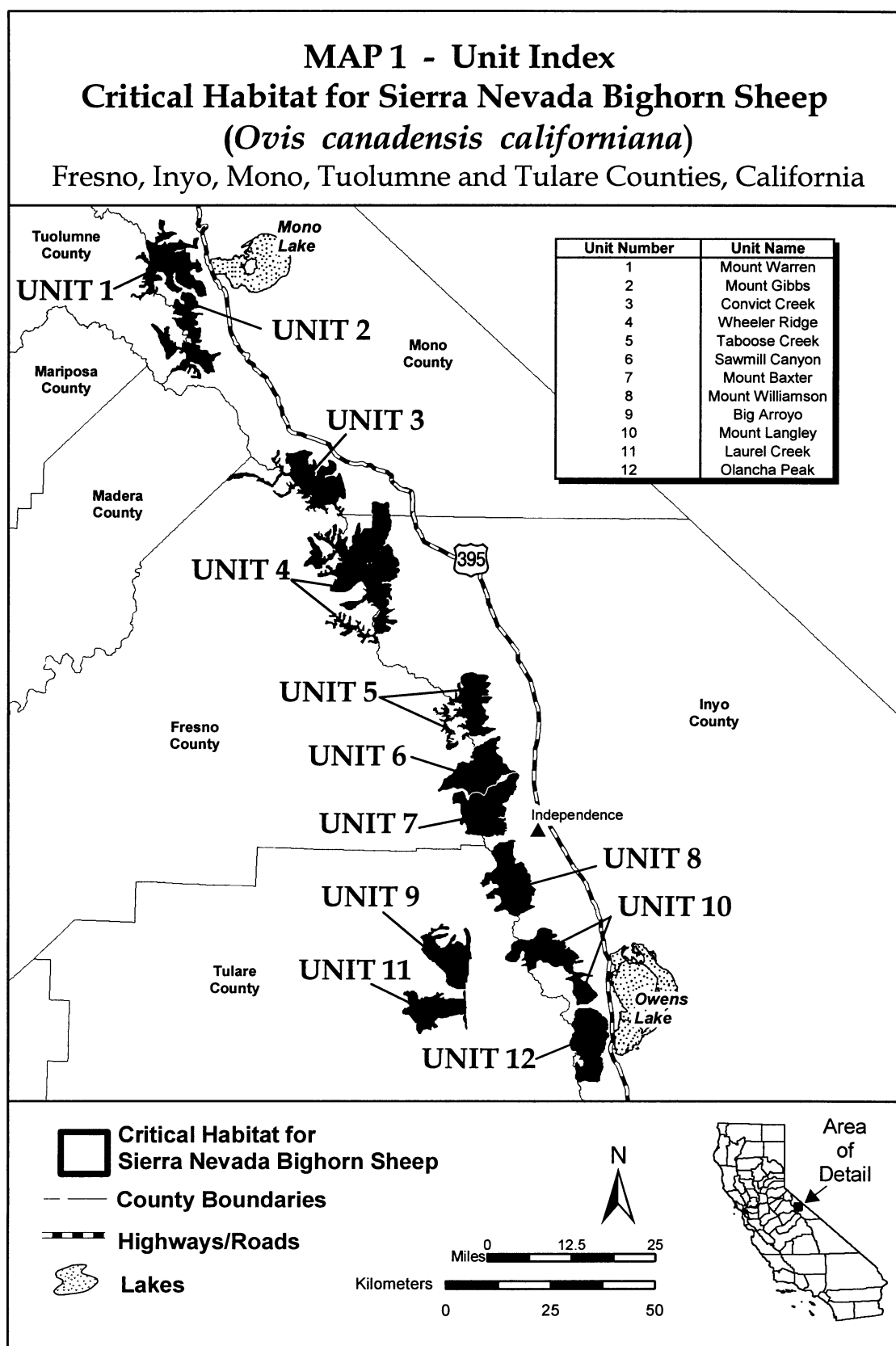
(iii) Presence of granite rock outcroppings containing minerals such as sodium, calcium, iron, and phosphorus that could be used as salt licks/mineral licks in order to meet nutritional needs.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they

are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units—Boundaries of proposed critical habitat were derived from Sierra Nevada Bighorn Sheep Herd Units developed by the California Department of Fish and Game for the final Sierra Nevada Bighorn Sheep (SNBS) recovery plan. The proposed critical habitat unit boundaries differ from SNBS Herd Unit polygons by the removal of developed areas and private parcels that are unlikely to contain the primary constituent elements. The data were projected to Universal Transverse Mercator (UTM), zone 11, on the North American Datum of 1983.

(5) Note: Index map of Sierra Nevada bighorn sheep critical habitat (Map 1) follows:



BILLING CODE 4310-55-P

(6) Unit 1 (Mount Warren); Mono and Tuolumne Counties, California.

(i) From USGS 1:24,000 scale quadrangles Dunderberg Peak, Lundy, Tioga Pass, and Mount Dana. Land bounded by the following UTM zone 11

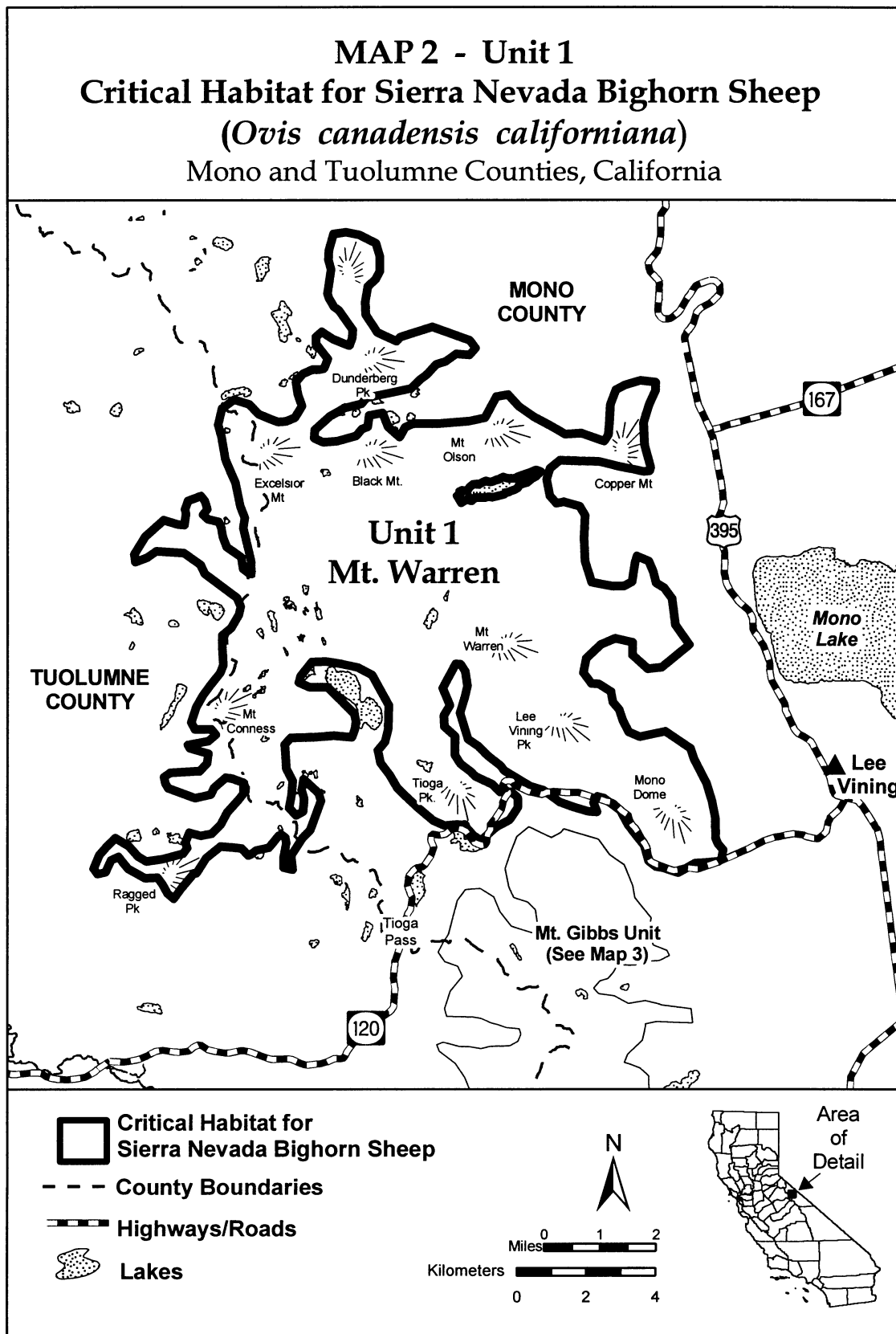
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4211739; 305477, 4211807; 305515,
4211863; 305405, 4211903; 305374,

4211907; 305176, 4211813; 305029,
4211770; returning to 304870, 4211718.

(ii) Note: Map of Unit 1 Mount
Warren for Sierra Nevada bighorn sheep
(Map 2) follows:



(7) Unit 2 (Mount Gibbs); Mono and Tuolumne Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Dana, Vogelsang Peak, Kiop Peak, and June Lake. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 305185, 4201586; 305855, 4201263; 306124, 4201406; 306203, 4201516; 306615, 4201390; 307214, 4201220; 307539, 4200758; 307946, 4200481; 308191, 4199870; 308255, 4199529; 308437, 4199297; 308728, 4198949; 308679, 4198612; 308778, 4198157; 309188, 4197993; 309259, 4197840; 308990, 4197698; 308498, 4197676; 308268, 4197570; 308079, 4197576; 307891, 4197582; 307737, 4197512; 307657, 4197364; 307500, 4197181; 307271, 4197113; 307075, 4196893; 307221, 4196737; 307673, 4196685; 308081, 4196446; 308575, 4196543; 308912, 4196457; 309062, 4196415; 309890, 4196313; 309934, 4195897; 309443, 4195913; 309141, 4195923; 308877, 4195931; 308572, 4195866; 308570, 4195790; 308525, 4195566; 308481, 4195379; 308053, 4194978; 307970, 4194755; 308120, 4194712; 308418, 4194590; 308675, 4194356; 308668, 4194130; 308697, 4193865; 308613, 4193604; 308382, 4193461; 308112, 4193281; 307734, 4193293; 307728, 4193105; 307761, 4192953; 308063, 4192944; 308472, 4192742; 308775, 4192770; 308930, 4192878; 309271, 4192905; 309416, 4192712; 309403, 4192298; 309382, 4191659; 309372, 4191358; 309323, 4190983; 309238, 4190684; 309151, 4190348; 308920, 4190204; 308879, 4190093; 309026, 4189975; 309327, 4189928; 309478, 4189923; 309626, 4189843; 309582, 4189656; 309389, 4189511; 309271, 4189365; 309114, 4189181; 308699, 4189195; 308470, 4189127; 308167, 4189099; 308163, 4188986; 308347, 4188829; 308683, 4188705; 308907, 4188623; 309244, 4188537; 309241, 4188424; 309232, 4188161; 309187, 4187936; 309219, 4187747; 309325, 4187517; 309475, 4187475; 309740, 4187504; 309966, 4187459; 310116, 4187454; 310418, 4187445; 310796, 4187433; 310981, 4187314; 311089, 4187160; 311233, 4186929; 311450, 4186621; 311820, 4186383; 312166, 4186560; 312582, 4186585; 312850, 4186689; 313267, 4186713; 313537, 4186893; 313956, 4186993; 314142, 4186911; 314210, 4186683; 313896, 4186317; 313515, 4186216; 313165, 4185888; 312814, 4185560; 312729, 4185262; 312376, 4184859; 312069, 4184718; 312061, 4184454; 312163, 4184112; 312082, 4183926; 312340, 4183730; 312407, 4183464; 312433, 4183087; 312500, 4182821; 312680,

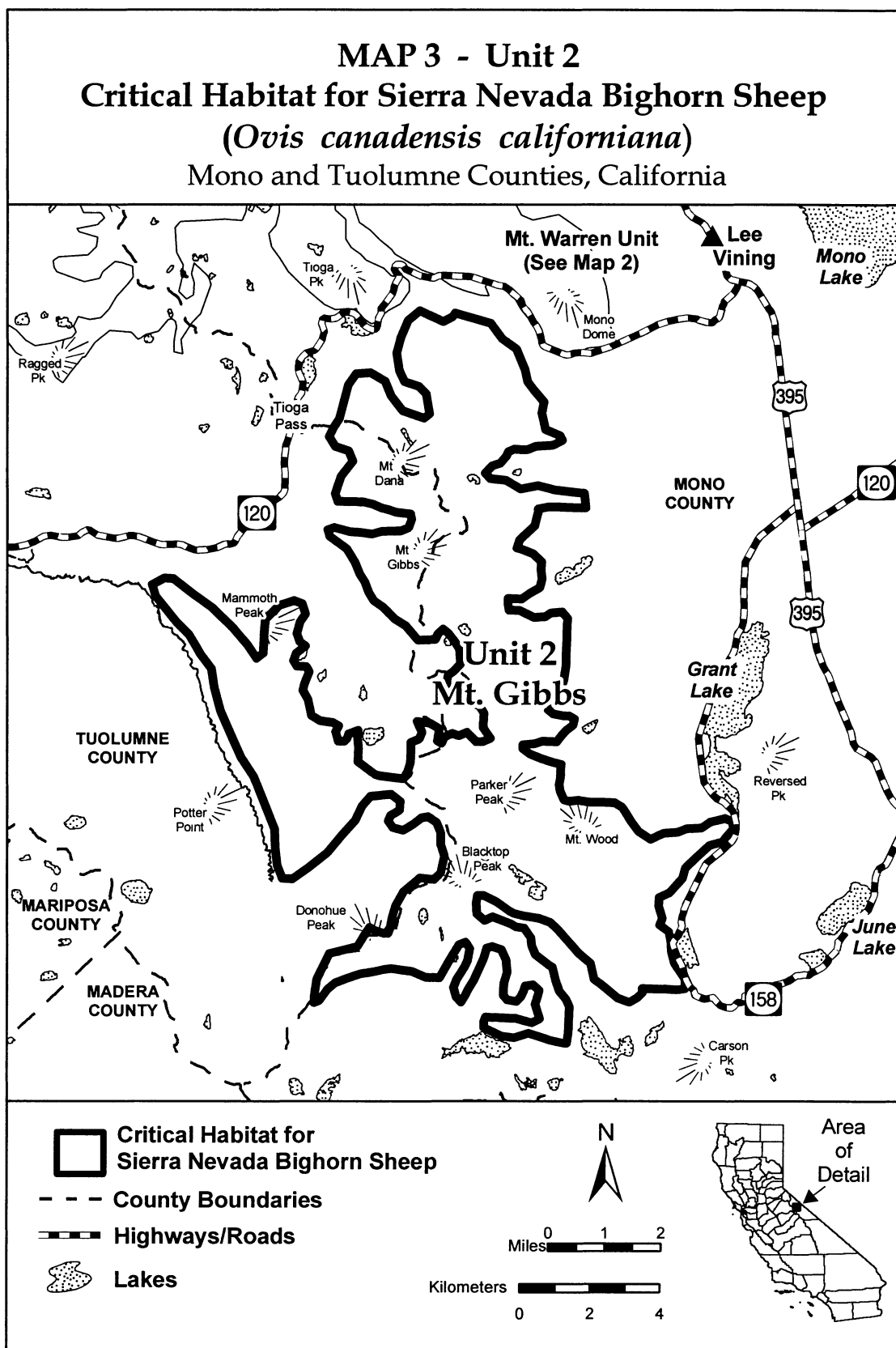
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(ii) Note: Map of Unit 2 (Mount Gibbs)
for Sierra Nevada bighorn sheep (Map 3)
follows:



(8) Unit 3 (Convict Creek); Fresno and Mono Counties, California.

(i) From USGS 1:24,000 scale quadrangles Crystal Crag, Bloody

Mountain, Convict Lake, Graveyard Peak, and Mount Abbot. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 327481, 4161516;

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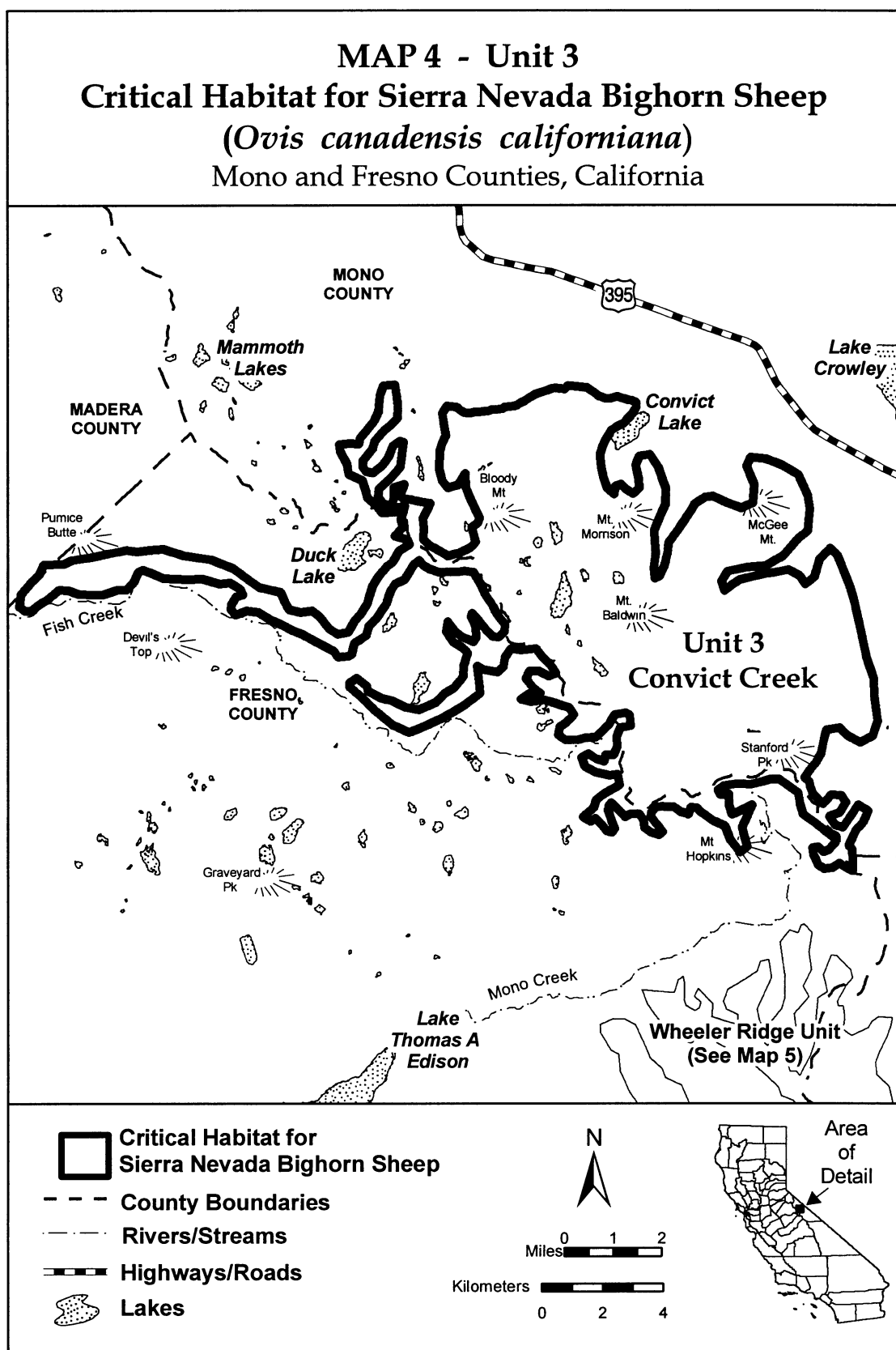
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returning to 327481, 4161516.

(ii) Note: Map of Unit 3 (Convict Creek) for Sierra Nevada bighorn sheep (Map 4) follows:

BILLING CODE 4310-55-P



(9) Unit 4 (Wheeler Ridge); Fresno, Inyo and Mono Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Abbot, Mount

Morgan, Mount Hilgard, Mount Tom, Tungsten Hills, Mount Henry, Mount Darwin and Mount Thompson. Land

bounded by the following UTM zone 11 NAD83 coordinates (E, N): 351676, 4150867; 352490, 4150441; 352738,

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 351676, 4150867; excluding land

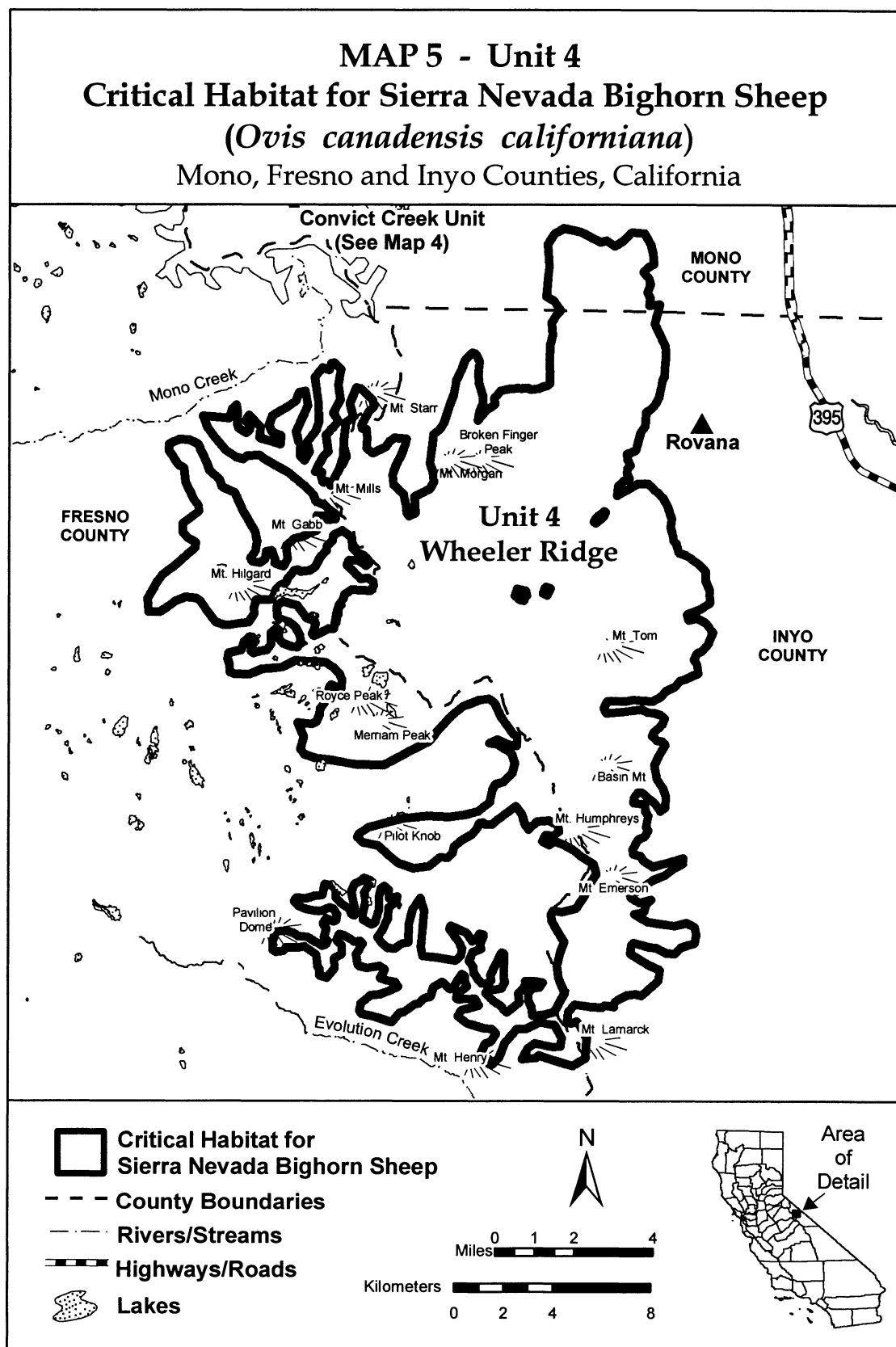
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(ii) Note: Map of Unit 4 (Wheeler Ridge) for Sierra Nevada bighorn sheep (Map 5) follows:

BILLING CODE 4310-55-P



(10) Unit 5 (Taboose Creek); Fresno and Inyo Counties, California.

(i) From USGS 1:24,000 scale quadrangles Coyote Flat, North Palisade,

Split Mountain, Fish Springs, Mount Pinchot, and Aberdeen. Land bounded by the following UTM zone 11 NAD83

coordinates (E, N): 376756, 4109414; 376837, 4109413; 376838, 4109467; 376865, 4109466; 377166, 4109426;

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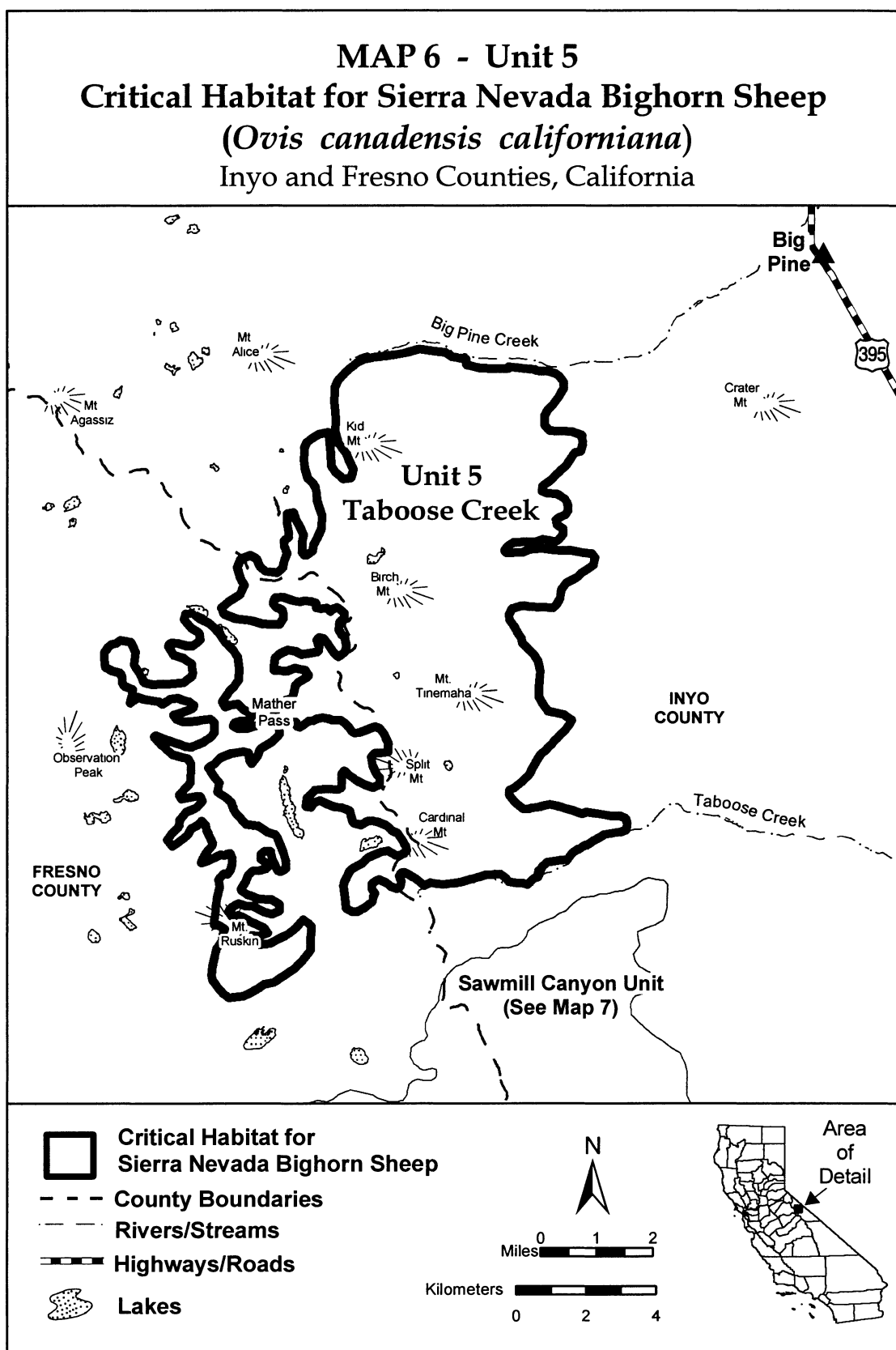
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(ii) *Note:* Map of Unit 5 (Taboose Creek) for Sierra Nevada bighorn sheep (Map 6) follows:

BILLING CODE 4310-55-P



(11) Unit 6 (Sawmill Canyon); Fresno and Inyo Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Pinchot, Aberdeen,

Mount Clarence King and Kearsarge Peak. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N):

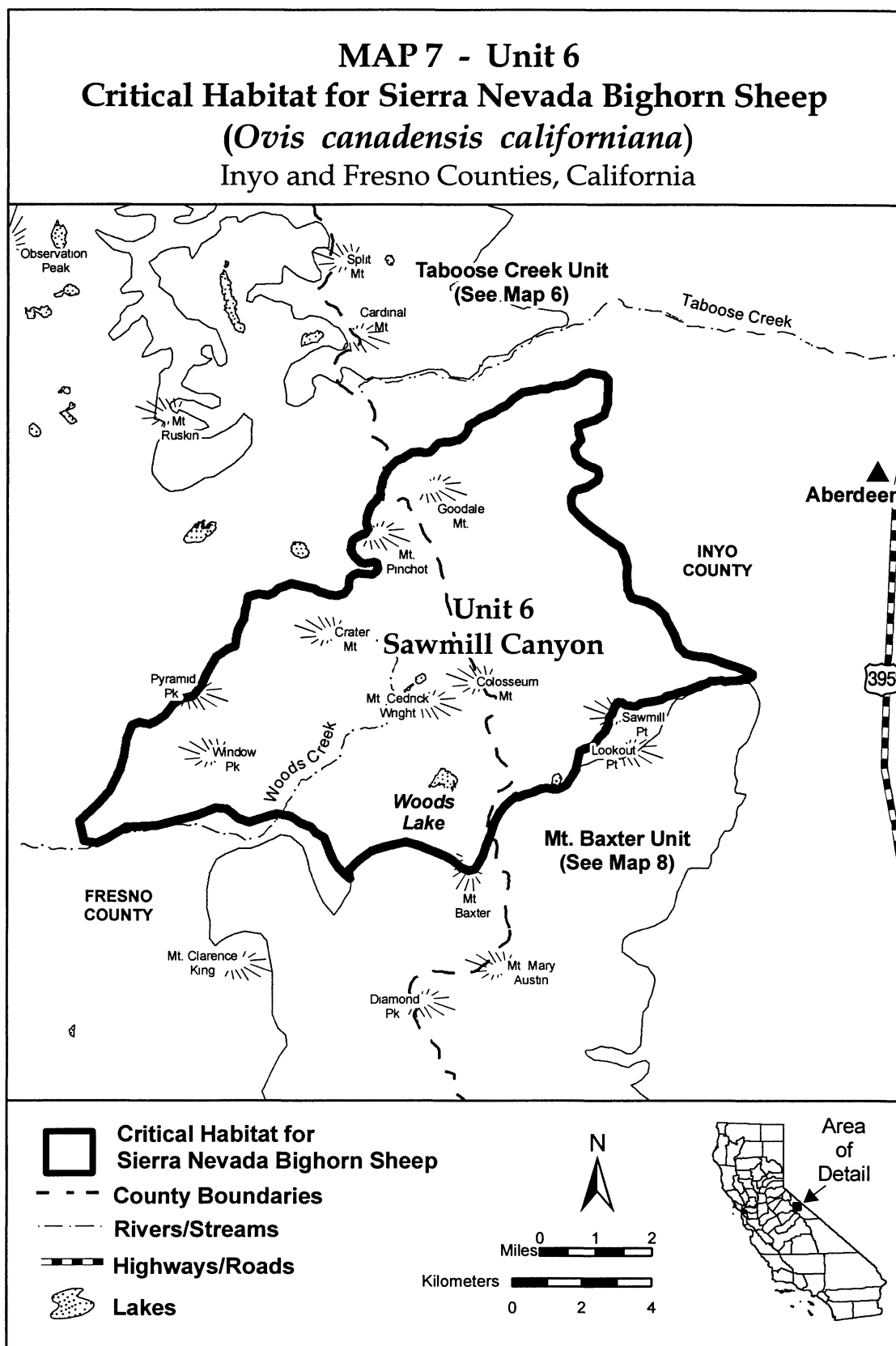
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(ii) Note: Map of Unit 6 (Sawmill Canyon) for Sierra Nevada bighorn sheep (Map 7) follows:



(12) Unit 7 (Mount Baxter); Fresno and Inyo Counties, California.

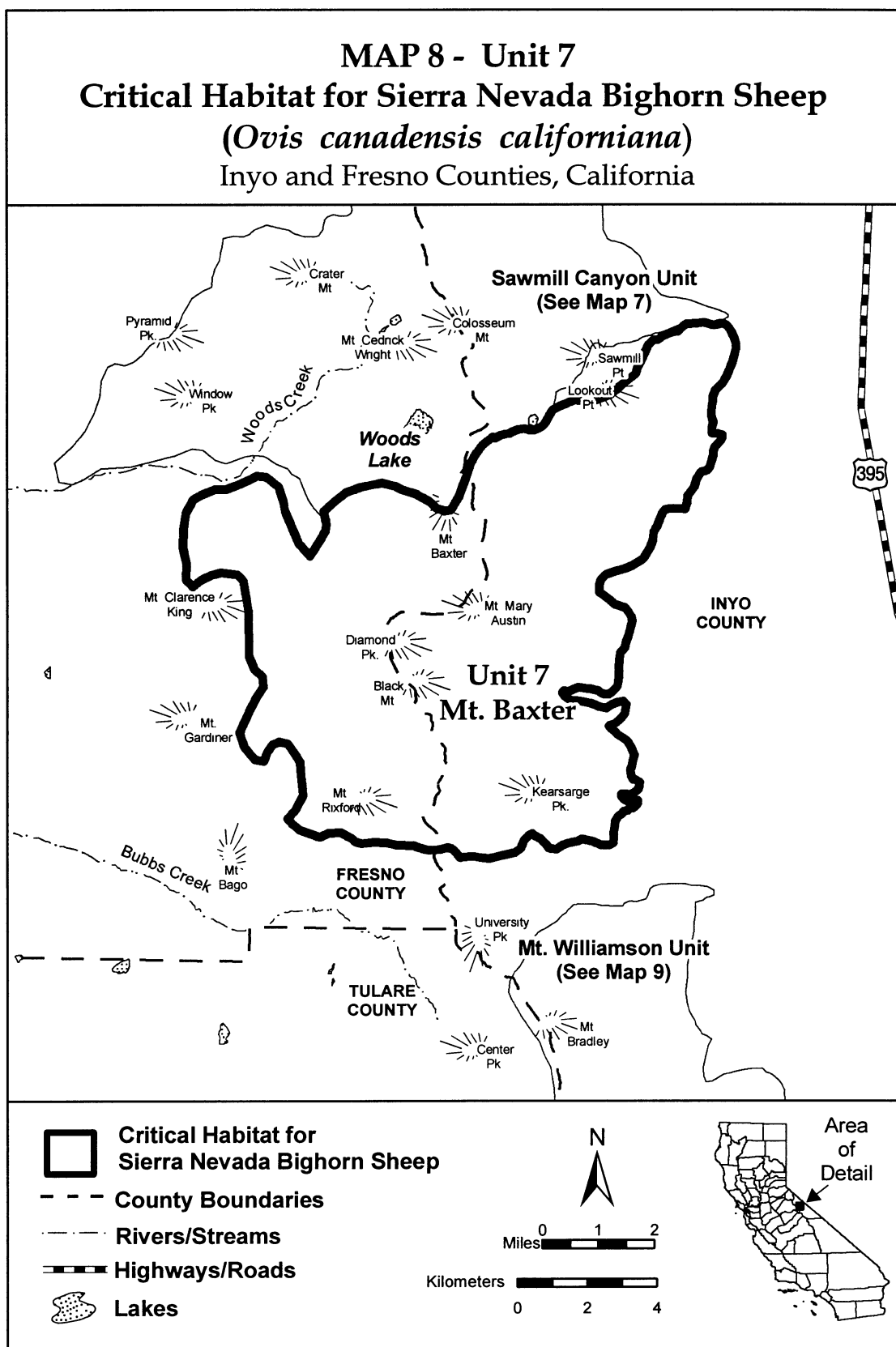
(i) From USGS 1:24,000 scale quadrangles Aberdeen, Mount Clarence

King and Kearsarge Peak. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 374028, 4080221; 373983, 4080457; 374295, 4080749;

374635, 4081009; 374788, 4081064; 375032, 4081147; 375519, 4081252; 375641, 4081278; 376030, 4081176; 376239, 4081079; 376628, 4080946;

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 374025, 4079883; 374061, 4080063;
 374035, 4080184; returning to 374028,
 4080221.

(ii) Note: Map of Unit 7 (Mount Baxter) for Sierra Nevada bighorn sheep (Map 8) follows:



(13) Unit 8 (Mount Williamson); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangle Kearsarge Peak, Mount

Brewer, Mount Williamson, Manzanar, Mount Whitney and Mount Langley. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N):

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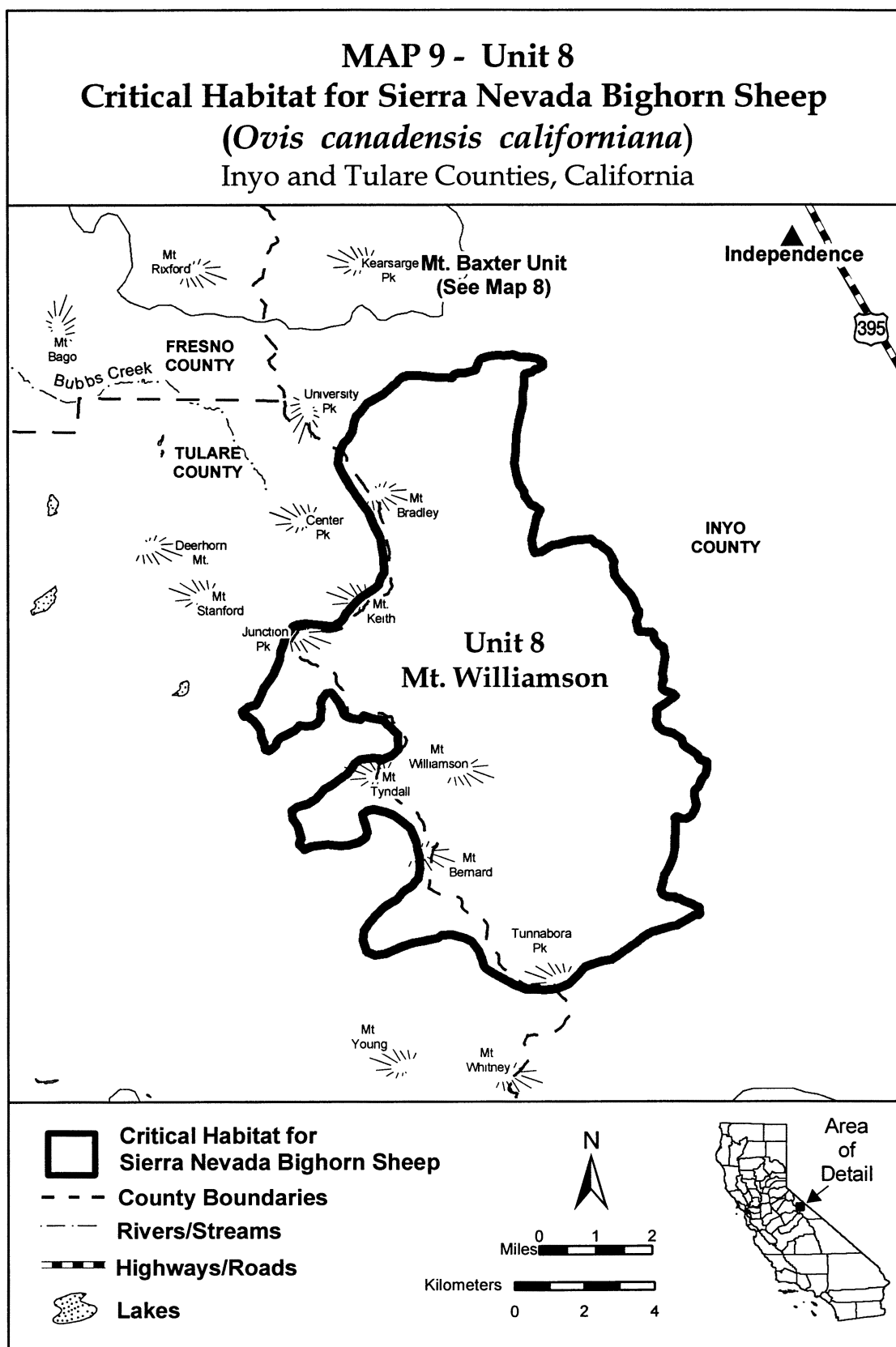
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384390, 4067447; 384376, 4066995;
384334, 4066635; 384385, 4066332;
384439, 4066120; 384495, 4065998;
384611, 4065813; 384637, 4065692;
384753, 4065538; 384810, 4065445;
384959, 4065380; 385077, 4065286;
384980, 4065079; 384910, 4064780;
384839, 4064450; 384862, 4064209;
384918, 4064056; 385100, 4064081;
385438, 4064281; 385590, 4064306;
385804, 4064360; 386017, 4064413;
386229, 4064437; 386532, 4064457;
386649, 4064333; 386769, 4064299;
386886, 4064205; 387004, 4064111;
387091, 4063988; 387176, 4063804;
387171, 4063654; 387194, 4063412;
387310, 4063258; 387397, 4063135;
387484, 4063042; 387660, 4062855;
387746, 4062702; 387828, 4062458;
387887, 4062396; 387883, 4062276;
387817, 4062097; 387843, 4061976;
387870, 4061855; 387898, 4061794;
387989, 4061791; 388140, 4061786;
388260, 4061782; 388319, 4061720;
388316, 4061630; 388344, 4061569;
388460, 4061414; 388579, 4061350;
388606, 4061229; 388631, 4061078;
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388580, 4060417; 388546, 4060297;
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388773, 4059838; 388618, 4059722;
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388391, 4059217; 388447, 4059065;
388594, 4058940; 388774, 4058904;
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377161, 4058607; 377077, 4058790;
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379860, 4062739; 380015, 4062855;
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381543, 4069163; 381785, 4069156;
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382297, 4069109; 382358, 4069107;
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382572, 4069191; 382725, 4069246;
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383119, 4069294; 383210, 4069322;
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383403, 4069677; 383616, 4069731;
383828, 4069754; 383919, 4069751;
384010, 4069748; returning to 384282,
4069770.

(ii) Note: Map of Unit 8 (Mount Williamson) for Sierra Nevada bighorn sheep (Map 9) follows:

BILLING CODE 4310-55-P



(14) Unit 9 (Big Arroyo); Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Triple Divide Peak, Mount Kaweah, and Chagoopa Falls. Land

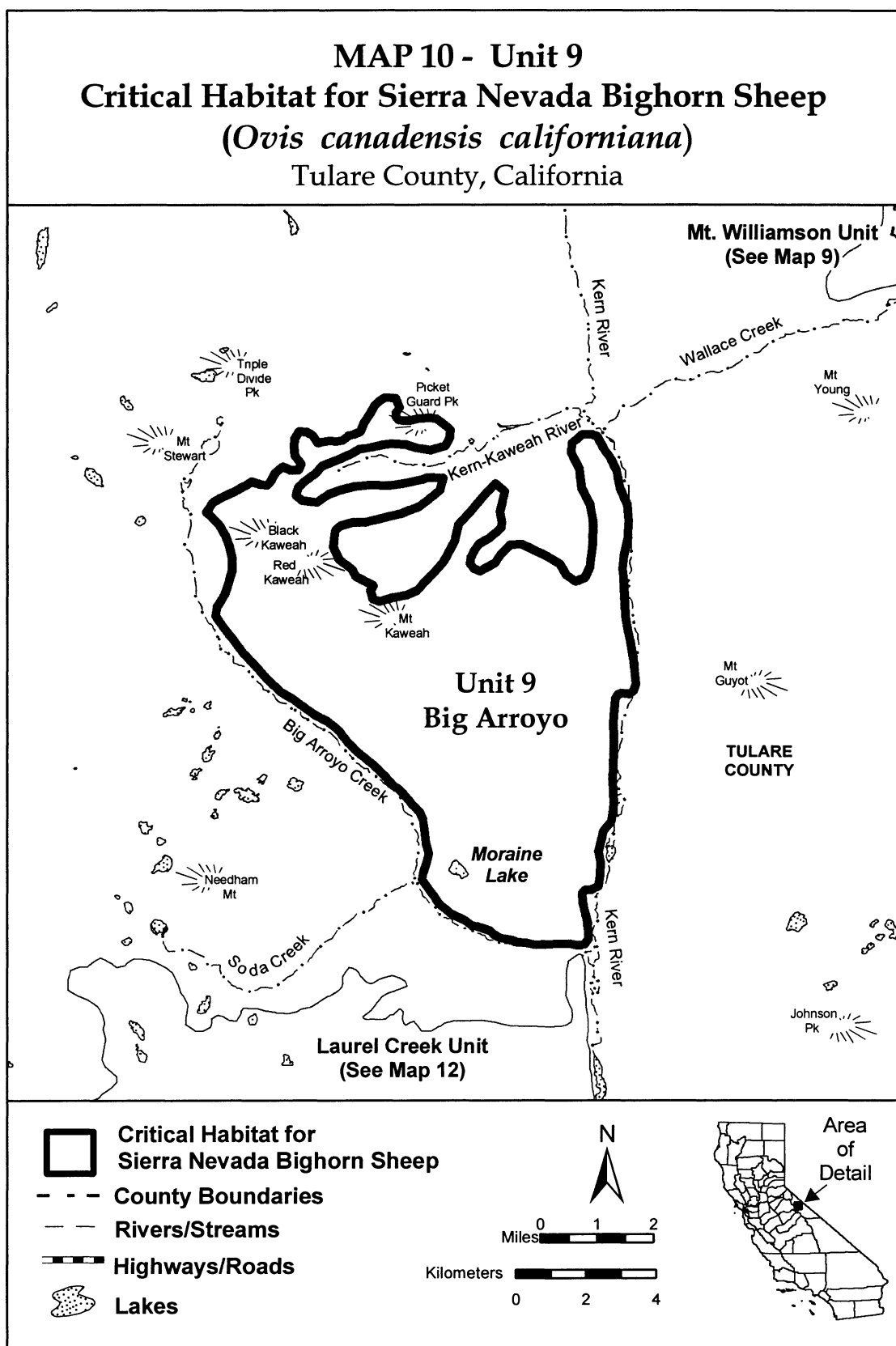
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(ii) Note: Map of Unit 9 (Big Arroyo) for Sierra Nevada bighorn sheep (Map 10) follows:



(15) Unit 10 (Mount Langley); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangles Mount Whitney, Mount

Langley, Lone Pine, Johnson Peak, Cirque Peak, and Bartlett. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 391201, 4048676;

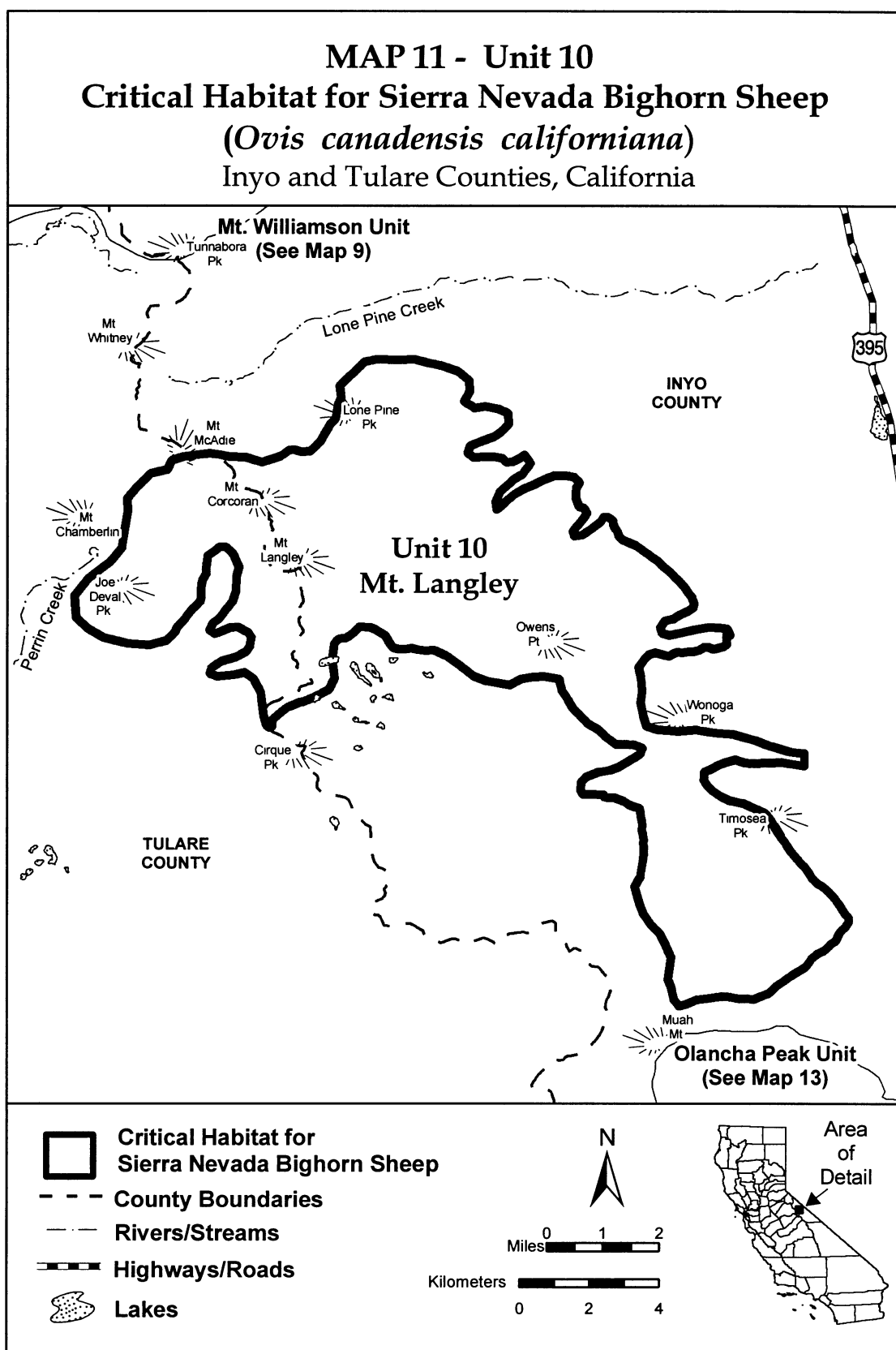
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 returning to 391201, 4048676.

(ii) Note: Map of Unit 10 (Mount Langley) for Sierra Nevada bighorn sheep (Map 11) follows:



(16) Unit 11 (Laurel Creek); Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Mineral King, Chagoopa

Falls, Quinn Peak, and Kern Lake. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 373174, 4031891; 373186, 4031558; 373154,

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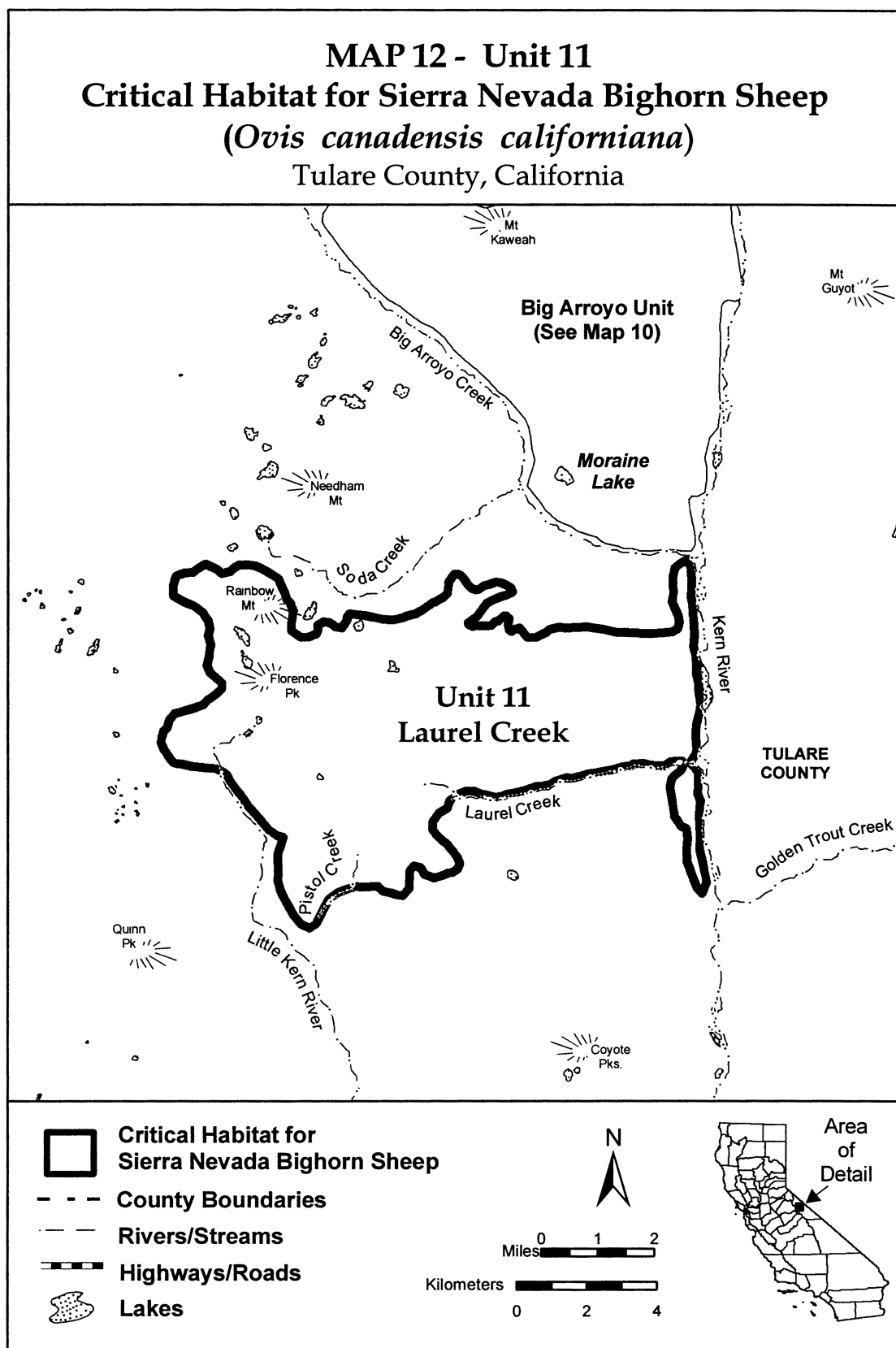
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(ii) Note: Map of Unit 11 (Laurel Creek) for Sierra Nevada bighorn sheep (Map 12) follows:

BILLING CODE 4310-55-P



(17) Unit 12 (Olancho Peak); Inyo and Tulare Counties, California.

(i) From USGS 1:24,000 scale quadrangles Cirque Peak, Bartlett,

Templeton Mountain, Olancho, and Haiwee Pass. Land bounded by the following UTM zone 11 NAD83 coordinates (E, N): 403133, 4029453;

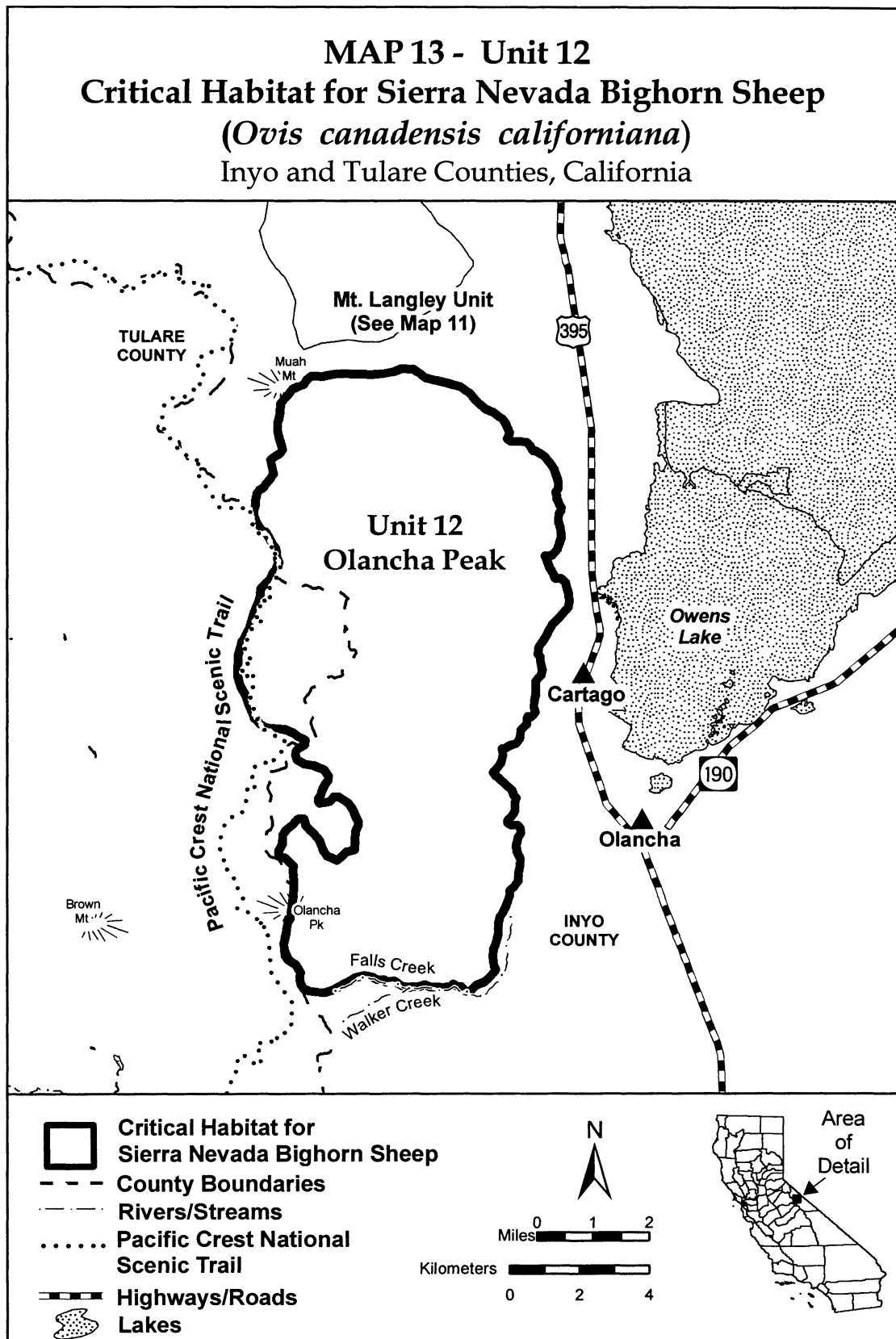
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398000, 4020898; 398005, 4021062;
398011, 4021226; 398122, 4021648;
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(ii) Note: Map of Unit 12 (Olancha Peak) for Sierra Nevada bighorn sheep (Map 13) follows:



* * * * *

Dated: July 17, 2007.

Todd Willens,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 07-3591 Filed 7-24-07; 8:45 am]

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S. 1701/P.L. 110-48

To provide for the extension of transitional medical assistance (TMA) and the abstinence education program through the end of the fiscal year 2007, and for other purposes. (July 18, 2007; 121 Stat. 244; 2 pages)

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