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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- 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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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 PERSONNEL MANAGEMENT

5 CFR Part 211

RIN 3206-AL33

Veterans' Preference

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement a change to the definition of "active duty" contained in § 211.102(f) of title 5, Code of Federal Regulations. We are making this change in response to a Merit System Protection Board (MSPB) decision that affects eligibility for veterans' preference based on a service-connected disability. This action will conform OPM's regulations with MSPB's decision.

DATES: Interim rule effective July 27, 2007; comments must be received on or before September 25, 2007.

ADDRESSES: Send or deliver written comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail: employ@opm.gov; fax: (202) 606-2329. Comments may also be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Scott A. Wilander by telephone at (202) 606-0960; by fax at (202) 606-0390; TTY at (202) 606-3134; or by e-mail at Scott.Wilander@opm.gov.

SUPPLEMENTARY INFORMATION: On February 6, 2007, the Merit Systems Protection Board (the Board) issued a decision in *Edward Thomas Hesse v. Department of the Army* (AT-3443-05-0936-I-1) that affects the eligibility criteria for veterans' preference based on a service-connected disability under 5 U.S.C. 2108(2). The Board decided that, for the purposes of entitlement to veterans' preference, the term "active duty" as used in 5 U.S.C. 2108(2) " * * * may consist entirely of service for training purposes."

OPM is revising the definition of "active duty" in § 211.102(f) consistent with MSPB's decision. Former National Guard and Reserve members who served on active duty, including active duty for training, who were discharged or released from active duty under honorable conditions, and who establish the present existence of a service-connected disability or are receiving compensation, disability retirement benefits, or pension under the laws of the Department of Veterans Affairs or a military department are entitled to veterans' preference under 5 U.S.C. 2108(2).

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Waiver of advance notice is necessary to ensure that the regulations become effective immediately and agencies understand completely their obligations under 5 U.S.C. 2108(2) and do not unwittingly deny veterans' preference based upon existing regulations. If OPM's regulations were permitted to remain as written while OPM solicited comments upon its proposed revisions, there is a possibility that Reservists or National Guard members with a service-connected disability who are released or discharged from active duty may be denied veterans' preference based upon the current language in regulations. The revised language in this interim regulation will ensure service-connected disabled individuals discharged or released from active duty in the armed forces receive the veterans' preference.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 211

Government employees, Veterans.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 211 of title 5, Code of Federal Regulations, as follows:

PART 211—VETERAN PREFERENCE

■ 1. The authority for part 211 continues to read as follows:

Authority: 5 U.S.C. 1302.

■ 2. In § 211.102, revise paragraph (f) to read as follows:

§ 211.102 Definitions.

* * * * *

211.102(f) Active duty or military duty.

(1) *Active duty or active military duty* for a veteran defined in paragraph (a) of this section means full-time duty with military pay and allowances in the armed forces, except for training or for determining physical fitness and except for service in the Reserves or National Guard.

(2) *Active duty or active military duty* for a disabled veteran defined in paragraph (b) of this section means active duty with military pay and allowances in the armed forces, including training or for determining physical fitness and including service in the Reserves or National Guard.

* * * * *

[FR Doc. E7-14490 Filed 7-26-07; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****7 CFR Part 301**

[Docket No. APHIS–2006–0116]

Gypsy Moth Generally Infested Areas; Addition of Counties in Ohio and West Virginia**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the gypsy moth regulations by adding Delaware and Franklin Counties in Ohio and Monroe County in West Virginia to the list of generally infested areas based upon the detection of infestations of gypsy moth in those counties. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: Effective on July 27, 2007, we are adopting as a final rule the interim rule published at 71 FR 53546–53547 on September 12, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:**Background**

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In an interim rule¹ effective and published in the **Federal Register** on September 12, 2006 (71 FR 53546–53547, Docket No. APHIS–2006–0116), we amended the gypsy moth regulations by adding Delaware and Franklin Counties in Ohio and Monroe County in West Virginia to the list of generally

infested areas. Comments on the interim rule were required to be received on or before November 13, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The rule affected the interstate movement of regulated articles, including forest products (logs, pulpwood, wood chips) and Christmas trees, nursery stock, and mobile homes and outdoor household articles from and through Delaware and Franklin Counties in Ohio and Monroe County in West Virginia.

Most of the area of the three counties now considered generally infested are on the fringe of generally infested areas and do not have high levels of infestation. In the three newly quarantined counties, there are 161 establishments that produce and ship regulated articles. Many of the establishments are in areas where there is negligible or no infestation. Of these, 38 are Christmas tree growers and 123 are nurseries. Nearly 99 percent of the establishments are considered to be small businesses. Sales of forest products and Christmas trees in the affected counties in 2002 were valued at \$33 million, representing about 6.7 percent of the total values of such sales in the two States. There were 950 shipments of shrubs and trees, nursery items, and Christmas trees. Of those, only 200 shipments were to non-regulated areas.

The regulatory requirements of the regulations are expected to cause a slight increase in the costs of business for affected entities. However, any negative economic effects are small when compared with the potential for harm to the forest industry and the U.S. economy as a whole that would result from the spread of the pest. Since the total value of regulated articles moved from the affected counties to non-regulated areas is a small fraction of the national total, the regulatory effect on national prices is expected to be insignificant. Additionally, since the regulations do not prohibit movement of regulated articles, articles that meet the

requirements of the regulations can continue to enter the market. The overall impact upon price and competitiveness is expected to be insignificant.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 53546–53547 on September 12, 2006.

Done in Washington, DC, this 23rd day of July 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–14527 Filed 7–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 25**

[Docket No. NM380; Special Conditions No. 25–361–SC]

Special Conditions: Cessna Model 650 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Cessna Model 650 airplanes modified by Columbia Avionics, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification consists of installing an Electronic Flight Instrument System (EFIS) with the options for the Universal Avionics Vision 1 Synthetic Vision System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-

¹ To view the interim rule, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0116, then click “Submit.” Clicking on the Docket ID link in the search results page will produce the document in the docket.

intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is July 18, 2007. We must receive your comments by August 27, 2007.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM380, 1601 Lind Avenue SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM380. You can inspect comments in the Rules Docket weekdays, except Federal Holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2799; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this

preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

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

Background

On March 15, 2007, Columbia Avionics, Inc., 11200 Airport Road, Columbia, Missouri, 65201, applied for a supplemental type certificate (STC) to modify Cessna Model 650 airplanes. The Cessna Model 650 is a low-wing, pressurized, transport category airplane with two fuselage-mounted jet engines. It can seat up to 19 passengers, with a crew of two pilots. The modification consists of installing an electronic flight instrument system (EFIS) with the options for the Universal Avionics Vision 1 Synthetic Vision System. These systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under 14 CFR 21.101, Columbia Avionics, Inc., must show that the Cessna Model 650 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A9NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A9NM include the following: Part 25 of the Federal Aviation Regulations (FAR) effective February 1, 1965, as amended by Amendments 25-1 through 25-39. In addition, the following regulations apply: §§ 25.901(c) and 25.1199, as amended by Amendments 25-1 through 25-40; §§ 25.1309 and 25.1351(d), as amended by Amendments 25-1 through 25-41; §§ 25.177, 25.255, and 25.703, as amended by Amendments 25-1 through 25-42; § 25.1326, as amended by Amendments 25-1 through 25-43; § 25.1413, as amended by Amendments 25-1 through 25-44; and §§ 25.1305 and 25.1529, as amended by Amendments

25-1 through 25-54. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, or later amended sections of the applicable part 25 regulations that are not relevant to these special conditions. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 650 airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Besides the applicable airworthiness regulations and special conditions, the Cessna Model 650 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should Columbia Avionics apply later for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the Cessna Model 650 airplanes modified Columbia Avionics will incorporate dual Electronic Primary Flight Displays that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by

the regulations incorporated by reference, special conditions are needed for the Cessna 650 airplanes modified by Columbia Avionics. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

Frequency	Field strength (volts per meter)	
	Peak	Average
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

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

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

Applicability

As discussed above, these special conditions are applicable to Cessna Model 650 airplanes modified by Columbia Avionics. Should Columbia Avionics apply later for a supplemental type certificate to modify any other model included on Type Certificate No. A9NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Cessna Model 650 airplanes modified by Columbia Avionics. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Cessna Model 650 airplanes modified by Columbia Avionics.

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

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–14593 Filed 7–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30560 Amdt. No. 3227]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

instrument flight rules at the affected airports.

DATES: This rule is effective July 27, 2007. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 27, 2007.

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

For Examination—

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

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

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

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

*For Purchase—*Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete

regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, 8260-5 and 8260-15A. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between

these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on July 13, 2007.

James J. Ballough,
Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

* * * *Effective 30 AUG 2007*

Bettles, AK, Bettles, RNAV (GPS) RWY 1,
Orig
Bettles, AK, Bettles, RNAV (GPS) RWY 19,
Orig

- Bettles, AK, Bettles, LOC/DME RWY 1, Amdt 5
- Bettles, AK, Bettles, VOR/DME RWY 1, Amdt 1
- Bettles, AK, Bettles, GPS RWY 01, Orig, CANCELLED
- Bettles, AK, Bettles, Takeoff Minimums and Obstacle DP, Amdt 2
- Soldontna, AK, Soldontna, RNAV (GPS) RWY 7, Orig
- Soldontna, AK, Soldontna, RNAV (GPS) RWY 25, Orig
- Soldontna, AK, Soldontna, GPS RWY 07, Orig-A, CANCELLED
- Soldontna, AK, Soldontna, GPS RWY 25, Orig, CANCELLED
- Soldontna, AK, Soldontna, Takeoff Minimums and Obstacle DP, Amdt 2
- Auburn, AL, Auburn-Opelika Robert G. Pitts, RNAV (GPS) RWY 36, Amdt 1
- Pell City, AL, St Clair County, RNAV (GPS) RWY 2, Amdt 1
- Pell City, AL, St Clair County, RNAV (GPS) RWY 20, Amdt 1
- Pell City, AL, St Clair County, VOR-A, Amdt 8
- Pell City, AL, St Clair County, Takeoff Minimums and Obstacle DP, Amdt 1
- Mountain View, AR, Mountain View Wilcox Memorial Field, RNAV (GPS) RWY 27, Orig
- Mountain View, AR, Mountain View Wilcox Memorial Field, NDB-A, Amdt 2B, CANCELLED
- Grand Canyon, AZ, Grand Canyon National Park, Takeoff Minimums and Obstacle DP, Orig
- Atwater, CA, Castle, ILS OR LOC/DME RWY 31, Amdt 1
- Groveland, CA, Pine Mountain Lake, RNAV (GPS) RWY 9, Orig
- Groveland, CA, Pine Mountain Lake, GPS RWY 9, Orig-A, CANCELLED
- Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 6, Orig
- Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 13, Amdt 1
- Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 24, Orig
- Apalachicola, FL, Apalachicola Muni, RNAV (GPS) RWY 31, Amdt 1
- Apalachicola, FL, Apalachicola Muni, Takeoff Minimums and Obstacle DP, Orig
- Pompano Beach, FL, Pompano Beach Airport, Takeoff Minimums and Obstacle DP, Amdt 3
- Adel, GA, Cook County, RNAV (GPS) RWY 23, Orig
- Adel, GA, Cook County, Takeoff Minimums and Obstacle DP, Amdt 1
- Cordele, GA, Crisp County-Cordele, RNAV (GPS) RWY 10, Orig
- Cordele, GA, Crisp County-Cordele, RNAV (GPS) RWY 28, Orig
- Cordele, GA, Crisp County-Cordele, Takeoff Minimums and Obstacle DP, Amdt 2
- Dublin, GA, W. H. 'Bud' Barron, ILS OR LOC RWY 2, Amdt 1
- Dublin, GA, W. H. 'Bud' Barron, Takeoff Minimums and Obstacle DP, Amdt 1
- Toccoa, GA, Toccoa RG Letourneau Field, RNAV (GPS) RWY 2, Orig
- Toccoa, GA, Toccoa RG Letourneau Field, RNAV (GPS) RWY 20, Orig
- Toccoa, GA, Toccoa RG Letourneau Field, GPS RWY 02, Orig, CANCELLED
- Toccoa, GA, Toccoa RG Letourneau Field, Takeoff Minimums and Obstacle DP, Amdt 3
- Waynesboro, GA, Burke County, Takeoff Minimums and Obstacle DP, Orig
- Winder, GA, Winder-Barrow, RNAV (GPS) RWY 13, Orig
- Winder, GA, Winder-Barrow, RNAV (GPS) RWY 31, Orig
- Winder, GA, Winder-Barrow, Takeoff Minimums and Obstacle DP, Orig
- Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 9R, Amdt 8
- Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 27L, Amdt 27, ILS RWY 27L (CAT II), ILS RWY 27L (CAT III)
- Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 4L, Amdt 1
- Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 9R, Amdt 1
- Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 22R, Amdt 1
- Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 27L, Amdt 1
- Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) Y RWY 22R, Orig-B, CANCELLED
- Chicago, IL, Chicago-O'Hare Intl, LOC RWY 4L, Amdt 20
- Chicago, IL, Chicago-O'Hare Intl, Takeoff Minimums and Obstacle DP, Amdt 15
- Flora, IL, Flora Muni, RNAV (GPS) RWY 3, Amdt 1
- Flora, IL, Flora Muni, RNAV (GPS) RWY 21, Amdt 1
- Marion, IL, Williamson County Regional, RNAV (GPS) RWY 2, Orig
- Marion, IL, Williamson County Regional, RNAV (GPS) RWY 20, Orig
- Marion, IL, Williamson County Regional, NDB RWY 20, Amdt 10
- Marion, IL, Williamson County Regional, VOR RWY 2, Amdt 13
- Marion, IL, Williamson County Regional, VOR RWY 20, Amdt 17
- Quincy, IL, Quincy Rgnl Baldwin Field, RNAV (GPS) RWY 22, Orig
- Quincy, IL, Quincy Rgnl Baldwin Field, VOR/DME RWY 22, Amdt 8
- Quincy, IL, Quincy Rgnl Baldwin Field, VOR/DME RNAV OR GPS RWY 31, Amdt 3A, CANCELLED
- Quincy, IL, Quincy Rgnl Baldwin Field, Takeoff Minimums and Obstacle DP, Orig
- Fort Scott, KS, Fort Scott Muni, RNAV (GPS) RWY 18, Orig
- Fort Scott, KS, Fort Scott Muni, RNAV (GPS) RWY 36, Orig
- Fort Scott, KS, Fort Scott Muni, Takeoff Minimums and Obstacle DP, Orig
- Topeka, KS, Forbes Field, ILS OR LOC RWY 31, Amdt 9C
- Frankfort, KY, Capital City, LOC RWY 24, Amdt 2
- Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 18, Amdt 1
- Alexandria, LA, Alexandria Intl, RNAV (GPS) RWY 36, Orig
- Alexandria, LA, Alexandria Intl, VOR/DME RWY 32, Amdt 1
- Alexandria, LA, Alexandria Intl, Takeoff Minimums and Textual DP's, Orig
- Kalamazoo, MI, Kalamazoo/Battle Creek Intl, ILS OR LOC RWY 35, Amdt 22
- Kalamazoo, MI, Kalamazoo/Battle Creek Intl, RNAV (GPS) RWY 35, Orig
- Kalamazoo, MI, Kalamazoo/Battle Creek Intl, NDB RWY 35, Amdt 19
- Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR RWY 35, Amdt 17
- Kalamazoo, MI, Kalamazoo/Battle Creek Intl, Takeoff Minimums and Textual DP, Amdt 9
- Lee's Summit, MO, Lee's Summit Municipal, RNAV (GPS) RWY 11, Orig
- Lee's Summit, MO, Lee's Summit Municipal, RNAV (GPS) RWY 18, Amdt 1
- Lee's Summit, MO, Lee's Summit Municipal, RNAV (GPS) RWY 29, Amdt 1
- Lee's Summit, MO, Lee's Summit Municipal, RNAV (GPS) RWY 36, Amdt 1
- Pascagoula, MS, Trent Lott Intl, ILS OR LOC RWY 17, Amdt 1
- Pascagoula, MS, Trent Lott Intl, RNAV (GPS) RWY 17, Orig
- Pascagoula, MS, Trent Lott Intl, RNAV (GPS) RWY 35, Orig
- Pascagoula, MS, Trent Lott Intl, GPS RWY 17, Orig-A, CANCELLED
- Pascagoula, MS, Trent Lott Intl, GPS RWY 35, Orig, CANCELLED
- Jamestown, ND, Jamestown Regional, RNAV (GPS) RWY 4, Orig
- Jamestown, ND, Jamestown Regional, RNAV (GPS) RWY 13, Orig
- Jamestown, ND, Jamestown Regional, RNAV (GPS) RWY 22, Orig
- Jamestown, ND, Jamestown Regional, VOR RWY 13, Amdt 8
- Jamestown, ND, Jamestown Regional, Takeoff Minimums and Obstacle DP, Amdt 1
- Albuquerque, NM, Albuquerque Intl Sunport, VOR OR TACAN RWY 8, Amdt 20A
- Reno, NV, Reno/Tahoe Intl, ILS OR LOC/DME RWY 34L, Orig
- Buffalo, NY, Buffalo Niagra Intl, Takeoff Minimums and Obstacle DP, Amdt 5
- Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 3, Orig
- Norman, OK, University of Oklahoma Westheimer, RNAV (GPS) RWY 17, Orig
- Norman, OK, University of Oklahoma Westheimer, NDB RWY 3, Amdt 1
- Norman, OK, University of Oklahoma Westheimer, GPS RWY 3, Orig-B, CANCELLED
- Norman, OK, University of Oklahoma Westheimer, GPS RWY 17, Amdt 1A, CANCELLED
- Oklahoma City, OK, Wiley Post, RNAV (GPS) RWY 17L, Orig
- Oklahoma City, OK, Wiley Post, GPS RWY 17L, Orig, CANCELLED
- Marion, SC, Marion County, RNAV (GPS) RWY 4, Orig
- Marion, SC, Marion County, NDB RWY 4, Amdt 4
- Mobridge, SD, Mobridge Muni, RNAV (GPS) RWY 12, Orig
- Mobridge, SD, Mobridge Muni, RNAV (GPS) RWY 30, Orig
- Mobridge, SD, Mobridge Muni, NDB RWY 12, Amdt 2
- Watertown, SD, Watertown Regional, RNAV (GPS) RWY 12, Orig
- Watertown, SD, Watertown Regional, RNAV (GPS) RWY 17, Orig
- Watertown, SD, Watertown Regional, RNAV (GPS) RWY 30, Orig
- Watertown, SD, Watertown Regional, VOR OR TACAN RWY 17, Amdt 17
- Watertown, SD, Watertown Regional, Takeoff Minimums and Obstacle DP, Orig

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, ILS OR LOC RWY 33L, Amdt 12F, CANCELLED

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 15R, Amdt 1, CANCELLED

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, RNAV (GPS) RWY 33L, Amdt 1A, CANCELLED

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, NDB RWY 33L, Amdt 11B, CANCELLED

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, VOR-D, Amdt 14, CANCELLED

Wichita Falls, TX, Sheppard AFB/Wichita Falls Muni, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELLED

Front Royal, VA, Front Royal-Warren County, Takeoff Minimums and Obstacle DP, Orig

Quinton, VA, New Kent County, Takeoff Minimums and Obstacle DP, Orig

Pasco, WA, Tri-Cities, VOR RWY 21R, Amdt 5

Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16L, Amdt 3B

ILS RWY 16L (CAT II), ILS RWY 16L (CAT III)

Boscobel, WI, Boscobel, RNAV (GPS) RWY 7, Orig

Boscobel, WI, Boscobel, RNAV (GPS) RWY 25, Orig

Boscobel, WI, Boscobel, VOR/DME RWY 25, Orig

Boscobel, WI, Boscobel, VOR/DME OR GPS-A, AMDT 3A, CANCELLED

Madison, WI, Dane County Regional-Truax Field, ILS OR LOC/DME RWY 18, Orig-A

Madison, WI, Dane County Regional-Truax Field, ILS OR LOC/DME RWY 36, Orig-B

Merrill, WI, Merrill Muni, RNAV (GPS) RWY 7, Amdt 1

Merrill, WI, Merrill Muni, RNAV (GPS) RWY 25, Amdt 1

Merrill, WI, Merrill Muni, Takeoff Minimums and Obstacle DP, Orig

Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 2, Amdt 1

Sturgeon Bay, WI, Door County Cherryland, RNAV (GPS) RWY 20, Amdt 1

Sturgeon Bay, WI, Door County Cherryland, Takeoff Minimums and Obstacle DP, Orig

** * * Effective 25 OCT 2007*

Houghton Lake, MI, Roscommon County-Blodgett Memorial, RNAV (GPS) RWY 9, Amdt 1

Houghton Lake, MI, Roscommon County-Blodgett Memorial, RNAV (GPS) RWY 27, Orig

Houghton Lake, MI, Roscommon County-Blodgett Memorial, VOR RWY 9, Amdt 4

Houghton Lake, MI, Roscommon County-Blodgett Memorial, VOR RWY 27, Amdt 3

Houghton Lake, MI, Roscommon County-Blodgett Memorial, Takeoff Minimums and Obstacle DP, Amdt 1

Kalamazoo, MI, Kalamazoo/Battle Creek Intl, RNAV (GPS) RWY 17, Orig

Kalamazoo, MI, Kalamazoo/Battle Creek Intl, RADAR-1, Amdt 9

Kalamazoo, MI, Kalamazoo/Battle Creek Intl, LOC BC RWY 17, Amdt 19

Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR RWY 17, Amdt 18

[FR Doc. E7-14077 Filed 7-26-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee; Risk Communication Advisory Committee; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of the Risk Communication Advisory Committee in the Office of Planning, Office of the Commissioner. This document adds the Risk Communication Advisory Committee to the agency's list of standing advisory committees.

DATES: This rule is effective July 27, 2007. Authority for the committee being established will end on June 19, 2009, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Lee Zwanziger, Office of Planning, Office of Commissioner (HFP-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2895, Fax 301-827-5260 or rcac@fda.hhs.gov

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92-463 (5 U.S.C. app. 2)); section 904 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 394), as amended by the Food and Drug Administration Revitalization Act (Public Law 101-635); and 21 CFR 14.40(b), FDA is announcing the establishment of the Risk Communication Advisory Committee by the Commissioner. The committee advises the Commissioner of Food and Drugs (the Commissioner) and designees on strategies and programs designed to communicate with the public about the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. The committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products.

The Risk Communication Advisory Committee will be composed of a core of 15 voting members including the Chair. Members and the chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of risk communication, social marketing, health literacy, cultural competency, journalism, bioethics, and other relevant behavioral and social sciences. Some members will be selected to provide experiential insight on the communication needs of the various groups who use FDA-regulated products. The latter may include patients and patients' family members, health professionals, communicators in health, medicine and science, persons affiliated with consumer, specific disease, or patient safety advocacy groups. Depending on the meeting topic(s), at least one nonvoting member identified with relevant industry interests may be invited from existing members of other FDA Advisory Committees.

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40 (d) and (e), the agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule merely adds the name of the Risk Communication Advisory Committee, already established by charter, to the list of standing advisory committees in 21 CFR 14.100.

Therefore, the agency is amending 21 CFR 14.100(a) as set forth below.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451-1461, 21 U.S.C. 41-50, 141-149, 321-394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b 264; Pub. L. 107-109; Pub. L. 108-155.

■ 2. Section 14.100 is amended by adding paragraph (a)(4).

§ 14.100 List of standing advisory committees.

* * * * *

(a) * * *

(4) Risk Communication Advisory Committee.

(i) Date established: June 19, 2007.

(ii) Function: The committee advises the Commissioner and designees on strategies and programs designed to communicate to the public the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. The committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products.

* * * * *

Dated: July 17, 2007.

Randall W. Lutter,*Deputy Commissioner for Policy.*

[FR Doc. E7-14498 Filed 7-26-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 48 and 602**

[TD 9346]

RIN 1545-BC08

Entry of Taxable Fuel**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the tax on the entry of taxable fuel into the United States. The final regulations affect enterers of taxable fuel, other importers of record, and certain sureties.

DATES: *Effective Date:* These regulations are effective July 27, 2007.

Applicability Dates: For dates of applicability, see §§ 48.4081-1(f) and 48.4081-3(j).

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh at (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork

Reduction Act (44 U.S.C. 3507) under control number 1545-1897. The collection of information in these final regulations is in § 48.4081-3(c)(2)(iii) and (iv). This collection of information allows certain importers of record and sureties to avoid liability for the tax on the entry of taxable fuel into the United States.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent and/or recordkeeper varies from 15 minutes to 2.25 hours, depending on individual circumstances, with an estimated average of 1.25 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) to provide rules relating to the tax that section 4081 of the Internal Revenue Code (Code) imposes on the entry of taxable fuel into the United States. On July 30, 2004, a temporary regulation (TD 9145, 69 FR 45587) relating to this topic was published in the **Federal Register**. A notice of proposed rulemaking (REG-120616-03, 69 FR 45631) cross-referencing the temporary regulations was published in the **Federal Register** on the same day. Written and electronic comments were received and a public hearing was held on January 12, 2005. After considering the written comments and the comments made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

The temporary and proposed regulations. Effective September 28, 2004, the temporary regulations provide that the importer of record (under Customs law) of taxable fuel is jointly

and severally liable with the enterer for the tax imposed on the entry of taxable fuel if the importer of record is not the enterer (that is, the importer of record is a customs broker engaged by the enterer) and the enterer is not a taxable fuel registrant. Under the law in effect before September 28, 2004, an importer of record's Customs bond could have been charged for any unpaid tax imposed on the entry of fuel imported under the bond. The preamble of the temporary regulations stated, however, that the IRS would not charge the Customs bond for the tax imposed on an entry of fuel occurring before September 28, 2004. In addition, the temporary regulations provide that the Customs bond posted with respect to the importation of fuel will not be charged for the tax imposed on an entry of fuel occurring after September 27, 2004, if the enterer is a taxable fuel registrant or the surety believes, based on the enterer's certification, that the enterer is a taxable fuel registrant.

Public comments. One commentator that represents an association of road builders supported the proposed and temporary regulations, calling them one of a series of important initiatives necessary to combat fuel tax evasion and finance the Highway Trust Fund.

Several commentators that represent tribal interests in the state of New York opposed the regulations. They maintained that the regulations will cause fuel prices to increase at service stations located on tribal reservations. These higher fuel prices will reduce sales and result in the loss of several hundred tribal jobs. In addition, a reduction in sales at these stations would cause a decrease in receipts from the tribal tax on fuel sold on the reservations. This tax funds general tribal government services, including police, health, and welfare programs.

Many of these commentators also suggested that the Treasury Department and the IRS failed to comply with section 5 of Executive Order 13175 (65 FR 6724) and Executive Order 12866 (58 FR 51735), which generally requires each Federal agency to consult with tribal officials before the promulgation of any regulation that "has tribal implications" or that "imposes substantial direct compliance costs on Indian tribal governments."

The final regulations. This Treasury decision adopts the proposed rules as final regulations without substantive change. Because the cross-reference notice of proposed rulemaking referred to the text of temporary rules, the Treasury decision includes the nonsubstantive, clerical changes need to

incorporate the temporary rule text into the final regulations.

The rules in these regulations address the nonpayment of tax on fuel that is entered into the United States. An enterer's failure to pay this tax not only gives it a competitive price advantage over its compliant competitors, but it also deprives the United States Treasury of revenue intended for the Highway Trust Fund. The final regulations do not impose a new tax burden on enterers of taxable fuel. Instead, the regulations simply provide the IRS with an additional enforcement tool to collect the tax that is owed under existing law and give an additional incentive for enterers to be registered.

The imposition of tax on the entry of fuel sold on reservations results not from these regulations but from the statute, which does not provide an exemption from the tax for fuel sold on reservations. The only effect of these regulations is to improve the ability of the IRS to apply the tax consistently and fairly with respect to all taxpayers subject to the tax, without regard to whether or not the fuel is ultimately sold on tribal reservations.

The Treasury Department and IRS determined that these regulations are not subject to Executive Order 13175 (65 FR 67249) which obligates an agency to consult with tribal officials when developing "policies that have tribal implications." This executive order defines "policies that have tribal implications," in part, as regulations that have substantial direct effects on one or more Indian tribes. The regulations do not have tribal implications, as specified in Executive Order 13175, because they do not significantly or uniquely affect the communities of Indian tribal governments, nor do they impose direct compliance costs on them. Any economic effect of the fuel tax on tribal economies is a consequence of the statutory imposition of the tax, not the manner in which the regulations operate to implement the statute. Thus, Executive Order 13175 does not apply to the final or temporary regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on

a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the regulations on small business.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS, the Treasury Department, and the Bureau of Customs and Border Protection, Department of Homeland Security, participated in their development.

List of Subjects

26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 48 and 602 are amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 48 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 48.4081-1 is amended as follows:

■ 1. Paragraph (b) is amended by revising the definition of *Enterer*.

■ 2. The first sentence of paragraph (f)(2) is revised.

The revisions read as follows:

§ 48.4081-1 Taxable fuel; definitions.

* * * * *

(b) * * *

Enterer generally means the importer of record (under customs law) with respect to the taxable fuel, except that—

(1) If the importer of record is a customs broker engaged by the owner of the taxable fuel, the person for whom the broker is acting is the enterer; and

(2) If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at

the time it is brought into the United States is the enterer.

* * * * *

(f) * * *

(2) In paragraph (b) of this section the definition of *aviation gasoline* and the third sentence in the definition of *terminal* are applicable after January 1, 1998, the definition of *kerosene*, *excluded liquid*, and *taxable fuel* are applicable after June 30, 1998, and the definition of *enterer* is applicable to entries of taxable fuel after September 27, 2004. * * *

§ 48.4081-1T [Removed]

■ **Par. 3.** Section 48.4081-1T is removed.

■ **Par. 4.** Section 48.4081-3 is amended by revising paragraphs (c)(2)(ii) through (iv), and (j) to read as follows:

§ 48.4081-3 Taxable fuel; taxable events other than removal at the terminal rack.

* * * * *

(c) * * *

(2) * * *

(ii) *Joint and several liability of the importer of record.* The importer of record with respect to the taxable fuel is jointly and severally liable with the enterer for the tax imposed under paragraph (c)(1) of this section if—

(A) The importer of record is not the enterer of the taxable fuel; and

(B) The enterer is not a taxable fuel registrant.

(iii) *Conditions for avoidance of liability.* The importer of record is not liable for the tax under paragraph (c)(2)(ii) of this section if, at the time of the entry, the importer of record—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

(iv) *Customs bond.* The Customs bond posted with respect to the importation of the fuel will not be charged for the tax imposed on the entry of the fuel if the enterer is a taxable fuel registrant. A Customs bond will not be charged for the tax imposed on the entry of the fuel covered by the bond, if at the time of entry, the surety—

(A) Has an unexpired notification certificate (as described in § 48.4081-5) from the enterer; and

(B) Has no reason to believe that any information in the notification certificate is false.

* * * * *

(j) *Effective/applicability date.* This section is applicable January 1, 1994, except that paragraphs (c)(2)(ii) through (iv) of this section are applicable to

entries of taxable fuel after September 27, 2004.

§ 48.4081–3T [Removed]

■ **Par. 5.** Section 48.4081–3T is removed.

§ 48.4081–5 [Amended]

■ **Par. 6.** Section 48.4081–5 is amended by revising paragraph (a) to read as follows:

(a) *Overview.* This section sets forth requirements for the notification certificate under §§ 48.4081–2(c)(2)(ii), 48.4081–3(c)(2)(iii) and (iv), 48.4081–3(d)(2)(iii), 48.4081–3(e)(2)(iii), 48.4081–3(f)(2)(ii), and 48.4081–4(c) to notify another person of the taxable fuel registrant's registration status.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 8.** In § 602.101, paragraph (b) is amended by removing the entry for § 48.4081–3T, and revising the entry for § 48.4081–3 in the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
48.4081–3	1545–1270 1545–1418 1545–1897
* * * * *	

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 16, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–14491 Filed 7–26–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2004–0257; FRL–8127–9]

Chlorthalonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for the combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on pea, edible podded. The Snowpea Commission of Guatemala requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 27, 2007. Objections and requests for hearings must be received on or before September 25, 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–2004–0257. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, 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:

Tony Kish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–9443; e-mail address: kish.tony@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 111), e.g., agricultural workers; greenhouse,

nursery, and floriculture workers; farmers.

- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2004–0257 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 25, 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-2004-0257, 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 Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of August 20, 2004 (69 FR 51672) (FRL-7674-2), 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 3E6795) by the Snowpea Commission of Guatemala, Guatemala City, Guatemala; GB Bioscience™ Corporation of Greensboro, NC serves as the agent for the Snowpea Commission of Guatemala. The petition requested that 40 CFR 180.275 be amended by establishing a tolerance for combined residues of the fungicide chlorothalonil, and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on pea, edible podded (to include snowpea, and sugar snap pea) at 5 parts per million (ppm). That notice included a summary of the petition prepared by GB Bioscience™ Corporation, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see

- <http://www.epa.gov/oppfead1/trac/science>.
- <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.
- <http://www.epa.gov/pesticides/trac/science/aggregate.pdf>.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for the combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile on pea, edible podded at 5 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 toxic effects caused by chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov>. The referenced document is available in Docket ID EPA-HQ-OPP-2004-0257.

B. Toxicological Endpoints

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

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

- <http://www.epa.gov/pesticides/health/human.htm>.
- <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.
- <http://www.epa.gov/oppfead1/trac/science/>.

The chronic dietary endpoint used in this rule 0.003 milligrams/kilogram/day (mg/kg/day) is based on new toxicity data the Agency received, and is approximately 6.6 fold less than the endpoint of 0.02 mg/kg/day used in the chlorothalonil risk assessment for the April 1999 RED. The Agency has received and is reviewing additional information which could change this lower chronic dietary endpoint. A summary of the toxicological endpoints for chlorothalonil used for human risk assessment is shown in Table 1:

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

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary (All populations)	NOAEL = <0.9 mg/kg/day UF = 300 Chronic RfD = 0.003 mg/kg/day	Special FQPA SF = 1X cPAD = chronic RfD/Special FQPA SF = 0.003 mg/kg/day	<i>Rat Chronic</i> LOAEL = 0.9 mg/kg/day based on an increased incidence and severity of epithelial hyperplasia, hyperkeratosis and ulceration of the non-glandular region of the stomach in females
Short-Term Oral (1 to 7 days) (Residential)	Oral study NOAEL = <30.8 mg/kg/day	LOC for Margin of Exposure (MOE) = 1,000 (Residential)	<i>Rat Two-Generation</i> LOAEL = 30.8 mg/kg/day based on thickening and/or roughening of the forestomach with depressions in the epithelial aspect, and hyperplasia and hyperkeratosis of the non-glandular epithelium of the stomach
Short-Term Inhalation (1 to 30 days) (Residential)	Inhalation (or oral) study NOAEL = 30.8 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential)	<i>Rat Reproduction Study</i> LOAEL = 30.8 mg/kg/day based on thickening and/or roughening of the forestomach with depressions in the epithelial aspect, and hyperplasia and hyperkeratosis of the non-glandular epithelium of the stomach
Intermediate-Term Inhalation (1-6 months) (Residential)	Oral study NOAEL = 30.8 mg/kg/day inhalation absorption rate = 100%	LOC for MOE = 1,000 (Residential)	<i>Rat Reproduction Study</i> LOAEL = 30.8 mg/kg/day based on thickening and/or roughening of the forestomach with depressions in the epithelial aspect, and hyperplasia and hyperkeratosis of the non-glandular epithelium of the stomach
Cancer (oral, dermal, inhalation)	NA	NA	<i>Classification:</i> "Likely" to be a human carcinogen by all routes of exposure. The Science Advisory Panel decision (6/30/98) supports the use of an MOE approach to adequately quantify cancer risk for chlorothalonil

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.275) for the combined residues of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on a variety of raw agricultural commodities. Tolerances currently exist on almond; apricot; asparagus; banana; bean, dry; bean, snap; blueberry; broccoli; Brussels sprouts; cabbage; carrot; cauliflower; celery; cherry, sweet; cherry, tart; cocoa bean; coffee bean; corn, sweet; cranberry; cucumber; mango; melon; mushroom; nectarine; onion, dry bulb; onion, green; papaya; parsnip; passionfruit; peach; peanut; pepper, nonbell; pistachio; plum; plum, prune; potato; pumpkin; soybean; squash, summer; squash, winter; tomato; and various animal commodities for cattle; goat; hog; horse; milk; and sheep. There is also a time-limited tolerance on ginseng and tolerances with regional registration on filbert and mint, hay. Risk assessments were conducted by EPA to assess dietary exposures from chlorothalonil and its metabolite, 4-

hydroxy-2,5,6-trichloroisophthalonitrile 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 chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure

assessments: A Tier 3, chronic dietary-exposure assessment was refined by making use of anticipated residues derived from monitoring data from the Pesticide Data Program (PDP) and Food and Drug Administration surveillance monitoring, percent crop treated estimates, and the processing factors used in the Reregistration Eligibility Decision for Chlorothalonil (Document number EPA 738-R-99-004, April 1999). Drinking water was incorporated directly into the dietary assessment using the estimated maximum allowable Estimated Drinking Water Concentration (EDWC) of 42 ppb.

iii. *Cancer.* EPA has determined that a non-linear approach to cancer risk assessment is appropriate. Therefore the chronic RfD is considered to be protective for this effect.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA

relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins (DCIs) for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such DCIs will be required to be submitted no later than 5 years from the date of issuance of this tolerance. Mean anticipated residues were estimated from PDP monitoring data for apricot; asparagus; banana and plantain; bean, green; bean/pea, dry; broccoli, Brussels sprouts; carrot; cauliflower; celery; cherry; corn, sweet; cucumber; melon; milk; mushroom; nectarine, parsnip; peach; pepper, non-bell; potato; plum; pumpkin; prune; squash; and tomato. Mean anticipated residues were estimated from FDA monitoring data for blueberry; cabbage; cranberry; mango; onion, dry bulb; papaya; peanut; and soybean. Empirical processing factors were used for bean, green, cooked, canned, or frozen; cabbage; carrot, processed or cooked; cherry, processed; cocoa; coffee; cucumber, pickled; peach, cooked and canned; peanut, oil; pea, edible podded, cooked and processed; prunes; pumpkin; soybean, oil; squash, winter, cooked; and tomato, processed. Default processing factors were used for all other food commodities.

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

The Agency used PCT information as follows:

Almond, 100%; apricot, 10%; asparagus, 15%; banana and plantain, 100%; bean, green, 20%; bean/pea, dry, 1%; blueberry, 15%; broccoli, 10%; Brussels sprouts, 68%; cabbage, 40%; carrot, 45%; cattle, 100%; cauliflower, 10%; celery, 65%; cherry, 35%; cocoa, 100%; coffee, 100%; corn, sweet, 100%; cranberry, 100%; cucumber, 45%; filbert, 100%; ginseng, 100%; goat, 100%; hog, 100%; horse, 100%; mango, 100%; melon, cantaloupe, 60%; melon, honeydew, 18%; melon, watermelon and other, 84%; milk, 100%; mushroom, 100%; nectarine, 100%; onion, dry bulb, 50%; onion, green, 100%; papaya, 100%; parsnip, 100%; passionfruit, 100%; peach, 15%; peanut, 65%; pea, edible podded, 100%; pepper, non-bell, 100%; pistachio, 100%; potato, 60%; plum and prune, 5%; pumpkin, 40%; sheep, 100%; soybean, 100%; squash, 35%; and tomato, 45%.

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

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical

characteristics of chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile. 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>.

The modeling showed that chronic drinking water levels of chlorothalonil from the most intensive use (i.e., sodfarms) would, in combination with other exposures, raise a risk of concern. EPA believes that this modeling estimate significantly overstates exposure not only because its surface water model is generally conservative, but due to several factors unique to this risk assessment. First, the EDWC for chlorothalonil and its major metabolite was estimated using the mobility factor for chlorothalonil's major metabolite, which is considered more mobile than the parent. EPA does not have a method to calculate model input values for mobility of combined toxic residues; therefore, the most conservative value was used for the model. Second, EPA assumed use of maximum sodfarm application rates, application intervals, and agronomic practices which are not always employed. Third, EPA assumed that 100% of a watershed consists of sodfarm turf, compared with recent preliminary data showing that 50% or less is a more realistic number. Fourth, EPA assumed that all sodfarms in any given watershed area would be treated with chlorothalonil in the same season, and at the same time, which is unlikely to occur. Despite EPA's conclusion that the predicted EDWC overstates exposure, EPA conducted a sensitivity analysis to determine what sodfarm usage rate would lower predicted drinking water levels by a sufficient amount to eliminate any risk concerns. EPA's analysis showed that the maximum allowable EDWC to be 42 ppb, and that reducing the maximum application rate for sodfarms from 26 lbs of active ingredient/acre/year to 13 lbs active ingredient/acre/year would result in acceptable EDWC of less than 42 ppb. This reduction in the maximum sodfarm application rate is being incorporated on all affected chlorothalonil product labels.

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).

Chlorothalonil is currently registered for use on the following residential non-dietary sites: Golf courses and additive for paints. The risk assessment was

conducted using the following residential exposure assumptions: There is potential for residential exposure from treated golf courses and from using treated paint. All other turf uses involving chlorothalonil exposure to toddlers and children have been canceled. EPA has determined that there is no hazard via the dermal route; therefore, quantification of a dermal risk assessment is not required. Inhalation post-application exposures for golf courses were not assessed since inhalation exposures are thought to be negligible in outdoor post-application scenarios. Consequently, only inhalation and incidental oral exposures from the use of treated paint were assessed. The short- and intermediate-term inhalation and incidental oral MOEs are greater than the target MOE of 1000 and, therefore, do not exceed EPA's level of concern (LOC).

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 chlorothalonil and any other substances and chlorothalonil 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 chlorothalonil has a common mechanism of toxicity with other substances. In the chlorothalonil RED, chlorothalonil was grouped in the polychlorinated fungicide class of pesticides. Other members of this class include hexachlorobenzene (HCB), pentachlorophenol (PCP), and pentachloronitrobenzene (PCNB). This is considered a weak classification, with the only point of commonality is that they are polychlorinated compounds used as fungicides. Available data do not support a finding for a common mechanism of toxicity for chlorothalonil and the other pesticides in the polychlorinated fungicide class. Chlorothalonil produces renal (kidney) tubular adenomas and carcinomas and papillomas of the stomach in rats. Chlorothalonil also produces gastric lesions and kidney toxicity due to perturbation of mitochondrial respiration. The other pesticides in the class do not have the same toxic effects

and do not have the same mode of action. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative>.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* EPA has concluded that there is no increased susceptibility following prenatal or postnatal exposure to chlorothalonil in rats. There is equivocal evidence of increased susceptibility in rabbits; however, the degree of concern for prenatal susceptibility is low. There is a well-defined NOAEL in the rabbit developmental toxicity study protecting from these effects. In addition, developmental effects were observed in only one of the two developmental toxicity studies conducted in the same strain of rabbit at the same dose levels. Therefore, based on overall weight-of-evidence, EPA concluded that there is no increased susceptibility following exposure to chlorothalonil or its 4-hydroxy-2,5,6-trichloroisophthalonitrile metabolite.

3. *Conclusion.* There is a complete toxicity data base for chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, and exposure data are complete or are estimated based

on data that reasonably accounts for potential exposures. The acute, subchronic, developmental, reproduction and chronic studies were sufficient to determine whether human hazard could exist within the context of dose, duration, timing, and route-of-exposure. The uncertainty factor used in determining the chronic reference dose (cRfD) was 300 (10X for interspecies animal-to-human extrapolation; 10X for intraspecies human variations; and 3X for use of a LOAEL instead of a NOAEL). The uncertainty factor of 3X for use of the LOAEL instead of the NOAEL is considered appropriate because an increased incidence and severity of epithelial hyperplasia, hyperkeratosis and ulceration of the non-glandular region of the stomach in females were seen in few animals and were minimal in severity and observed in one sex only. The chlorothalonil FQPA safety factor was reduced to 3X for chronic risk assessment but retained at 10X for residential assessments. The data from the chronic toxicity study in rats show that a 3X factor in the chronic risk assessment is protective of infants and children despite the lack of a NOAEL in that study. As to the residential risk assessment, there are insufficient reliable data to conclude that a reduction of the 10X FQPA safety factor is safe for infants and children given the lack of a NOAEL in the study upon which the residential risk assessment is based. Other than the lack of NOAELs in these two critical studies, other considerations raise no concern for the safety of infants and children. Specifically, (1) the hazard and exposure databases are complete; (2) there are low concerns for prenatal and/or postnatal toxicity; (3) there are no residual uncertainties with regard to prenatal and/or postnatal toxicity; and (4) there are no neurotoxic concerns.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* No acute effects were identified in the toxicological studies for chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile; therefore, a quantitative acute dietary exposure assessment is unnecessary. In the 1999 Chlorothalonil Registration Eligibility Document, the acute RfD was based on the results of a 90-day study in rats in which gastric renal lesions were observed beginning at 7 days of continuous dosing. These type of lesions and in particular, the time frame at which they occurred (after 7 days of continuous high-dose administrations), do not meet the criteria of a single-dose effect.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile from food will utilize 3% of the cPAD for the U.S. population, 2% of the cPAD for all infants, and 8% of the cPAD for children 1-2 years old. There are no residential uses for chlorothalonil that

result in chronic residential exposure to chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile. Based on approved use pattern, chronic residential exposure to residues of chlorothalonil are not expected. In addition, there is potential for chronic dietary exposure to chlorothalonil in drinking water. Analyses by the Agency indicate that 42 ppb is the maximum

residue concentration (parent plus metabolite) in drinking water which results in acceptable levels of chronic aggregate risk. However, as explained prior in Unit III.C.2., this 42 ppb EDWC is considered conservative. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CHLOROTHALONIL

Population/Subgroup	cPAD/mg/kg/day	%cPAD/ (Food plus water)	Surface Water EEC/ (ppb)	Ground/ Water EEC/ (ppb)	Chronic/ DWLOC (ppb)
U.S. Population	0.003	33	N/A (Not Applicable)	N/A	N/A
All infants (<1 year old)	0.003	99	N/A	N/A	N/A
Children 1-2 years old	0.003	52	N/A	N/A	N/A
Adults 20-49 years old	0.003	30	N/A	N/A	N/A

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

Chlorothalonil is currently registered for use that could result in short-term and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate-term exposures for chlorothalonil and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile.

Using the exposure assumptions described in this unit for short-term and intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 8,600 for adults 20-49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water, and residential uses. Dietary exposure was calculated assuming residues in water of 42 ppb.

5. *Aggregate cancer risk for U.S. population.* EPA has determined that a non-linear approach to cancer risk assessment is appropriate and that the chronic RfD is considered to be protective for this effect.

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 chlorothalonil and its metabolite, 4-

hydroxy-2,5,6-trichloroisophthalonitrile residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate residue analytical methods are available for purposes of registration. The Pesticide Analytical Manual (PAM) Vol. II lists Method I, a gas chromatography (GC) method with electron-capture detection (ECD), for the enforcement of tolerances for plant commodities.

B. International Residue Limits

There are no conflicts between existing U.S. tolerances and MRLs established by the CODEX Alimentarius Commission.

C. Response to Comments

One comment dated September 4, 2004, was received from B. Sachau. Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to chlorothalonil, including all anticipated dietary exposures and other exposures for which there is reliable information. This comment, as well as her comments regarding animal testing, has been responded to by the Agency on several occasions. For example, January 7, 2005 (70 FR 1349) (FRL-7691-4) and October 29, 2004 (69 FR 63083) (FRL-7681-9).

V. Conclusion

Therefore, the tolerance is established for the combined residues of

chlorothalonil, and its metabolite, 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on pea, edible podded (includes snow pea and sugar snap pea) at 5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal Government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: 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 180.275 is amended by alphabetically adding the following commodity to the table in paragraph (a)(1) to read as follows:

§180.275 Chlorothalonil; tolerances for residues.

(a) * * *			
(1) * * *			
Commodity			
Parts per million			
* * *	*	*	5
Pea, edible podded	*	*	

* * * * *
[FR Doc. E7–14567 Filed 7–26–07; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

45 CFR Part 146

[CMS–4094–F5]

RIN 0938–AO83

Amendment to the Interim Final Regulation for Mental Health Parity

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Amendment to interim final regulation.

SUMMARY: This document amends the interim final regulation that implements the Mental Health Parity Act of 1996 (MHPA) to conform the sunset date of the regulation to the sunset date of the statute under legislation passed on December 9, 2006.

DATES: *Effective date:* The amendment to the regulation is effective August 27, 2007.

Applicability dates: Under the amendment, the requirements of the MHPA interim final regulation apply to group health plans and health insurance coverage offered in connection with a group health plan during the period commencing August 27, 2007 through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Adam Shaw, Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, at 1–877–267–2323, ext. 61091.

SUPPLEMENTARY INFORMATION:

I. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits and the application of dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

The provisions of MHPA are set forth in Title XXVII of the PHS Act, Part 7 of Subtitle B of Title I of ERISA, and

Chapter 100 of Subtitle K of the Code. The Secretaries of Health and Human Services, Labor, and the Treasury share jurisdiction over the MHPA provisions. These provisions are substantially similar, except for jurisdictional differences. See for example, the amendment to the interim final rule published July 22, 2005 (70 FR 42276).

II. Overview of MHPA

The MHPA provisions are set forth in section 2705 of the PHS Act, section 712 of ERISA, and section 9812 of the Code. MHPA applies to a large group health plan (or health insurance coverage offered in connection with a large group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions would not apply to benefits for services furnished on or after September 30, 2001. On December 22, 1997, the Departments of Health and Human Services, Labor, and the Treasury issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

The sunset date has been extended on a yearly basis by subsequent statutory provisions, which are described in detail in the amendment to the interim final rule published July 22, 2005 (70 FR 42276). The Department has published changes to the interim final mental health parity regulations to conform the expiration date of the regulation to each new statutory sunset date. (See 70 FR 42276, (July 22, 2005); 71 FR 25092 (April 28, 2006).)

On December 20, 2006, President Bush signed The Tax Relief and Health Care Act of 2006 (Pub. L. 109-432). That legislation further extended MHPA's sunset date under the PHS Act, ERISA, and the Code so that MHPA's provisions apply to any services furnished through December 31, 2007.

This statutory amendment has not altered MHPA's scope. It continues to apply to a large group health plan (or health insurance coverage offered in connection with a large group health plan) that provides both medical/surgical benefits and mental health benefits. To assist plan sponsors, health insurance issuers, and covered individuals, the Department is publishing this amendment to the interim final regulations, conforming the regulatory sunset date to the new statutory sunset date. The Department is making the effective date of this amendment to the interim final regulations effective as of August 27, 2007. Since the extension of this sunset

date is essentially self-implementing, this amendment to the MHPA regulations is published on an interim final basis under section 2792 of the PHS Act.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Regulatory Impact Statement

Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96-354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). According to the terms of the Executive Order, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order. Rather, it is an amendment to the 1997 interim final regulations that makes no substantive changes to those regulations, and merely extends the regulatory sunset date to conform to the new statutory sunset date added by Pub. L. 109-432. Because it is not a major rule, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the

RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule and have determined that it will not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Pub. L. 104-121, the Contract with America Act, it is not a major rule.

List of Subjects in 45 CFR Part 146

Health care, Health insurance, Reporting and recordkeeping requirements, State regulation of health insurance.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 45 CFR part 146 as follows:

PART 146—REQUIREMENTS FOR THE GROUP HEALTH INSURANCE MARKET

■ 1. The authority citation for part 146 is amended to read as follows:

Authority: Secs. 2705, 2791, and 2792 of the PHS Act (42 U.S.C. 300gg-5, 300gg-91, and 300gg-92).

§ 146.136 [Amended]

■ 2. In § 146.136, the following amendments are made:

■ a. The last sentence of paragraph (f)(1) is amended by removing the date "December 31, 2006" and adding in its place the date "December 31, 2007."

■ b. Paragraph (g)(2) is amended by removing the date "January 1, 2007" and adding in its place the date "January 1, 2008."

■ c. Paragraph (i) is revised to read as follows:

§ 146.136 Parity in the application of certain limits to mental health benefits.

* * * * *

(i) *Sunset*. This section does not apply to benefits for services furnished after December 31, 2007.

Dated: March 15, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: April 11, 2007.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

[FR Doc. E7-14097 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 148

[CMS-2260-IFC]

RIN 0938-A046

High Risk Pools

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period will amend our regulations regarding grants to States for operation of qualified high risk pools to conform to provisions of the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. Those provisions extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the Public Health Service Act.

DATES: *Effective date:* These regulations are effective on August 27, 2007.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 27, 2007.

ADDRESSES: In commenting, please refer to file code CMS-2260-IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-2260-IFC, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-2260-IFC, Mail Stop C4-26-05.00, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Paul Youket, (410) 786-7528, or John Young, (410) 786-0505.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by

referencing the file code CMS-2260-IFC and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107-210) added section 2745 of the Public Health Service Act (PHS Act) to provide for two types of grants to States for the promotion of "qualified high risk pools." These pools provide health coverage to high-risk individuals who may find private health insurance unavailable or unaffordable. Under this provision, a pool could meet the definition of a "qualified" high risk pool for purposes of section 2745 only if it met the definition of a qualified high risk pool in section 2744(c)(2) of the PHS Act. Section 2744 deals with how States can satisfy the requirement of section 2741 of the PHS Act to guarantee access to health coverage for individuals who meet the definition of an "eligible individual" under section 2741, as added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). These individuals are commonly referred to as "HIPAA-eligible" individuals.

Under section 2744(c)(2) of the PHS Act, a qualified high risk pool must provide health coverage without a pre-existing condition exclusion to "all" HIPAA-eligible individuals. This meant that State high risk pools that did not allow all HIPAA-eligible individuals into the pool without a pre-existing condition exclusion could not meet the definition of a "qualified" risk pool.

The two types of grants authorized by the legislation were “seed grants” for States that had not yet created a high risk pool, and “operational” grants to offset losses incurred by States that operate a qualified high risk pool. Under the prior law, in order for a risk pool to qualify for an operational grant, it could not charge premiums that exceeded 150 percent of the premium for applicable standard risk rates. Moreover, the amount of the grants was limited to 50 percent of the losses incurred by a State.

Section 6202 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) and the State High Risk Pool Funding Extension Act of 2006 (Pub. L. 109–172) (Extension Act) extended funding for seed and operational grants for State High Risk Pools and amended section 2745 of the PHS Act.

The Extension Act made the following changes:

1. Expanded the definition of a “qualified high risk pool.” As noted above, section 2745(d) of the PHS Act previously defined the term to have the same meaning as in section 2744(c)(2) of the PHS Act, which required that the risk pool provide coverage to “all” HIPAA-eligible individuals (as defined in § 148.103), without any pre-existing condition exclusion. The revised definition specifies that, for purposes of grants under section 2745, a risk pool can be qualified even if the State uses other mechanisms beyond the risk pool to ensure that health coverage is provided to all HIPAA-eligibles.

2. Expanded the definition of “State.” Section 2745 of the PHS Act previously defined this term to include only the 50 States and the District of Columbia, but has now been amended to include U.S. Territories.

3. Increased the amount of premiums that a risk pool can charge and still qualify for an operational grant. Section 2745 of the PHS Act previously required that the premiums charged under the pool not exceed 150 percent of the premium for applicable standard risk rates. As amended, it permits grants to States with premiums of up to 200 percent of the standard risk rates, as long as States with premiums greater than 150 percent of the standard rate use at least half of the grant funds to reduce high risk pool premiums for enrollees.

4. Removed the limitation that a State’s grant not exceed 50 percent of its operating losses.

5. Changed the funding allotment formula. Previously, the grant funds were to be allotted to States under a relatively simple formula based on the number of uninsured individuals in the State. Under the new legislation, the

allotment formula is more complex. Of the total appropriation for a given year—if money is appropriated—two-thirds would be available for grants to cover operational losses. Of these funds, 40 percent is to be equally divided among any of the 50 States and the District of Columbia that apply. Another 30 percent of that amount is allotted among all States that apply for grants based on the ratio of uninsured individuals in the State to uninsured individuals in all States that apply. The final 30 percent is to be allotted based on the ratio of the number of individuals enrolled in a State’s risk pool to the number enrolled through the risk pools of all the qualifying States that apply. (Territories are eligible for the proportional allotments, but only up to a total of \$1 million for all Territories combined.)

6. Provided authority for “bonus grants” to States (not including Territories) that qualify for operational grants. One-third of a total yearly appropriation will be used to provide grants to enable States to provide specified supplemental consumer benefits to enrollees or potential enrollees of the qualified high risk pool. (A bonus grant is not to exceed 10 percent of the total for any one State.)

This interim final rule with comment period updates our regulations at 45 CFR part 148, subpart E, Grants to States for Operation of Qualified High Risk Pools, to implement the changes made by the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006.

II. Provisions of This Interim Final Rule

[If you choose to comment on issues in this section, please include the caption “Provisions of this Interim Final Rule” at the beginning of your comments.]

We are revising the regulation text in 45 CFR part 148 to conform with the State High Risk Pool Funding Extension Act of 2006 and the DRA. These revisions are discussed in detail below.

A. Definitions (§ 148.308)

We are amending § 148.308 (Definitions) to

- Add a definition of “bonus grants.”
- Revise the definition of “qualified high risk pool;” and
- Revise the definition of “State.”

1. Bonus Grant

We are adding the following definition for Bonus Grants—Funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer

benefits to enrollees or potential enrollees in qualified high risk pools.

2. Qualified High Risk Pool

We are amending the definition at § 148.308 to reflect the exception added by the Extension Act in section 2745(g)(1)(A) of the PHS Act. Specifically, a State may elect to meet the definition of a qualified high risk pool under § 148.128(a)(2)(ii)(A) by providing for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS) that includes a high risk pool as a component.

3. State

In accordance with the Extension Act, we are amending the definition to include any of the 50 States and the District of Columbia, and the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

B. Grants for Operational Losses (§ 148.310)

1. Eligibility Requirements for an Operational Grant

This section specifies the eligibility requirements for operational grants. A State must meet all of the following requirements to be eligible for a grant:

- a. Maximum premium. We are amending § 148.310 to reflect that the statute has increased the maximum premium that a risk pool can charge and still qualify for a grant. The maximum has been changed from 150 percent to 200 percent of the premium for applicable standard risk rates for the State.

- b. Continued funding. The statute previously required that the pool have in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of fiscal year 2004, which was the last year that grants were authorized under the prior appropriation. The statute, as revised by the Extension Act, now requires that a risk pool have such a mechanism to ensure funding after the end of the last fiscal year for which a grant is provided. We interpret this to mean that the pool has capacity or mechanisms in place that can reasonably be expected to ensure that it may operate in the future without the benefit of Federal funding.

In the case of a qualified high risk pool of a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State must use at least 50 percent of the amount of the grant provided to the

State to reduce premiums for enrollees. The application should demonstrate/attest that the funds will be used this way.

2. Amount of Grant Payment (§ 148.312)

Two-thirds of any amounts appropriated are made available for operational grants. An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the fiscal year for which it is applying. The grant may be less than 100 percent after the allotment limits are applied, but in no case will it be more than 100 percent.

Funds will be allocated in accordance with § 148.312 to each State that meets the eligibility requirements of § 148.310 and files an application in accordance with § 148.316. Specifically:

- Forty percent of funds made available under that section will be equally divided among any of the 50 States and the District of Columbia that meet the eligibility criteria for an operational grant;
- Thirty percent of funds made available will be divided among States (including territories) based on the number of uninsured residents in the State during the specified year as compared to the total number of uninsured residents in all States that apply for grants;
- Thirty percent will be divided among States (including territories) based on the number of people in State high risk pools during the specified year as compared to all States that apply.

In accordance with the statute, in no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1 million.

We will calculate the number of uninsured individuals for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau. The 3-year average will be calculated using numbers available as of March 1 of each year for the preceding 3-year period.

C. Bonus Grants

One-third of the total appropriation will be available for the bonus grants. These grants will be available to any one of the 50 States and the District of Columbia that receives an operational grant under § 148.310. The grants must be used to provide one or more of the following benefits:

- (1) Low income premium subsidies;
- (2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and

(6) The establishment of disease management programs. In no case will a State receive bonus grants that exceed 10 percent of the total funds allotted for bonus grants in that fiscal year.

D. Periods During Which Eligible States May Apply for a Grant (§ 148.314)

Funds are currently appropriated for Federal fiscal year 2006 and authorized for fiscal years 2007 through 2010. Funding for FY 2007 through 2010 under Pub. L. 109–172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's or pool's fiscal year ending prior to or during any federal fiscal year, 2007 through 2010 for which authorized funds are appropriated, in connection with the operation of its qualified high risk pool. Grant funding is administered on a retrospective basis (for example, pools with losses incurred in 2005 may apply for Federal Fiscal Year 2006 grant funds). If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after it is established that a pool is eligible (i.e., that it is a qualified high risk pool as defined by § 148.128(a)(2)(ii)) will qualify for a grant. An eligible State must apply for a grant no later than June 30 following the end of the State fiscal year during which it incurred losses. Each State may only be awarded one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of § 148.314 will receive distribution of grant funds using the following methodology:

- Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's fiscal year 2005 incurred losses.
- Grant allocations for each fiscal year will be determined by taking all grant applications received by June 30 of the Federal fiscal year and allocating

grant funds in accordance with § 148.312. In no case will a State receive funds greater than 100 percent of its losses.

If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses. This process will occur at the time of the initial calculation and there will be one annual allocation and distribution by September 30 of each year.

Grant Application Instructions (§ 148.316)

We are amending § 148.316 to reflect the addition of application requirements for bonus grants. We are changing the heading of § 148.316(a), "Application package," to "Application for operational losses." We are inserting a bonus grants section by redesignating § 148.316(a)(3) as § 148.316(a)(4) and adding new paragraph (a)(3), the bonus grants requirements. The individual State applying for a bonus grant must provide:

(i) A narrative description with detailed information about each one of the following supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

(A) Low income premium subsidies;

(B) Reduction in premium trends, actual premium or other cost-sharing requirements;

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;

(D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;

(E) Increased benefits; and

(F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 and SF 424 A.

We are revising the "Standard forms application kit" in § 148.316(b). We are eliminating the text "Additional Assurances" in "Standard forms application kit," paragraph (b)(1)(i).

We are also changing the Web site URL address for the "Standard forms kit" download at paragraph (b)(1)(ii) to <http://www.grants.gov>.

There are no other changes to the content of the "Standard forms application kit."

In § 148.316(c), "Submission of application package," we are deleting

paragraphs (c)(1) and (c)(2) and replacing with text that will read: All applications should be submitted electronically via <http://www.grants.gov>.

In § 148.316(d), “Application deadlines,” we are changing the applications deadlines text to read: The deadline for States to submit an application for losses incurred in a State fiscal year is *June 30 of the next Federal fiscal year that begins after the end of the State fiscal year*.

In § 148.316(e), “Where to submit an application,” we are changing the text to read: Applications must be submitted to <http://www.grants.gov>.

Funding Mechanism (§ 148.318)

We are amending § 148.318, dealing with continued funding of a risk pool. The State must outline funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after the last fiscal year for which it is applying for grant funds.

Grant Awards (§ 148.320)

We are amending this section to specify that the grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by the States.

III. Collection of Information Requirement

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 148.316 Grant Application Instructions

Section 148.316(a) requires each State to compile an application package that documents that it has met the requirements for a grant. If a risk pool entity applies on behalf of a State, it must provide documentation that it has been delegated appropriate authority by the State.

The burden associated with this requirement is subject to the PRA; however, the structure of the application collection and grant monitoring reporting requirements of the grants has not been changed from the original grants program and is currently approved under OMB control number 0938–0887 “Matching Grants to States for the Operation of High Risk Pools and Supporting Regulations at 42 CFR 148.316, 148.318, and 148.320” with a current expiration date of 01/31/2010. We are, however, revising this package to include the additional request under 148.316(a)(3) for (1) description of Type of Consumer Benefits; (2) Description of the Eligible Population for the consumer benefits; and, (3) Projected Budget for the use of Bonus Grants. We believe the burden associated with the additional information is already captured in the currently approved OMB package (#0938–0887).

Section 148.320 Grant Awards

Section 148.320(a)(2)(iii) states that a grantee is required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

The burden associated with this requirement is the time it would take for a grantee to submit quarterly progress and financial reports. We estimate it will take one grantee 1 hour per quarter to comply with this requirement.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs Division of Regulations Development, *Attn.*: Melissa Musotto, CMS–2260–IFC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn.*: Katherine Astrich, CMS Desk Officer, CMS–2260–IFC, katherine_astrich@omb.eop.gov. Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Notice of Proposed Rulemaking and the 60-Day Delay in the Effective Date

[If you choose to comment on issues in this section, please include the caption “Waiver of Notice of Proposed Rulemaking and the 60-Day Delay in the Effective Date” at the beginning of your comments.]

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In this case, we believe that a notice-and-comment procedure is unnecessary because the regulation is only being amended to conform directly to the provisions of the Deficit Reduction Act of 2005 and the State High Risk Pool Funding Extension Act of 2006. The statutory effective date was the date of enactment, February 10, 2006. The law amends section 2745 of the Public Health Service Act, and the rule updates 45 CFR Subchapter B, Part 148, Subpart E—Grants to States for Operation of Qualified High Risk Pools to conform to the new and changed provisions of the law.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of an interim final rule.

Section 553(d) of the APA (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

All revisions are to update the current sections of the regulation. The only new section added is § 148.316(a)(3), bonus grants for supplemental consumer benefits, which is a new provision of the Extension Act. Other revisions include an expanded definition of “qualified high risk pool,” an updated definition of “States” to include U.S. Territories, and changes to the funding formula and updating dates to reflect new census measure periods and application deadlines. Although the grant solicitation clearly conforms to the provisions of the law and a grant cycle has already been completed under the provisions of this law, we believe that this action will better accommodate the implementation of the statute before the end of the second funding cycle.

VI. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption “Regulatory Impact Statement” at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by

nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 45 CFR chapter IV as set forth below:

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 2741 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg–41 through 300gg–63, 300gg–91, and 300gg–92).

Subpart E—Grants to States for Operation of Qualified High Risk Pools

■ 2. Section 148.306 is revised to read as follows:

§ 148.306 Basis and scope.

This subpart implements section 2745 of the Public Health Service Act (PHS Act). It extends grants to States that have qualified high risk pools that meet

the specific requirements described in § 148.310. It also provides specific instructions on how to apply for the grants and outlines the grant review and grant award processes.

■ 3. Section 148.308 is amended by—

■ A. Adding the definition for “bonus grants.”

■ B. Revising the definition of “qualified high risk pool.”

■ C. Revising the definition of “State.”

The addition and revisions read as follows:

§ 148.308 Definitions.

* * * * *

Bonus grants means funds that the Secretary provides from the appropriated grant funds to be used to provide supplemental consumer benefits to enrollees or potential enrollees in qualified high risk pools.

* * * * *

Qualified high risk pool as defined in sections 2744(c)(2) and 2745(g) of the PHS Act means a risk pool that—

(1) Provides to all eligible individuals health insurance coverage (or comparable coverage) that does not impose any preexisting condition exclusion with respect to such coverage for all eligible individuals, except that it may provide for enrollment of eligible individuals through an acceptable alternative mechanism (as defined for purposes of section 2744 of the PHS Act) that includes a high risk pool as a component; and

(2) Provides for premium rates and covered benefits for such coverage consistent with standards included in the NAIC Model Health Plan for Uninsurable Individuals Act that was in effect at the time of the enactment of the Health Insurance Portability and Accountability Act of 1996 (August 21, 1996) but only if the model has been revised in State regulations to meet all of the requirements of this part and title 27 of the PHS Act.

* * * * *

State means any of the 50 States and the District of Columbia and includes the U.S. Territories of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

* * * * *

■ 4. Section 148.310 is amended by—

■ A. Republishing the introductory text to the section.

■ B. Revising paragraph (b).

■ C. Revising paragraph (d).

■ D. Adding paragraphs (f), (g), and (h).

The republication, revisions, and additions read as follows:

§ 148.310 Eligibility requirements for a grant.

A State must meet all of the following requirements to be eligible for a grant:

* * * * *

(b) The pool restricts premiums charged under the pool to no more than 200 percent of the premium for applicable standard risk rates for the State.

* * * * *

(d) The pool has in effect a mechanism reasonably designed to ensure continued funding of losses incurred by the State after the end of each fiscal year for which the State applies for Federal Funding in fiscal years 2005–2010 in connection with the operation of the pool.

* * * * *

(f) In the case of a qualified high risk pool in a State that charges premiums that exceed 150 percent of the premium for applicable standard risks, the State will use at least 50 percent of the amount of the grant provided to the State to reduce premiums for enrollees.

(g) In no case will the aggregate amount allotted and made available to the U.S. Territories for a fiscal year exceed \$1,000,000 in total.

(h) Bonus grant funding must be used for one or more of the following benefits:

(1) Low income premium subsidies;
(2) Reduction in premium trends, actual premium or other cost-sharing requirements;

(3) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrolment rules;

(4) Less stringent rules or additional waiver authority with respect to coverage of pre-existing conditions;

(5) Increased benefits; and

(6) The establishment of disease management programs.

■ 5. Section 148.312 is amended by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Adding a new paragraph (d).

The revisions and addition read as follows:

§ 148.312 Amount of grant payment.

(a) An eligible State may receive a grant to fund up to 100 percent of the losses incurred in the operation of its qualified high risk pool during the period for which it is applying or a lesser amount based on the limits of the allotment under the formula.

(b) Funds will be allocated in accordance with this paragraph to each State that meets the eligibility requirements of § 148.310 and files an

application in accordance with § 148.316. The amount will be divided among the States that apply and are awarded grants according to the allotment rules that generally provide that: 40 percent will be equally divided among those States; 30 percent will be divided among States and territories based on their number of uninsured residents in the State during the specified year as compared to all States that apply; and 30 percent will be divided among States and territories based on the number of people in State high risk pools during the specified year as compared to all States that apply. For the purposes of this paragraph:

(1) The number of uninsured individuals is calculated for each eligible State by taking a 3-year average of the number of uninsured individuals in that State in the Current Population Survey (CPS) of the Census Bureau during the period for which it is applying. The 3-year average will be calculated using numbers available as of March 1 of each year.

(2) The number of individuals enrolled in health care coverage through the qualified high risk pool of the State will be determined by attestation by the State in its grant application and verified for reasonability by the Secretary through acceptable industry data sources.

* * * * *

(d) One-third of the total appropriation will be available for the bonus grants. In no case will a State for a fiscal year receive bonus grants that exceed 10 percent of the total allotted funds for bonus grants.

■ 6. Section 148.314 is revised to read as follows:

§ 148.314 Periods during which eligible States may apply for a grant.

(a) *General rule.* A State that meets the eligibility requirements in § 148.310 may apply for a grant to fund losses that were incurred during the State's fiscal year 2005, 2006, 2007, 2008 and 2009 in connection with the operation of its qualified high risk pool. Funding for FY 2007 through 2010 under Pub. L. 109–172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available. Grants funding is on a retrospective basis and applies to the States previous fiscal year. If a State becomes eligible for a grant in the middle of its fiscal year, a State may apply for losses incurred in a partial fiscal year if a partial year audit is done. Only losses that are incurred after eligibility is established will qualify for a grant.

(b) *Maximum number of grants.* An eligible State may only be awarded a maximum of five grants, with one grant per fiscal year. A grant for a partial fiscal year counts as a full grant.

(c) *Deadline for submitting grant applications.* The deadlines for submitting grant applications are stated in § 148.316(d).

(d) *Distribution of grant funds.* States that meet all of the eligibility requirements in § 148.310 and submit timely requests in accordance with paragraph (c) of this section will receive an initial distribution of grant funds using the following methodology: Grant applications for losses will be on a retrospective basis. For example, grant applications for 2006 funds are based on the State's fiscal year 2005 incurred losses. Grant funding is appropriated for Federal fiscal year 2006 and authorized to be appropriated for Federal fiscal years 2007 through 2010.

(e) *Grant allocations.* Grant allocations for each fiscal year will be determined by taking all grant applications during the period for which States are applying and allocating the funds in accordance with § 148.312.

(1) In no case will a State receive funds greater than 100 percent of their losses.

(2) If any excess funds remain after the initial calculation, these excess funds will be proportionately redistributed to the States whose allocations have not exceeded 100 percent of their losses.

■ 7. Section 148.316 is amended by—

■ A. Adding new introductory text to the section.

■ B. Amending paragraph (a) introductory text by revising the heading.

■ C. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ D. Adding a new paragraph (a)(3).

■ E. Revising paragraph (b).

■ F. Revising paragraph (c).

■ G. Revising paragraph (d).

■ H. Revising paragraph (e).

The republication, revisions, and addition read as follows:

§ 148.316 Grant application instructions.

Funding for FY 2007 through FY 2010 under Pub. L. 109–172 requires the subsequent enactment of appropriations. States will be unable to apply for grants unless and until such funding becomes available.

(a) *Application for operational losses.* * * *

* * * * *

(3) *Bonus grants for supplemental consumer benefits.* Provide detailed information about the following

supplemental consumer benefits for which the entity is applying:

(i) A narrative description of one or more of the following of the supplemental consumer benefits to be provided to enrollees and/or potential enrollees in the high risk pool:

(A) Low income premium subsidies;

(B) Reduction in premium trends, actual premium or other cost-sharing requirements;

(C) An expansion or broadening of the pool of individuals eligible for coverage, such as through eliminating waiting lists, increasing enrollment caps, or providing flexibility in enrollment;

(D) Less stringent rules, or additional waiver authority with respect to coverage of pre-existing conditions;

(E) Increased benefits; and

(F) The establishment of disease management programs.

(ii) A description of the population or subset population that will be eligible for the supplemental consumer benefits.

(iii) A projected budget for the use of bonus grant funds using the SF 424 A.

* * * * *

(b) Standard form application kit—(1) Forms. (i) The following standard forms must be completed with an original signature and enclosed as part of the application package:

SF-424 Application for Federal Assistance.

SF-424A Budget Information.

SF-424B Assurances Non-Construction Program.

SF-LLL Disclosure of Lobbying Activities Biographical Sketch.

(ii) These forms can be accessed from the following Web site: <http://www.grants.gov>.

(2) *Other narrative*. All other narrative in the application must be submitted on 8½ x 11 inch white paper.

(c) *Application submission*.

Submission of application package is through <http://www.grants.gov>.

Submissions by facsimile (fax) transmissions will not be accepted.

(d) *Application deadlines*. (1) The deadline for States to submit an application for losses incurred in a State fiscal year that begins after the end of the State fiscal year. Funding for FY 2007 through 2010 under Pub. L. 109–172 requires subsequent enactment of appropriations authority. States will be unable to apply for grants unless and until such funding becomes available.

(2) *Deadline for States to submit an application for losses incurred in their fiscal year 2005*. States had to submit an application to CMS no later than June 30, 2006.

(3) *Deadline for States to submit an application for losses incurred in their fiscal year 2006*. States must submit an application to CMS by no later than June 30, 2007.

(4) *Deadline for States to submit an application for losses incurred in their fiscal year 2007*. States must submit an application to CMS by no later than June 30, 2008.

(5) *Deadline for States to submit an application for losses incurred in their fiscal year 2008*. States must submit an application to CMS by no later than June 30, 2009.

(6) *Deadline for States to submit an application for losses incurred in their fiscal year 2009*. States must submit an application to CMS by no later than June 30, 2010.

(e) *Where to submit an application*. Applications must be submitted to <http://www.grants.gov>. Submissions by facsimile (fax) transmissions will not be accepted.

■ 8. Section 148.318 is amended by revising paragraph (d)(2) to read as follows:

§ 148.318 Grant application review.

* * * * *

(d) * * *

(2) *Funding mechanism*. The State has outlined funding sources, such as assessments and State general revenues, which can cover the projected costs and are reasonably designed to ensure continued funding of losses a State incurs in connection with the operation of the qualified high risk pool after each fiscal year for which it is applying for grant funds.

■ 9. Section 148.320 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 148.320 Grant awards.

(a) * * *

(2) * * *

(iii) The grantee will be required to submit quarterly progress and financial reports under part 92 of this title and in accordance with section 2745(f) of the Public Health Service Act, requiring the Secretary to make an annual report to Congress that includes information on the use of these grant funds by States.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 22, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 17, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. E7-14361 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

Proposed Rules

Federal Register

Vol. 72, No. 144

Friday, July 27, 2007

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2007-0022]

RIN 0579-AC34

Citrus Canker; Movement of Fruit From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before August 7, 2007.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2007-0022 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2007-0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700

River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2007-0022.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737-1231; (301) 734-4387.

SUPPLEMENTARY INFORMATION: On June 21, 2007, we published in the **Federal Register** (72 FR 34180-34191, Docket No. APHIS-2007-0022) a proposal to amend the citrus canker regulations by modifying the conditions under which fruit may be moved interstate from quarantined areas. Under this proposed rule, we would eliminate the requirement that the groves in which the fruit is produced be inspected and found free of citrus canker, and instead require that fruit produced in the quarantined area be treated with a surface disinfectant treatment in a packinghouse operating under a compliance agreement and that each lot of finished fruit be inspected at the packinghouse and found free of visible symptoms of citrus canker. We would, however, retain the current prohibition on the movement of fruit from a quarantined area into commercial citrus-producing States.

Comments on the proposed rule were required to be received on or before July 23, 2007. We are reopening the comment period on Docket No. APHIS-2007-0022 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between July 24, 2007, and the date of this notice. We have allowed comments to be submitted

through Regulations.gov (see **ADDRESSES** block) during that period.

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

Done in Washington, DC, this 24th day of July 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7-14530 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-34-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AF60

Small Business Size Standards; Calculation of the Number of Employees

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to change the way it calculates a concern's number of employees in determining its small business size status. SBA proposes to alter the period used for calculating average number of employees from the current method, which uses a rolling average over the preceding 12 months, to an average over the last 3 completed calendar years. This proposal simplifies the calculation of the average number of employees, reduces the burden on small businesses, and better defines the size of a small business where number of employees is the measure for the size standard.

DATES: Comments must be received by SBA on or before September 25, 2007.

ADDRESSES: You may submit comments, identified by RIN 3245-AF60 by one of the following methods: (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments; or (2) *Mail/Hand Delivery/Courier:* Gary M. Jackson, Division Chief for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205-6618 or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION: SBA is proposing to revise its method of

calculating the number of employees of a business concern from a 12-month rolling average to an average over the last 3 completed calendar years. Calculation of size would be based on, and coincide with, a concern's calendar year submission of Form W-3, "Transmittal of Wage and Tax Statement," to the Internal Revenue Service (IRS) (found at <http://www.irs.gov/pub/irs-pdf/fw3.pdf>). This policy would also coincide with the regulatory requirement for a concern to update its size status on an annually basis in the Central Contractor Registration (CCR) and On-line Certifications and Representations (ORCA) databases. Using the IRS W-3 Form would also give SBA a government-validated document to use in verifying employment size. Currently, SBA reviews a concern's payroll records to determine size where the size standard is number of employees. For receipts-based size standards, SBA requires concerns to submit their IRS tax returns (13 CFR 121.104). This method of validating receipts has worked well.

If a concern has been in business for less than 3 calendar years, average annual number of employees will be calculated based on an annualized figure for the time it has been in operation. For example, a concern that has been in business for 1 year and 3 months will divide its total number of employees by 1.25 (1 year + 3 months/12 months). For this calculation, the time period includes all completed pay periods as of the date of self-certification.

If a concern has not filed an IRS Form W-3 for a period that must be included within the period of measurement, SBA may calculate the concern's average annual using other information. SBA prefers to use other relevant government documents reporting the number of employee of a concern, such as IRS Form 941, Employer's Quarterly Federal Tax Return. In lieu of government documents, SBA will consider any other available information, such as payroll records, which show the total number of employees for the relevant period.

Why is SBA proposing a 3-year average: SBA is proposing to revise its method of calculating the number of employees of a business concern because it considers the current method to be burdensome to small businesses, and because of changes in the Federal procurement process regarding the development of e-government and the acquisition process. This proposal is also in the spirit of SBA's efforts to simplify its size standards where possible.

With the current system of calculating employees, a concern's size can fluctuate from pay period to pay period, necessitating a new calculation after each pay period. SBA's proposal to calculate the number of employees of a concern as an average over the concern's last 3 calendar years provides consistency and stability in calculating size. The proposed calculation, if adopted, would require a concern to calculate its employment size only once a year and it would apply until the beginning of the next calendar year. The time period for calculation would also be similar to the method used for calculating receipts for size purposes, *i.e.*, an average annual receipts over the concern's last 3 completed fiscal years. Furthermore, for those concerns with fiscal years that end at the calendar year, both employment and receipts averages would be calculated at the same time.

With the advent of e-government systems in the Federal acquisition process, a concern must update its CCR and ORCA information at least once a year and every time its small business size status changes, which could occur many times during the year using the current employee calculation method. This is extremely burdensome on small businesses, especially if a concern has different pay periods for different types of employees (*e.g.*, bi-weekly for hourly employees and monthly for salaried employees).

The proposed method of calculation would also be less burdensome and costly to small businesses and the Federal Government. Currently, if a concern's small business size status is protested, the concern must provide to SBA its own, and all of its affiliates, extensive payroll records for the 12 months preceding the date of self-certification. By going to an average number of employees over a calendar year basis, a concern could supply SBA with copies of its own and its affiliates' IRS Form W-3, along with other requested documents as needed, that would show the concern's total number of employees for each of the 3 preceding calendar years.

What SBA is not proposing: On December 3, 2004, SBA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (69 FR 70197) that sought comments from the public on issues raised during the public comment period concerning SBA's withdrawn proposal to simplify and restructure its small business size standards (69 FR 13130, dated March 19, 2004). Many comments received as a result of the withdrawn proposal recommended that

SBA modify its method for calculating the number of employees of a business concern. In the December 3, 2004, ANPRM, SBA sought additional comments on alternative methods of calculating the size of a business concern based on number of employees, including the feasibility of using full-time equivalents (FTEs). SBA also requested comments on whether the period for calculating average employment should be modified from SBA's current method, which uses a rolling average over the preceding 12 months. During June of 2005, SBA conducted 11 hearings throughout the country to receive additional comments on the ANPRM issues.

SBA received more than 5,000 comments addressing or mentioning the subject of calculating a concern's number of employees; however, only 10 commenters made substantive comments regarding this subject. The remaining commenters gave one-sentence responses without providing any reasoning for their position. All but 86 of the comments were from organizations that submitted as their own a form comment prepared by and representing the position of a particular small business association. Of the remaining 86 commenters, there were 11 business or trade associations, 2 Alaskan Native Corporations, 1 Community Development Corporation, and one large business prime contractor.

Many commenters misunderstood the request for comments on the employee issue to be a request for a single employee-based size standard to be used government-wide. SBA received recommendations of 25 employees and \$100,000; 25 employees and \$5 million; 50 employees; 75 employees; 100 employees; 500 employees, and 1,500 employees. One commenter recommended two size standards of 100 and 750 employees, but gave no reasoning for the selection of the two numbers.

Most of the comments received supported the concept of FTEs, with only three commenters discussing how to calculate FTEs. One commenter believed that FTEs should be based upon the number of man hours divided by the average work year for a small business within a given industry and recommended that a man-year equate to 1,080 hours. One commenter recommended SBA define FTEs for a week, month, or full-time year, because it would add consistency between companies. The other recommended that SBA use a 1,920 hours per year standard. The remainder of the commenters just stated their support for the idea.

Six commenters stated their opposition to FTEs. Of the six, four discussed their reasons. Two trade associations strongly opposed the use of FTEs because their industry relies heavily on part-time, temporary and seasonal employees. They believed that this change would place a tremendous administrative recordkeeping burden on their member firms. One of the other commenters believed the use of FTEs would lead to endless disputes and size status protest concerning how to compute the number of FTEs. Another believed that FTEs would create incentives to increase temporary jobs and reduce full time jobs. SBA did not receive any substantive comments on FTEs from concerns in industries that would be impacted by this change, *i.e.*, industries that calculate their size by number of employees. Rather, all of the substantive commenters that addressed FTEs were from concerns and trade associations in industries where the size standards are calculated in receipts and not employees.

Based on these comments, SBA has decided not to convert any industries where the size standard is measured by average annual receipts to employee-based size standards. Also, the voluminous supportive comments provided no basis for SBA to justify a significant change in policy of this nature. Therefore, SBA will not make any changes to the way it calculates number of employees to include FTEs.

Thirteen commenters advocated no change to the way SBA calculates the number of employees. Only one of the commenters gave a reason, *i.e.*, he believed the current method was not complex. SBA believes that the calculation is not complicated, but the current method is burdensome to small businesses, as they need to recalculate their size from pay period to pay period.

As part of SBA's review of comments from the ANPRM on the FTE issue, it explored alternative data sources besides payroll records by which to calculate a concern's number of employees. For the reasons discussed above, SBA believes the use of IRS Form W-3 is a viable alternative to payroll records and lessens the burdens on small businesses and the Federal Government. SBA had decided to propose this change pertaining to employment size rather than other changes offered by the commenters.

Alternative Methods for Calculating Number of Employees: As an alternative, SBA considered using a concern's total number of employees for only its last calendar year. This method would also lessen the burden and instability of the current method that

fluctuates pay period to pay period. However, trends in the economy fluctuate over a period of years. SBA's use of a 3-year average for calculating receipts has always taken these fluctuations into account, which provides for a more stable measure of a concern's size. By extending the 3-year period to the calculations of number of employees, SBA is providing consistency in the way it determines size by both receipts and employees. For this reason, SBA has determined that a 3-year average for calculating the number of employees of a concern is more appropriate.

SBA welcomes public comments on its proposal to adopt a 3 calendar year average to calculate a concern's number of employees and the use of IRS Form W-3. Comments on alternatives, including the option of retaining the current method of calculating employment size, should explain why the alternative would be preferable to the proposed method of calculating the number of employees.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist effectively the intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to SBA's Administrator the responsibility for establishing small business definitions. The supplementary information section of this proposed rule explains SBA's reasons for revising the way it defines small businesses in industries where the size standards are employee-based. SBA believes that it can simplify the calculation of employee size and lessen the burden on small businesses.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses in industries that calculate their size in number of employees is the lessening of the burdens placed upon these businesses when they calculate their small business size status for eligibility for Federal small business assistance programs and retaining small business status for a longer period of time. These programs include SBA's financial assistance programs; economic injury disaster loans; and Federal procurement preference programs for small businesses, including 8(a) concerns, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), and service disabled veteran-owned small businesses. HUBZone small businesses are also eligible for Federal contracts awarded through full and open competition after application of the HUBZone price evaluation preference. Other Federal agencies also may use SBA size standards for a variety of regulatory and program purposes. Through the assistance of these programs, small businesses become more knowledgeable, stable, and competitive businesses.

The benefits of redefining how the number of employees is calculated would accrue to two groups: businesses that use small business assistance programs and SBA officials that make formal size determinations. Besides reducing the burden on businesses, this proposed rule would reduce the burden on SBA officials performing size determinations. SBA officials could use a concern's IRS Form W-3 and not have to review a concern's payroll records, unless necessary.

SBA estimates that on average a business spends approximately 4 hours preparing size information in response to a size determination. In some cases where a concern must provide extensive payroll records to substantiate its employment size, preparation and copying expenses may be much greater than 4 hours. SBA's proposal to utilize the IRS W-3 Form could significantly reduce these expenses by allowing businesses to provide already prepared information. SBA estimates that preparation time may decrease by at least 1 hour for size determinations based on employment size. SBA would also expend less time on size determinations by use of the IRS W-3 Form rather than verifying and calculating employment size from payroll records. This may save from a few hours to a few days in review time,

depending on the complexity of the case.

3. What are the alternatives to this proposed rule?

SBA considered two alternative approaches to the proposed rule. First, it considered other sources of information on a concern's employment, such as from the U.S. Department of Labor and the Social Security Administration. SBA found that the IRS' W-3 Form provides the most reliable and cost effective alternative source of employment information from payroll records. In addition, SBA would require that a concern calculate both its average annual receipts and number of employees from information submitted to the same Federal agency—the IRS. Second, SBA considered calculating employment size on an annual basis instead of over a 3-year period as a viable alternative. As explained above, a 3-year period has the advantages of providing more stability in small business status and of achieving consistency in policy with the 3-year average used to calculate average annual receipts.

SBA's proposal could potentially impact up to 2,000 businesses, but the actual number is likely to be significantly less than this number. In the Dynamic Small Business Search, approximately 1,800 small businesses out of over 300,000 are near or above 500 employees that could grow or downsize to qualify as small under one of the SBA's employee-based size standards that range between 500 employees to 1,500 employees. In addition, another 200 businesses are near or slightly above the 150-employee size standard for information technology value added resellers. Employment levels of businesses tend to be more stable than revenues, which limits the number of businesses that may become small or retain small business status if this proposal were adopted. SBA invites comment on the impact this proposed rule would have on the number of firms that could potentially do business with the Federal Government or on data to estimate the effect this change would have on the Federal contracting programs.

Under SBA's 7(a) Guaranteed Loan Program, SBA estimates that potentially 10 additional loans totaling \$8 million in new Federal loan guarantees could be made to businesses newly-defined as small or those retaining small business status. Additional loans under this program would likely be limited to businesses in the wholesale trade sector, which are subject to a 100-employee size standard. Using the relationships

between SBA loan data and the 2002 Economic Census, approximately one-half of one percent of the 1,900 newly eligible small businesses will seek SBA financial assistance. On average, small businesses between 50 to 100 employees obtain 7(a) loans between \$700,000 and \$800,000 in value.

Any newly defined small businesses could also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected for future disasters.

SBA's proposed simplification of the way it calculates small business size standards in terms of number of employees is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards and related eligibility criteria, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a federalism assessment.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule, if finalized, may have a significant impact on a substantial number of small entities in industries where the size standard is measured in number of employees. As described above, this rule may affect small entities seeking Federal contracts, SBA 7(a) Loans, SBA Economic Impact Disaster Loans, and assistance from other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis (IRFA) of this proposed rule addressing the following questions: (1) What is the need for and objective of the rule, (2) what is SBA's description and estimate

of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. What is the need for and objective of the rule?

SBA believes a change in the method of calculating the number of employees will simplify size standards and lessen the burden on small businesses in calculating their size status.

2. What is SBA's description and estimate of the number of small entities to which the rule will apply?

The impact of this rule will almost exclusively be related to Federal contracting programs. The Dynamic Small Business Search contains more than 300,000 registrants. Of these, SBA's estimates that about 2,000 businesses near or above the current employee size standards may benefit from this proposal if adopted. However, the actual number is likely to be significantly less than this number because not all of these businesses will experience a sufficient change in size to alter their small business status or to have been awarded Federal contracts. SBA invites comment on the impact this proposed rule would have on the number of firms that could potentially do business with the Federal Government or on data to estimate the effect this change would have on these contracting programs.

3. What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?

A revised method of calculating the employment size of a concern does not impose any additional reporting, record keeping or compliance requirements on small entities. Changing the way the number of employees of a business is calculated does not impose a regulatory burden as they neither regulate nor control business behavior.

4. What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?

This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under sec. 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size

standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). SBA is not aware of any Federal rule that would duplicate or conflict with established size standards.

Redefining the way size standards based on number of employees are calculated may also affect small businesses participating in programs of other agencies that use SBA size standards. As a practical matter, however, SBA cannot estimate the impact of this proposed change on each Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

5. What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

As an alternative, SBA considered using a concern's total number of employees for only its last calendar year. This method would also lessen the burden and instability of the current method that fluctuates pay period to pay period. However, trends in the economy fluctuate over a period of years. SBA's use of a 3-year average for calculating receipts has always taken these fluctuations into account, which provides for a more stable measure of a concern's size. By utilizing the 3-year period to calculate a concern's number of employees, SBA is providing consistency in the way it determines size by both receipts and employees. For this reason, SBA has determined that a 3-year average for calculating the number of employees of a concern is more appropriate.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows.

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

2. Revise § 121.106 to read as follows:

§ 121.106 How does SBA calculate annual number of employees?

(a) *Employees* include all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employer organization or leasing concern. Part-time and temporary employees are counted the same as full-time employees. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) *Average annual number of employees.* (1) Where the size standard is number of employees, a concern's size is based on an average annual number of employees.

(2) Average annual number of employees means the total number of employees of the concern (including the employees of its domestic and foreign affiliates) for the preceding 3 calendar years divided by 3.

(3) Average annual number of employees for a concern that has been in business for less than 3 years means the total number of employees over the period the concern has been in business divided by the number of completed calendar years and fraction of the calendar year the concern has been in business. For example, a concern that has been in business for 1 year and 3 months divides its total number of employees by 1.25 (1 year +3 months/ 12 months).

(4) SBA will use a concern's IRS Form W–3, Transmittal of Wage and Tax Statement, and any corrections thereof, to calculate average annual number of employees. For purposes of counting employees obtained from a temporary employee agency, professional employer organization, or leasing concern, SBA will use contractual documents or invoices between the

parties showing the number of individuals provided to the concern.

(5) Where a concern has not filed an IRS Form W–3 for a period which must be included within the period of measurement, SBA may calculate the concern's average annual number of employees using IRS Form 941, Employer's Quarterly Federal Tax Returns, other accredited governmental documents or any other available information, such as payroll records, which show the total number of employees for that relevant period.

(c) *Employees of Affiliates.* (1) The employee size of a business concern with affiliates is calculated by adding the average annual number of employees of the business concern with the average annual number of employees of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(3) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

Dated: April 30, 2007.

Steven C. Preston,
Administrator.

[FR Doc. E7–14492 Filed 7–26–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–128224–06]

RIN 1545–BF80

Section 67 Limitations on Estates or Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance on which costs incurred by

estates or non-grantor trusts are subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a). The regulations will affect estates and non-grantor trusts. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by October 25, 2007. Outlines of topics to be discussed at the public hearing scheduled for November 14, 2007 must be received by October 24, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-128224-06), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128224-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (indicate IRS and REG-128224-06). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer N. Keeney, (202) 622-3060; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard A. Hurst, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1. Section 67(a) of the Internal Revenue Code (Code) provides that, for an individual taxpayer, miscellaneous itemized deductions are allowed only to the extent that the aggregate of those deductions exceeds 2 percent of adjusted gross income. Section 67(b) excludes certain itemized deductions from the definition of "miscellaneous itemized deductions." Section 67(e) provides that, for purposes of section 67, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual. However, section 67(e)(1) provides that the deductions for costs paid or incurred in connection with the administration of the estate or trust and which would not have been incurred if the property were not held in such estate or trust shall be treated as allowable in arriving at adjusted gross income. Therefore, deductions

described in section 67(e)(1) are not subject to the 2-percent floor for miscellaneous itemized deductions under section 67(a).

United States courts of appeals have interpreted the language of section 67(e)(1) differently in determining whether costs incurred by trustees are subject to the 2-percent floor. The issue in each case has been whether the trust's costs (specifically, investment advisory fees) "would not have been incurred if the property were not held in such trust or estate." In *O'Neill v. Commissioner*, 994 F.2d 302 (6th Cir. 1993), the Court of Appeals for the Sixth Circuit held that investment advisory fees paid for professional investment services were fully deductible under section 67(e)(1) where the trustees lacked experience in managing large sums of money. The court found that, under state law, the trustee was required to engage an investment advisor to meet its fiduciary obligations and to incur fees that the trust would not have incurred if the property were not held in trust. The court held that estate or trust expenditures that are necessary to meet specific fiduciary obligations under state law are not subject to the 2-percent floor. In contrast, in *Mellon Bank, N.A. v. United States*, 265 F.3d 1275 (Fed. Cir. 2001), *Scott v. United States*, 328 F.3d 132 (4th Cir. 2003), and *Rudkin v. Commissioner*, 467 F.3d 149 (2d Cir. 2006), the courts held that investment advisory fees are subject to the 2-percent floor. These courts read the language of section 67(e)(1) differently than the Sixth Circuit. Specifically, the courts in *Scott* and *Mellon Bank* concluded that a trust expense is subject to the 2-percent floor if it is an expense "commonly" or "customarily" incurred by individuals; and the court in *Rudkin* looked to whether such an expense was "peculiar to trusts" and "could not" be incurred by an individual.

The result of this lack of consistency in the case law is that the deductions of similarly situated taxpayers may or may not be subject to the 2-percent floor, depending upon the jurisdiction in which the executor or the trustee is located. The IRS and the Treasury Department believe that similarly situated taxpayers should be treated consistently by having section 67(e)(1) construed and applied in the same way in all jurisdictions. The proposed regulations are intended to provide a uniform standard for identifying the types of costs that are not subject to the 2-percent floor under section 67(e)(1).

Explanation of Provisions

These proposed regulations provide that costs incurred by estates or non-grantor trusts that are unique to an estate or trust are not subject to the 2-percent floor. For this purpose, a cost is unique to an estate or trust if an individual could not have incurred that cost in connection with property not held in an estate or trust. To the extent that expenses paid or incurred by an estate or non-grantor trust do not meet this standard, they are subject to the 2-percent floor of section 67(a). (Neither section 67 nor this rule applies to expenses that are excluded under section 67(b) from the definition of miscellaneous itemized deductions, or to expenses related to a trade or business.)

Under the proposed regulations, whether costs are subject to the 2-percent floor on miscellaneous itemized deductions depends on the type of services provided, rather than on taxpayer characterizations or labels for such services. Thus, taxpayers may not circumvent the 2-percent floor by "bundling" investment advisory fees and trustees' fees into a single fee. The regulations provide that, if an estate or non-grantor trust pays a single fee that includes both costs that are unique to estates and trusts and costs that are not, then the estate or non-grantor trust must use a reasonable method to allocate the single fee between the two types of costs. The regulations also provide a non-exclusive list of services for which the cost is either exempt from or subject to the 2-percent floor. The IRS and the Treasury Department invite comments on whether any safe harbors or other guidance, concerning allocation methods or otherwise, would be helpful.

Proposed Effective Date

The regulations, as proposed, apply to payments made after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of

the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the proposed rules, as well as their clarity and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 14, 2007, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 24, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jennifer N. Keeney, Office of the Office of Associate Chief Counsel (Passthroughs and Special Industries).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.67–4 is added to read as follows:

§ 1.67–4 Costs paid or incurred by estates or non-grantor trusts.

(a) *In general.* Section 67(e) provides an exception to the 2-percent floor on miscellaneous itemized deductions for costs that are paid or incurred in connection with the administration of an estate or a trust not described in § 1.67–2T(g)(1)(i) (a non-grantor trust) and which would not have been incurred if the property were not held in such estate or trust. To the extent that a cost incurred by an estate or non-grantor trust is unique to such an entity, that cost is not subject to the 2-percent floor on miscellaneous itemized deductions. To the extent that a cost included in the definition of miscellaneous itemized deductions and incurred by an estate or non-grantor trust is not unique to such an entity, that cost is subject to the 2-percent floor.

(b) *Unique.* For purposes of this section, a cost is unique to an estate or a non-grantor trust if an individual could not have incurred that cost in connection with property not held in an estate or trust. In making this determination, it is the type of product or service rendered to the estate or trust, rather than the characterization of the cost of that product or service, that is relevant. A non-exclusive list of products or services that are unique to an estate or trust includes those rendered in connection with: Fiduciary accountings; judicial or quasi-judicial filings required as part of the administration of the estate or trust; fiduciary income tax and estate tax returns; the division or distribution of income or corpus to or among beneficiaries; trust or will contest or construction; fiduciary bond premiums; and communications with beneficiaries regarding estate or trust matters. A non-exclusive list of products or services that are not unique to an estate or trust, and therefore are subject to the 2-percent floor, includes those rendered in connection with: Custody or management of property; advice on investing for total return; gift tax returns; the defense of claims by creditors of the decedent or grantor; and the purchase, sale, maintenance, repair, insurance or management of non-trade or business property.

(c) *“Bundled fees.”* If an estate or a non-grantor trust pays a single fee,

commission or other expense for both costs that are unique to estates and trusts and costs that are not, then the estate or non-grantor trust must identify the portion (if any) of the legal, accounting, investment advisory, appraisal or other fee, commission or expense that is unique to estates and trusts and is thus not subject to the 2-percent floor. The taxpayer must use any reasonable method to allocate the single fee, commission or expense between the costs unique to estates and trusts and other costs.

(d) *Effective/applicability date.* These regulations are proposed to be effective for payments made after the date final regulations are published in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–14489 Filed 7–26–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0280; FRL–8446–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Seven Individual Sources; Partial Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of proposed rule.

SUMMARY: EPA is withdrawing two individual sources that were included as part of a proposed rule to approve Pennsylvania's State Implementation Plan (SIP) pertaining to source-specific volatile organic compounds (VOC) and nitrogen oxides (NO_x) RACT determinations for seven individual sources located in Pennsylvania. The proposed rule was published on May 4, 2006 (71 FR 26297). Subsequently, EPA is withdrawing the two provisions of that proposed rule.

DATES: The proposed additions of the entries for Merck & Company, Inc. and The Frog, Switch & Manufacturing Company published at 71 FR 26297 are withdrawn as of July 27, 2007.

FOR FURTHER INFORMATION CONTACT: Rose Quinto at (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the proposed

rule, entitled, "Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Seven Individual Sources," located in the Proposed Rules section of the May 4, 2006 **Federal Register** (71 FR 26297). EPA is withdrawing only the provisions for two individual sources, namely, Merck & Co., Inc., Northumberland County, Pennsylvania; and The Frog, Switch & Manufacturing Co., Cumberland County, Pennsylvania. The other actions in the May 4, 2006 **Federal Register** are not affected.

List of Subjects in 40 CFR Part 52

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

Dated: July 18, 2007.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. E7-14599 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2007-0344; FRL-8447-1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Mercer County Portion of the Youngstown-Warren-Sharon, OH-PA 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 Mercer County portion of the Youngstown-Warren-Sharon, OH-PA ozone nonattainment area ("Youngstown Area" or "Area") be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). The Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. In this rulemaking action EPA is proposing to approve the ozone redesignation request, maintenance plan, and 2002 base year inventory for Mercer County. In a separate rulemaking

action (72 FR 19435, April 18, 2007) EPA proposed to approve the ozone redesignation request for Trumbull, Mahoning, and Columbiana Counties. In conjunction with its redesignation request, the Commonwealth submitted a SIP revision consisting of a maintenance plan for Mercer County 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 Mercer County 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 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 Mercer County, and EPA is proposing to approve that inventory for Mercer County 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 Mercer County for purposes of transportation conformity, and is also proposing to approve those MVEBs. Note that separate conformity budgets are being established by Ohio for Trumbull, Mahoning, and Columbiana Counties. 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 27, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2007-0344 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-2007-0344, 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-2007-0344. EPA's policy is that all comments

received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy 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: Amy Caprio, (215) 814-2156, or by e-mail at caprio.amy@epa.gov.

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 March 27, 2007, the PADEP formally submitted a request to redesignate Mercer County from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, Pennsylvania submitted a maintenance plan for Mercer County as a SIP revision to ensure continued attainment throughout the Youngstown Area over the next 11 years. PADEP also submitted a 2002 base-year inventory for Mercer County as a SIP revision. The Youngstown Area is comprised of Mercer County, Pennsylvania and Trumbull, Mahoning, and Columbiana Counties, Ohio. It is currently designated a basic 8-hour ozone nonattainment area. EPA is proposing to determine that Mercer County 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 Mercer County from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Mercer County maintenance plan as a SIP revision for Mercer County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to ensure continued attainment in Mercer County for the next 11 years. EPA is also proposing to approve the 2002 base-year inventory for Mercer County as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Mercer County maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for Mercer

County for transportation conformity purposes. Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA is proposing to approve Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs.

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 Youngstown 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 Youngstown 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 (DC 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. “Mercer County 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 Mercer County 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 Youngstown Area was classified a basic 8-hour ozone nonattainment area based on air quality monitoring data from 2001–2003. Therefore, the Youngstown 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 Youngstown Area has a design value of 0.083 ppm for the 3-year period of 2004–2006, using complete, quality-assured data. Therefore, the ambient ozone data for the Youngstown Area indicates no violations of the 8-hour ozone standard.

B. The Youngstown Area

The Youngstown Area consists of Mercer County, Pennsylvania and Mahoning, Trumbull, and Columbiana Counties, Ohio. Prior to its designation as an 8-hour ozone nonattainment area, the Youngstown 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 Youngstown Area has attained the 1-hour ozone NAAQS by the November 15, 1993 attainment date (60 FR 3349, January 17, 1995). The Ohio counties were subsequently redesignated as attainment (Mahoning and Trumbull Counties on January 31, 1996 (61 FR 3319) and Columbiana County on February 8, 1995 (60 FR 7453)).

On March 27, 2007, the PADEP requested that Mercer County 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 Youngstown 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 March 27, 2007, the PADEP requested redesignation of Mercer County to attainment for the 8-hour ozone standard. On March 27, 2007, PADEP submitted a maintenance plan for Mercer County 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 Mercer County 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 Mercer County 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 Mercer County 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 (Mercer County only) for transportation conformity purposes for the years 2009 and 2018. These MVEBs are displayed in the following table:

TABLE 1.—MERCER COUNTY MOTOR VEHICLE EMISSIONS BUDGETS IN TONS PER SUMMER DAY (TPSD)

Year	VOC	NO _x
2009	4.2	11.2
2018	2.6	4.9

VI. What Is EPA's Analysis of the Commonwealth's Request?

EPA is proposing to determine that Mercer County 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 March 27, 2007 submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. Mercer County Has Attained the 8-Hour NAAQS

EPA is proposing to determine that Mercer County 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 Youngstown Area, there are four ozone monitors, one located in Mahoning County, Ohio, two located in Trumbull County, Ohio and one in Mercer County, Pennsylvania that measure air quality with respect to ozone. As part of its redesignation request, Pennsylvania referenced ozone monitoring data for the years 2004–2006

for the Youngstown 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 Tables 2–5.

TABLE 2.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES MERCER COUNTY, PENNSYLVANIA MONITOR/AQS ID 42–085–0100

Year	Annual 4th highest reading (ppm)
2004	0.076
2005	0.087
2006	0.079

The average for the 3-year period 2004–2006 is 0.079 ppm

TABLE 3.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES MAHONING COUNTY, OHIO MONITOR/AQS ID 39–099–0013

Year	Annual 4th highest reading (ppm)
2004	0.074
2005	0.083
2006	0.076

The average for the 3-year period 2004–2006 is 0.077 ppm

TABLE 4.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES TRUMBULL COUNTY, OHIO MONITOR/AQS ID 39–155–0009

Year	Annual 4th highest reading (ppm)
2004	0.078
2005	0.083
2006	0.074

The average for the 3-year period 2004–2006 is 0.078 ppm

TABLE 5.—YOUNGSTOWN AREA FOURTH HIGHEST 8-HOUR AVERAGE VALUES TRUMBULL COUNTY, OHIO MONITOR/AQS ID 39–155–0011

Year	Annual 4th highest reading (ppm)
2004	0.080
2005	0.087
2006	0.082

The average for the 3-year period 2004–2006 is 0.083 ppm

The air quality data for 2004–2006 show that the Youngstown Area has attained the standard with a design value of 0.083 ppm. The data collected at the Youngstown Area monitors satisfy 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 Mercer County 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 Youngstown Area has attained the 8-hour ozone NAAQS.

B. Mercer County 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 Mercer County 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 Mercer County 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 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 Mercer County 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 Youngstown 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, Mercer County 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 submittal 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 D.C. 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 Mercer County initially had been classified under subpart 2, the first two Part D subpart 2 requirements applicable to Mercer County 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 Mercer County, 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 Mercer County, which was submitted on March 27, 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 Mercer County 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 Mercer County 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 Mercer County, EPA has also determined that before being redesignated, Mercer County 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 Mercer County 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 Mercer County.

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 (I/M) programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to Mercer County 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 section 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 § 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 Youngstown 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 Youngstown 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 Youngstown 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) (this covers the Mercer County, PA portion of the Youngstown Area). 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 Youngstown 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 in severe and extreme nonattainment areas, and therefore was never applicable in the Youngstown 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 Mercer County 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 Mercer County. (As discussed elsewhere in this document, EPA is only proposing to approve 8-hour MVEBs for the Mercer County portion of the Youngstown 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 Mercer County 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 RACT, NSR, enhanced vehicle inspection and maintenance, and Stage II vapor recovery or a comparable measure.

In the case of Mercer County, 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. Mercer County 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 Mercer County 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 Mercer County

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 6.

TABLE 6.—TOTAL VOC AND NO_x EMISSIONS FOR 2002 AND 2004 IN TONS PER SUMMER DAY (TPSD)

Year	Pennsylvania	Ohio	Total
Volatile Organic Compounds (VOC)			
2002	20.8	70.5	91.3
2004	19.0	64.6	83.6
Difference (02–04)	– 1.8	– 5.9	– 7.7
Nitrogen Oxides (NO_x)			
2002	25.5	95.5	121.0
2004	22.4	82.5	104.9
Difference (02–04)	– 3.1	– 13.0	– 16.1

Between 2002 and 2004, VOC emissions throughout the Area decreased by 7.7 tpsd from 91.3 tpsd to 83.6 tpsd; NO_x emissions throughout the Area decreased by 16.1 tpsd from 121.0 tpsd to 104.9 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 Mercer County achieving attainment of the 8-hour ozone standard.

D. Mercer County Has a Fully Approvable Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate Mercer County 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 Mercer County 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) an attainment emissions inventory;
- (b) a maintenance demonstration;
- (c) a monitoring network;
- (d) verification of continued attainment; and
- (e) a contingency plan.

Analysis of the Mercer County 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 Table 8 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 Mercer County. Mercer County airports do not support enough flights or the type of aircraft to create measurable emissions from these sources. Emissions from airport ground support equipment are considered to be zero. 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 PADEP’s March 27, 2007 state submittal.

(b) Maintenance Demonstration—On March 27, 2007, the PADEP submitted a maintenance plan as required by section 175A of the CAA. The Mercer County 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 Mercer County 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.

Table 7 specifies the VOC and NO_x emissions for the Youngstown 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 7.—VOC AND NO_x EMISSIONS FOR THE YOUNGSTOWN AREA (TPSD); 2004, 2009, 2018

	2004			2009			2018		
	PA	OH	Total	PA	OH	Total	PA	OH	Total
Point.									
VOC	1.7	6.0	7.8	2.7	6.4	9.1	3.7	7.8	11.4
NO _x	2.9	20.3	23.2	4.3	8.3	12.6	5.5	12.7	18.2
Area.									
VOC	7.6	24.1	31.7	7.4	22.9	30.2	7.8	23.0	30.9
NO _x	0.8	2.5	3.3	0.9	2.8	3.7	0.9	3.0	3.9
Mobile.									
VOC	5.9	26.2	32.1	4.5	19.6	24.1	3.0	10.4	13.4
NO _x	15.8	43.5	59.3	11.6	33.7	45.3	5.3	13.3	18.5
Nonroad.									
VOC	3.8	8.3	12.1	3.4	6.5	9.9	2.6	5.2	7.8
NO _x	2.8	16.3	19.1	2.3	12.5	14.8	1.4	8.2	9.6
Total.									
VOC	19.1	64.6	83.6	18.0	55.4	73.4	17.1	46.3	63.4
NO _x	22.4	82.5	104.9	19.1	57.4	76.4	13.1	37.2	50.2

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 Mercer County.

(c) Monitoring Network—There are four ozone monitors located throughout the Youngstown Area, one located in Mahoning County, Ohio, two located in Trumbull County, Ohio and one in Mercer County, Pennsylvania that measure air quality with respect to ozone, 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 Youngstown 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 Mercer County 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 Mercer County, PADEP will be required to submit a second maintenance plan that will ensure attainment through 2028. PADEP has made the 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 Mercer County to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_x emissions in the Youngstown 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 any of the Youngstown Area monitors are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate, in cooperation with the Ohio Environmental Protection Agency, 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 (including states upwind of Pennsylvania), 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 any of the Youngstown Area monitors. 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 Youngstown Area to attainment with the standard. Contingency measures to

be considered for Mercer County 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 Mercer County 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 Mercer County 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). Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA proposed approval of Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs. 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: Mercer County first attained the 8-hour ozone NAAQS during the 2004 to 2006 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for Mercer County. The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 equaled 19.0 tpsd of VOC and 22.4 tpsd of NO_x. The PADEP projected emissions out to the year 2018 and projected a total of 17.1 tpsd of VOC and 13.1 tpsd of NO_x from all sources in Mercer County. The safety margin for 2018 would be the difference between these amounts, or 1.9 tpsd of VOC and 9.3 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 8 shows the safety margins for the 2009 and 2018 years.

TABLE 8.—2009 AND 2018 SAFETY MARGINS FOR MERCER COUNTY

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2004 Attainment	19.0	22.4
2009 Interim	18.0	19.1
2009 Safety Margin	1.0	3.3
2004 Attainment	19.0	22.4
2018 Final	17.1	13.1
2018 Safety Margin	1.9	9.3

The PADEP allocated 0.3 tpsd VOC and 0.4 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 0.4 tpsd VOC and 0.4 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 9 shows the final 2009 and 2018 MVEBs for Mercer County.

TABLE 9.—2009 AND 2018 FINAL MVEBs FOR MERCER COUNTY

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2009 projected on-road mobile source projected emissions	4.2	11.2
2009 Safety Margin Allocated to MVEBs	0.3	0.4
2009 MVEBs	4.5	11.6

TABLE 9.—2009 AND 2018 FINAL MVEBS FOR MERCER COUNTY—Continued

Inventory year	VOC emissions (tpsd)	NO _x emissions (tpsd)
2018 projected on-road mobile source projected emissions	2.6	4.9
2018 Safety Margin Allocated to MVEBs	0.4	0.4
2018 MVEBs	3.0	5.3

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for Mercer County 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. Note that in a separate rulemaking action (72 FR 19435, April 18, 2007) EPA proposed approval of Trumbull, Mahoning, and Columbiana Counties, Ohio MVEBs.

D. What Is the Adequacy and Approval Process for the MVEBs in the Mercer County Maintenance Plan?

The MVEBs for the Mercer County 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 Mercer County 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 Mercer County 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 Mercer County has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of Mercer

County 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 Mercer County has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of Mercer County from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan for Mercer County, submitted on March 27, 2007, as a revision to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for Mercer County 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 Mercer County, and the MVEBs submitted by Pennsylvania for Mercer County 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 Mercer County 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

Air pollution control, National parks, Wilderness areas.

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

Dated: July 16, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7-14589 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU98

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Astragalus magdalenae* var. *peirsonii*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of the draft economic analysis; notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) pursuant to the Endangered Species Act of 1973, as amended (Act). In total,

approximately 16,108 acres (ac) (6,519 hectares (ha)) in Imperial County, California, fall within the boundaries of the proposed revised critical habitat designation. Lands being proposed as critical habitat are under Federal (15,857 ac (6,418 ha)), private (240 ac (97 ha)), and State (11 ac (4 ha)) ownership.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We have conducted an analysis of the economic impacts of designating the aforementioned areas as critical habitat for *Astragalus magdalenae* var. *peirsonii*, and are announcing the availability of the draft economic analysis for public review. We hereby solicit data and comments from the public on all aspects of this revised proposal, including data on the economic and other impacts of the designation.

We are also announcing that public hearings will be held on both the proposed critical habitat rule and the draft economic analysis.

DATES: We will accept comments from all interested parties until September 25, 2007. The public hearings will take place on August 23, 2007, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at the Carlsbad Fish and Wildlife Office in Carlsbad, California (see **ADDRESSES**).

ADDRESSES: *Public Hearings.* The public hearings will be held at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California, 92011.

Comments. If you wish to comment on the proposed rule and/or the draft economic analysis, you may submit your comments and materials, identified by RIN 1018-AU98, by any of the following methods:

- (1) You may send comments by electronic mail (e-mail) to fw8cfwocomments@fws.gov. Include "RIN 1018-AU98" in the subject line.
- (2) You may fax your comments to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at 760-431-5901.
- (3) You may mail or hand-deliver your written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office at the address above.

(4) You may submit your comments at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife

Office at the above address (telephone 760-431-9440). Copies of the draft economic analysis are available for downloading from the Internet at <http://www.fws.gov/carlsbad/> or by contacting the Carlsbad Fish and Wildlife Office directly at the above phone number or address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed under **ADDRESSES** (telephone 760-431-9440; facsimile 760-431-5901). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed critical habitat rule and its associated draft economic analysis are hereby solicited. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential or are appropriate for exclusion under section 4(b)(2) in which case they would be removed from the final critical habitat designation.

Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the taxon caused by designation.

(2) Specific information on the amount and distribution of *Astragalus magdalenae* var. *peirsonii* habitat, and what areas that were occupied at the time of listing that contain features essential for the conservation of the taxon should be included in the designation and why, and what areas that were not occupied at the time of listing are essential to the conservation of the taxon and why.

(3) Additional information on the specific physical and biological features (primary constituent elements) that are essential to the conservation of *Astragalus magdalenae* var. *peirsonii* (see "Primary Constituent Elements" section of this proposed rule for more details).

(4) Land use designations and current or planned activities in the subject areas

and their possible impacts on proposed critical habitat.

(5) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Astragalus magdalenae* var. *peirsonii*, and how many were either already in place or enacted for other reasons.

(6) Whether the draft economic analysis identifies all State and local costs attributable to the revised proposed critical habitat designation, and information on any costs that have been inadvertently overlooked.

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat.

(9) Whether the economic analysis indicated potentially disproportionate impacts to any areas included in the proposed designation. Based on this information, we may consider excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act.

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families; and whether it is appropriate that the analysis does not include the cost of project modifications that are the result of informal consultation only.

(11) Whether the economic analysis appropriately identifies the benefits that could result from the designation.

(12) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas.

(13) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment on the proposed rule and/or the draft economic analysis, you may submit your comments and materials by any one of several methods (see **ADDRESSES** section). Please submit e-mail comments to fw8cfwoccomments@fws.gov. Please include "Attn: RIN 1018-AU98" in your e-mail subject line and your name and return address in the body of your

message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760-431-9440. Please note that comments must be received by the date specified in **DATES** in order to be considered.

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.

Background

This proposed rule addresses revised critical habitat for *Astragalus magdalenae* var. *peirsonii*. For additional information on the taxonomy, biology, and ecology of this taxon, refer to the final rule listing the taxon as threatened, published in the **Federal Register** on October 6, 1998 (63 FR 53596), or the proposed and final rules designating critical habitat for this taxon published in the **Federal Register** on August 5, 2003 (68 FR 46143), and on August 4, 2004 (69 FR 47330), respectively. It is our intention to discuss only those topics directly relevant to the revised designation of critical habitat in this proposed rule.

Astragalus magdalenae var. *peirsonii* is an erect to spreading, herbaceous member of the Fabaceae (legume family) (Barneby 1959, p. 879; 1964, p. 862) that occurs on bowls, swales, and slopes of intact, active windblown sand dunes of the Algodones Dunes of Imperial County, California and the northeastern Estado de Baja California and Gran Desierto of northwestern Sonora, Mexico (Felger 2000, p. 300; Spellenberg 1993, p. 598; Willoughby 2005a, p. 2). Please refer to the "Primary Constituent Elements" section below for additional discussion on habitat requirements of this taxon. Plants may reach 8 to 27 inches (in) (20 to 70 centimeters (cm)) in height and develop tap roots (Barneby 1964, pp. 863–864) that penetrate deeply to the moister sand and that anchor plants in the shifting sand dunes. The root crown is often exposed by wind action moving the sand away from the base of the plants. Seeds are enclosed in fruits or pods and are either dispersed locally by falling out of partly opened fruits on the parent plant, "salt-shaker" style, or are dispersed further if blown across the

sand after falling from the parent plant. Thus seeds can be transported from one favorable site to another, or remain near the parent plant, depending on winds (Phillips *et al.* 2001, p. 11).

Seeds require no pre-treatment to induce germination, but germination success has been shown to improve dramatically when the outer seed coat is scarified (*e.g.*, scratched, chipped) (Porter *et al.* 2005, p. 29). Germination appears to be more successful in the cooler months of the year when temperatures are less than 86 °F (30 °C) (Romsper and Burk 1979, pp. 45–46). Therefore, based on our current understanding of the taxon's life history, sufficient rain in conjunction with cool temperatures and wetter-than-average fall weather appears to trigger germination events.

Depending upon conditions, *Astragalus magdalenae* var. *peirsonii* is capable of flowering before it is one year old (Barneby 1964, p. 862; Romsper and Burk 1979, p. 16; Phillips *et al.* 2001, p. 10; Phillips and Kennedy 2005, p. 22). Porter *et al.* (2005, pp. 31–32) hypothesized that if rains occur early in the growing season, then flowering can begin in as little as 3 months after germination. If, on the other hand, rains (and germination) do not occur until late February, then flowering is delayed until the next rainy season. In dry years, individuals die and are not replaced by new seedlings.

This variability in annual abundance of above-ground plants has caused this taxon to be considered variously as an annual (completing its life cycle in a year or growing season) or a perennial (living for more than 2 years) (Munz 1932, p. 7; Munz 1974, p. 432; Barneby 1959, p. 879; Barneby 1964, p. 862; Spellenberg 1993, p. 598; Willoughby 2001, p. 21). Recent evidence has confirmed that this species is a short-lived perennial (Phillips *et al.* 2001, p. 10; Porter *et al.* 2005, pp. 31, 34). This taxon likely depends on the production of seeds in wetter years and the persistence of the seed bank from previous years to survive until appropriate conditions for germination occur again. Porter *et al.* (2005, p. 29) identified the primary dormancy mechanism in *Astragalus magdalenae* var. *peirsonii* as the impermeability of the seed coat to water and demonstrated little loss of viability in seeds stored for 5 years. This dormancy mechanism is consistent with species having a seed bank (Given 1994, p. 67). Dispersed seeds in a given year that do not germinate during the subsequent growing season become part of the soil seed bank (Given 1994, p. 67).

Species Distribution and Abundance

In the United States, *Astragalus magdalenae* var. *peirsonii* is restricted to about 53,000 acres (ac) (21,500 hectares (ha)) in a narrow band running 40 miles (mi) (64 kilometers (km)) northwest to southeast along the western portion of the Algodones Dunes of eastern Imperial County, California, which is the largest sand dune field in North America. *Astragalus magdalenae* var. *peirsonii* has also been documented from the Gran Desierto de Sonora, Mexico (Felger 2000, p. 300) from an area south and southeast of the Sierra Pinacate lava field, but the Service has no additional information on the size of the population or extent of area occupied (63 FR 53599). The taxon was noted from the Borrego Valley, California, by Barneby (1959, p. 879) but no verified, reproducing population exists (Porter *et al.* 2005, pp. 9–10). Other observations from Yuma, Arizona, and San Felipe, Baja California, Mexico, were based on misidentified specimens (see Porter *et al.* 2005, pp. 9–10, and Phillips *et al.* 2001, p. 7, for detailed accounts).

The Algodones Dunes are one of the largest sand dune fields in North America, extending about 40 mi (64 km), trending from northwest to southeast (Norris and Norris 1961, p. 608). Please refer to the 2003 proposed critical habitat rule for a more detailed discussion on the geomorphology of the Algodones Dunes (68 FR 46143). These dunes are often referred to as the Imperial Sand Dunes, a designation derived from their inclusion in the Imperial Sand Dunes Recreation Area (ISDRA) established by the Bureau of Land Management (BLM). The majority of the Algodones Dunes is managed by BLM within 8 management areas, of which 7 are occupied by *Astragalus magdalenae* var. *peirsonii* (Mammoth

Wash, North Algodones Wilderness, Glamis, Gecko, Adaptive Management Area (AMA), Ogilby, and Buttercup). The State of California and private individuals own some small inholdings in the Mammoth Wash management area.

The ISDRA is the most popular off-highway vehicle (OHV) area in the southwest United States, with a specified major focus to ensure that OHV recreation opportunities are continuously available while responding to increased need for protection of plant and animal species in the dunes (Willoughby 2003, pp. 1–3). As a result of a settlement agreement reached in 2000, the BLM agreed to establish 5 interim closure areas within the Algodones Dunes, temporarily closing these areas to OHV recreation (see Index Map in “Rule Promulgation” section). As a result of a June 3, 2005, lawsuit, these temporary closures are still in place (see “Previous Federal Actions” section below for more information about the 2005 lawsuit).

The Algodones Dunes are in one of the driest and hottest regions in the United States. The rainfall is often described as scattered or patchy with amounts differing from place to place and from year to year, with areas to the northwest being generally dryer than those to the southeast (Willoughby 2001, p. 20). Romsper and Burk (1979, p. 11) reported average yearly rainfall during the period 1941–1970 was 2.6 in (66 millimeters (mm)). Average yearly rainfall between 1997 and 2002 at seven weather stations in the vicinity of the dunes ranged from a low of 0.1 in (3.3 mm) during the 2001–2002 growing season to a high of 6.1 in (155 mm) in the 1997–1998 growing season (Willoughby 2004, p.13). Average yearly rainfall between 2002 and 2006 at two weather stations on the dunes ranged

from a low of 0.2 in (5.3 mm) during the 2005–2006 growing season to a high of 4.8 in (122 mm) during the 2004–2005 growing season (Willoughby 2006, p.18).

The distribution and abundance of *Astragalus magdalenae* var. *peirsonii* has been recorded during several ongoing survey efforts. As discussed in the 2004 final critical habitat rule (69 FR 47330), the 1977 dunes-wide survey for *A. m.* var. *peirsonii* and four other rare psammophytic (sand-loving) scrub species (WESTEC 1977) was considered the most extensive survey of the Algodones Dunes conducted at that time. The BLM conducted rare plant surveys for 5 consecutive years from 1998 through 2002, generally repeating the methodology used by WESTEC in its 1977 survey (Willoughby 2001, p. iii). Raw data from the 2001 and 2002 surveys were provided by the BLM to the Service for use in the development of the 2004 final critical habitat rule. However, a written report of the 2001 and 2002 surveys (Willoughby 2004) was completed in October 2004, after the publication of the August 4, 2004, final critical habitat rule. As also discussed in the 2004 final critical habitat rule, Phillips and Kennedy (2002, 2003) conducted surveys for *A. m.* var. *peirsonii* from 2001 through 2003. Since publication of the 2004 final critical habitat rule, both the BLM (Willoughby 2005a, 2005b, 2006) and Phillips and Kennedy (2004, 2005, 2006) continued to conduct annual surveys for this species through 2006. Table 1 below summarizes all of the various survey efforts, including the number of sampling points or transects and the effective area surveyed by each effort as well as the estimated population by the survey methodology and the actual number of plants counted.

TABLE 1.—COMPARISON OF SURVEY DATA COLLECTED FOR *Astragalus magdalenae* VAR. *peirsonii* IN THE ALGODONES DUNES; DATA TAKEN FROM 13 UNPUBLISHED REPORTS

Year	Surveyor	Number of plants counted	Estimated population	Number samples	Effective area
1977	WESTEC	N/A	N/A	542	53,000 ac
1998	BLM ¹	5,064	N/A	542	53,000 ac
1999	BLM ¹	942	N/A	542	53,000 ac
2000	BLM ¹	86	N/A	542	53,000 ac
2001	BLM ¹	5,930	N/A	542	53,000 ac
2002	BLM ¹	2,297	N/A	542	53,000 ac
2001	Phillips ²	³ 71,926	N/A	127	~35,000 ac
2001	Phillips ²	30,771	N/A	25	138 ac
2003	Phillips ²	33,202	N/A	25	138 ac
2005	Phillips ²	77,922	⁴ 173,328	25	138 ac
2006	Phillips ²	1,233	⁴ 2,035	25	138 ac
2004	BLM ¹	25,798	286,374	37,169	53,000 ac
2005	BLM ¹	739,805	1,831,076	123,488	53,000 ac

TABLE 1.—COMPARISON OF SURVEY DATA COLLECTED FOR *Astragalus magdalenae* VAR. *peirsonii* IN THE ALGODONES DUNES; DATA TAKEN FROM 13 UNPUBLISHED REPORTS—Continued

Year	Surveyor	Number of plants counted	Estimated population	Number samples	Effective area
2006	BLM ¹	N/A	83,451	775	53,000 ac

(1) BLM reports cited as Willoughby; (2) Phillips reports cited as Phillips et al. or Phillips and Kennedy; (3) reconnaissance of unspecified area; (4) estimated population for 60 specific sample sites.

Since different methodologies and survey effort were used by the BLM as compared to Phillips and Kennedy, it is difficult to compare the annual estimates of dunes-wide species abundance reported from the two different survey efforts. Early surveys conducted by WESTEC in 1977 (WESTEC 1977) and by BLM from 1998 through 2002 (Willoughby 2001, 2004) incorporated a methodology [whereby plants encountered along driving transects were qualitatively indexed to an abundance value] and represented in quadrants measuring 0.45 mi on each side. Analysis of these coarse, dune-wide surveys could only provide relative comparisons of mean abundance values between years. In 2004, the BLM embarked on a new sampling methodology that sampled a larger portion of the dunes in greater detail (Willoughby 2005a, pp. 1–5). Unlike previous surveys, the recent BLM surveys were scientifically and statistically designed to estimate the standing *Astragalus magdalenae* var. *peirsonii* population (Willoughby 2005a, 2005b, 2006). Data were compiled in adjacent 25 x 25-meter (m) cells along 4–5 km transects covering the full length of the dunes, and all micro-habitats were sampled along each transect (Willoughby 2005b, pp. 1–3). Within these 25 x 25-m cells, surveyors noted: The total number of plants; age class of plants; number of seedlings; number of flowering versus non-flowering plants; number of plants exhibiting damage from OHVs; and the number of plants showing damage from other sources (Willoughby 2005b, p. 3). The recent BLM surveys also increased the number of sample transects to 135 in 2004, and to 510 for the spring 2005 surveys; the increased transect numbers and more detailed survey methodology increased their overall sample count to 37,169 and 123,488, respectively (Willoughby 2005b). In 2006, the BLM used a randomized sample of 2005 known occupied cells during the very dry winter and spring of 2006 to yield a population estimate for the 2005–2006 survey year (Willoughby 2006, p. 6). Both the WESTEC and BLM surveys covered an effective area of about 53,000 ac (21,200 ha) and encompassed all

management areas containing *Astragalus magdalenae* var. *peirsonii* (Willoughby 2005a, p. 2).

By comparison, Phillips *et al.* (2001, p. 6) counted individual *Astragalus magdalenae* var. *peirsonii* from 127 specific locations covering an unspecified area of about 35,000 ac (14,165 ha) (Phillips and Kennedy 2002, Appendix A). Phillips and Kennedy (2002, 2003, 2004, 2005, 2006) then established 25 monitoring sites from these 127 locations for their multi-year survey effort, which had an effective area of about 138 ac (56 ha).

The disparity between these three survey methods and the data collected makes it difficult to assess status and trends of the *Astragalus magdalenae* var. *peirsonii* population. However, we consider the surveys conducted by BLM to be the most extensive and precise effort to determine overall population abundance and distribution for this species, because this effort covered an effective area of about 53,000 ac (21,200 ha) and encompassed all management areas containing *Astragalus magdalenae* var. *peirsonii*. Also, the amount of data gathered in 2005 was the result of an exceptionally good rainfall year and extraordinary monitoring effort. We agree with the BLM that the 2005 survey effort represents the best estimate to date of distribution and abundance of the species on the Algodones Dunes (Willoughby 2006, p. v). The 2005–2006 survey year was an exceptionally dry year, with no *A. m.* var. *peirsonii* germination reported (Willoughby 2006, p. vi).

While direct comparison of annual estimates of *Astragalus magdalenae* var. *peirsonii* abundance reported by BLM and Phillips and Kennedy is difficult due to differences in survey methodologies and effort used by the surveyors, some comparisons can be made which illustrate the wide variation in numbers of standing individuals found in any given year and in any given area of the dunes depending on abundance and distribution of rainfall. If we compare BLM data from 1998 with BLM 2000 data and compare Phillips and Kennedy's 2001 data with their 2003 data, we see the annual variation in

species abundance at occupied sites. Along the same series of west to east transects, BLM counted a total of 5,064 plants in 1998, a heavy rainfall year, and 86 plants in 2000, a low rainfall year (Willoughby 2004, p. 36). The record of steep decline of the cohort counted by Phillips *et al.* in 2001 was tracked by Phillips and Kennedy (2002, p. 18), who reported that only 26 percent of the plants seen in spring of 2001 were present in late 2001. Phillips and Kennedy (2003, p. 12) also reported that only 0.26 percent of the plants counted in spring 2001 survived to spring 2003.

This wide variation in numbers of standing individuals is also evident when comparing results of the BLM's dunes-wide surveys conducted in 2004, 2005, and 2006. In 2004, estimated dunes-wide abundance was 286,374 plants (5.5 plants/ac (13.5/ha)) (Willoughby 2005a, p. 37). In 2005, estimated dunes-wide abundance was 1,831,076 plants (39.8 plants/ac (86/ha)) (Willoughby 2005b, pp. 9–11). In 2006, estimated dunes-wide abundance was 83,451 plants (1.6 plants/ac (3.9/ha)) (Willoughby 2006, p. vi). Differences in densities (plants per acre) are likely due to differences in rainfall between years. An above average amount of rainfall was recorded during the 2004–2005 growing season, resulting in the greatest abundance of plants to date, while the 2005–2006 growing season was considered an exceptionally dry year, resulting in zero reported germination. Density in 2004 may have also been decreased due to higher average monthly maximum temperatures recorded during the survey period, potentially impacting germination (Willoughby 2005a, p. 12).

In any given year, *Astragalus magdalenae* var. *peirsonii* may be present as standing plants, as a “soil seed bank” in the sand dunes, or as plants persisting as perennial root crowns in the sand dunes. During any given year, the suitable habitat for *A. m.* var. *peirsonii* may be occupied by various combinations of these three life history phases. The dynamics of dune morphology, local rainfall patterns and amounts, and the spatial distribution of the soil seed bank contribute to the

patchy or mosaic nature of the distribution of standing plants of *A. m. var. peirsonii*. As discussed above, local rainfall patterns and amounts are likely to cause shifts in the proportions of these three life history phases.

This species was federally listed as threatened due to threats of increasing habitat loss from OHV use and associated recreational development, destruction of plants, and lack of protection afforded the plant under State law (63 FR 53596). Impacts to individual plants and their habitat associated with OHV activities and recreation development continue to be the primary threat to this species in the United States. Please refer to the final listing rule (63 FR 53596) for a detailed discussion of the threats to the species and to the "Special Management Considerations or Protection" section of this proposed rule for a more detailed discussion on threats to this species' habitat.

Previous Federal Actions

For more information on previous Federal actions related to the designation of critical habitat for *Astragalus magdalenae* var. *peirsonii*, refer to the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the proposed designation of critical habitat for this species published in the **Federal Register** on August 5, 2003 (68 FR 46143). On August 4, 2004 (69 FR 47330), we designated approximately 21,836 acres (ac) (8,848 hectares (ha)) of land in Imperial County, California, as critical habitat for this species.

On June 3, 2005, the Center for Biological Diversity, Sierra Club, Public Employees for Environmental Responsibility, and Desert Survivors filed suit against the BLM and the Service alleging, among other violations related to the protection of *Astragalus magdalenae* var. *peirsonii* and desert tortoise (*Gopherus agassizii*), that the Service did not properly consider and weigh the benefits and costs associated with designating critical habitat for *A. m. var. peirsonii*. In a September 25, 2006, order and injunction regarding final relief, the court ordered the Service to submit a new final critical habitat rule to the **Federal Register** for publication no later than February 1, 2008. In addition, the Court ordered that the August 4, 2004 final critical habitat designation remain in full force and effect pending completion of the new final rule, and that the August 5, 2003 proposed designation of critical habitat be reinstated and remain effective pending completion of the new final rule or the issuance of a new proposed

critical habitat rule for *A. m. peirsonii*. Therefore, under the Court's order, this proposed rule replaces the August 5, 2003 proposed critical habitat designation, and the August 5, 2003 proposed rule is no longer in effect. All areas currently designated under the August 4, 2004 final rule remain designated pending completion of the new final critical habitat rule.

On November 30, 2005, we published a notice of 90-day finding on a petition to delist this species and an initiation of a status review in the **Federal Register** (70 FR 71795). Please see the notice of 90-day finding for a discussion of the previous Federal actions related to the delisting petition history of this species. We are currently completing a status review of *Astragalus magdalenae* var. *peirsonii* and will publish our 12-month finding on the delisting petition in the **Federal Register** later this year.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7(a)(2) of the Act requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7(a)(2) of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2) of the Act.)

Unoccupied areas can be designated 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.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, the Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271); Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658); and the associated Information Quality Guidelines issued by the Service provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the

Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial information available in determining areas that contain the features essential to the conservation of *Astragalus magdalenae* var. *peirsonii*, areas that are essential to the conservation of *A. m. var. peirsonii*, or both. This included data from unpublished research and survey reports, such as WESTEC (1977); Porter *et al.* (2005); BLM surveys conducted from 1998 to 2006 (Willoughby 2001, 2004, 2005a, 2005b, 2006); peer-reviewed journal articles; site visits; and discussions with species experts. We are not including in this proposed critical habitat rule any areas outside the geographical area presently occupied by the species.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied

by the species at the time of listing to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, and rearing (or development) of offspring; and (5) habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

The specific primary constituent elements (PCEs) required for *Astragalus magdalenae* var. *peirsonii* are derived from the biological needs of *A. m. var. peirsonii* as described in the “Background” section of this proposed rule, and also in the final listing rule (63 FR 53596) and in the “Background” section of the 2003 proposed critical habitat rule (68 FR 46143).

Space for Individual and Population Growth, Including Sites for Germination, Reproduction, Seed Dispersal, Seed Bank, and Pollination

Astragalus magdalenae var. *peirsonii* is found on active sand dunes between active faces (so-called slip faces) of the dunes, in bowls, or on semi-stabilized shallow slopes, facing the slip-faces of active dunes (Porter *et al.* 2005, p. 14). Active sand dunes provide the space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination of *A. m. var. peirsonii*. Active sand dunes are characterized by bowls (hollows among the dunes), swales (low area), and slip faces (areas so steep that the loose sand naturally cascades downward) that run transverse to the primary ridge line. *A. m. var. peirsonii* generally occurs on west-facing slopes where there is relative substrate stability from the floor of the dune basin to beyond the ridge; the greatest concentrations are generally above the middle of the slope (WESTEC 1977, p. 75; Porter *et al.* 2001, pp. 12–13).

Sand movement, dune-building, and dune migration are likely determined by the wind regime (Norris and Norris 1961, p. 609). Winds from the northwest are prevalent in the winter, while in the summer the winds are from the southeast (Romspert and Burk 1979, p. 11). Muhs *et al.* (1995, pp. 43–44) found, during a study of the sand source

for the Algodones Dunes, that dominant sand-moving winds are as follows: Prevailing from the northwest all year at Indio, California; from the west or southwest all year at El Centro, California; and from the northwest in winter and from the southeast in summer at Yuma, Arizona. These winds are responsible for the local dispersal of seeds that either fall out of partly opened fruits or pods on the parent plant or that are released from fruits blown across the sand after falling from the parent plant (Phillips *et al.* 2001, p. 11).

Seed germination patterns likely reflect the horizontal and vertical distribution of the seed bank in the shifting sand dunes (seeds will not effectively germinate if buried more than 3 in (8 cm) below the surface of the dune (Bowers 1996, p. 69)). As an adaptation to shifting sands and low soil moisture, this species has developed extremely long tap roots (Barneby 1964, p. 862) that penetrate deeply to the moister sand and that anchor the plants in the shifting dunes. According to Porter *et al.* (2005, p. 28), seedlings may have roots descending only 4 in (10 cm), whereas older plants (e.g., 4 years or older) are likely to have roots “many meters deep.” Seeds buried in the sand function as the seed bank and allow for growth when suitable conditions, such as adequate rainfall, scarification, and suitable sand depths, are met.

Wind-driven sand appears to provide the primary mechanism for seed scarification (e.g., scratching or chipping of outer cover). While seeds require no pre-germination treatment to induce germination, scarification appears to significantly increase germination success. Porter *et al.* (2005, p. 29) conducted germination trials of *Astragalus magdalenae* var. *peirsonii* seeds collected from Algodones Dunes and found that, averaging over all germination trials, scarified seeds had 99.1 percent germination whereas unscarified seeds displayed 5.3 percent germination. In germination trials conducted by Romspert and Burk (1979, pp. 45–46), 92 percent or more seeds germinated within 29 days at temperatures of 77 °F (25 °C) or less, and no seeds germinated at temperatures of 86 °F (30 °C) or higher. This observation indicates that seeds on the dunes likely germinate in the cooler months of the year. Porter *et al.* (2005, p. 29) identified the primary dormancy mechanism in *A. m. var. peirsonii* as the impermeability of the seed coat to water and demonstrated little loss of viability in seeds stored for 5 years.

Seedlings may be generally present in suitable habitat throughout the dunes,

especially during above-normal precipitation years. In intervening dry years, plant numbers decrease as individuals die and are not replaced by new seedlings. Porter (*et al.* 2005, p. 35) estimated that a total- or near-total failure of seedling recruitment occurs 20 percent of the time (1 of every 5 years). This species likely depends on the production of seeds in the wetter years and the persistence of the seed bank from previous years to survive until appropriate conditions for germination occur again.

Astragalus magdalenae var. *peirsonii* occurs only in a vegetation community referred to as psammophytic (sand-loving) scrub, characterized by *Croton wigginsii* (Dunes croton), *Eriogonum deserticola* (Desert buckwheat), *Helianthus niveus* ssp. *Tephrodes* (Algodones Dunes sunflower), *Palafoxia arida* var. *gigantea* (Giant Spanish-needle), *Pholisma sonora*, *Tiquilia plicata* (Plicate coldenia), *Petalonyx thurberi* (Thurber's sandpaper plant), and *Panicum urvilleanum* (Dunes panic grass) (WESTEC 1977, p. 58; Porter *et al.* 2005, p. 14). However, none of these species truly dominates the landscape (Porter *et al.* 2005, p. 14).

In areas where the sand dunes are more stabilized (less sand dune building and movement), such as along the margins of the dune fields, the open canopy psammophytic scrub community is replaced by the sandier phases of the creosote bush scrub community. *Astragalus magdalenae* var. *peirsonii* is apparently excluded from the relatively more closed canopy, creosote bush scrub community. The presence of this associated co-adapted psammophytic scrub plant community is important for population growth of *A. m.* var. *peirsonii*, because it provides habitat for insect pollinators required by *A. m.* var. *peirsonii* for fruit production (Porter *et al.* 2005, p. 35). The white-faced digger bee (*Habropoda pallida*) has been found to be the most frequent visitor on and may be the primary pollinator for this taxon (Porter *et al.* 2005, p. 32).

Intervening Areas for Gene Flow and Connectivity Within the Population

The active sand dunes are continuous along the northwest-to-southeast axis. The continuity of the sand dunes provides connectivity and facilitates gene flow within the population by allowing the movement of pollinators and the wind dispersal of fruit and seeds. Therefore, areas of the sand dunes between bowls occupied by *Astragalus magdalenae* var. *peirsonii* are important for maintaining gene flow within the population.

Areas That Provide the Basic Requirements for Growth (Such as Water, Light, and Minerals)

A soil survey for the Imperial Valley area of Imperial County did not include the areas east of the Coachella Canal, but did depict a few adjacent portions of the Algodones Dunes as Rositas fine sand with 9 to 30 percent slopes (Zimmerman 1981, p. 32). Rositas fine sand is described as deep, somewhat excessively drained, sloping soils formed in wind-blown sands of diverse origin. Dean (1978, p. 65) describes the sand as quartz with a mean grain size of 0.006 in (0.17 mm). The dunes contain 60 to 70 percent quartz and 30 to 40 percent feldspar sand (Norris and Norris 1961, p. 610). Porter *et al.* 2005 (pp. 26–27) describes the sand as containing very little organic material (less than 1 percent). They also found that following rainfall, the dune surface held considerable moisture. Within two to three weeks of a rainfall event, moist sand was found 1 in (3 cm) below the dune surface and later in the season (e.g., April) moist sand was found 7 in (19 cm) below the surface (Porter *et al.* 2005, pp. 26–27). Therefore, Rositas fine sands are required by this species to provide the basic requirements for growth.

Based on the best available information at this time, the primary constituent elements required by *Astragalus magdalenae* var. *peirsonii* are:

(1) West and/or northwest-facing sides of bowls, swales, and slopes consisting of Rositas fine sands within intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds) in the existing range of the species that provide space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(2) The associated co-adapted psammophytic scrub plant community characterized by *Croton wigginsii*, *Eriogonum deserticola*, *Helianthus niveus* ssp. *tephrodes*, *Palafoxia arida* var. *gigantea*, *Pholisma sonora*, *Tiquilia plicata*, *Petalonyx thurberi*, and *Panicum urvilleanum* that provides habitat for insect pollinators, particularly the white-faced digger bee (*Habropoda pallida*), required for reproduction; and

(3) Areas within intact, active sand dune systems between occupied bowls, swales, and slopes that allow for pollinator movement and wind dispersal of fruit and seeds.

This proposed revision to the critical habitat designation is designed for the

conservation of those areas containing PCEs necessary to support the life history functions that were the basis for the proposal and the areas containing those PCEs. Because not all life history functions require all the PCEs, not all proposed critical habitat units will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support at least one of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain primary constituent elements that may require special management considerations or protection. We have also considered how revising the current designation highlights habitat that needs special management consideration or protection.

Astragalus magdalenae var. *peirsonii* was listed due to destruction of plants and modification of habitat associated with OHV activity and associated recreational development (63 FR 53596). OHVs can impact habitat for *A. m.* var. *peirsonii* by:

(1) Disrupting the natural processes that support dune formation, movement, and structure which could disrupt the available habitat needed for individual and population growth (PCE 1 and 3);

(2) Causing the collapse of dune faces and ridges, which could result in burial of the seed bank (PCE 1);

(3) Disturbing surface sand, thereby decreasing soil moisture needed for individual and population growth (PCE 1); and

(4) Degrading the psammophytic scrub plant community that provides habitat for pollinators required for reproduction (PCE 2).

In the 2004 final critical habitat rule, we stated that OHVs may also increase sand compaction (69 FR 47330). However, Porter *et al.* (2005, p. 27) measured soil compaction associated with undisturbed dunes, OHV-traversed sand dunes, and dunes disturbed by foot traffic, and found that soil compaction on the undisturbed dunes was significantly higher. They state that winds and rains cause the sand grains on the surface of the dune to sort and pack in undisturbed areas, thereby potentially reducing evaporative water loss from the dunes. They theorize that OHV activity or walking disturbs the surface and may result in increased

evaporative water loss in the dunes (Porter *et al.* 2005, p. 27).

Special management considerations or protection may be required to minimize impacts to *Astragalus magdalenae* var. *peirsonii* habitat resulting from OHV recreation. The BLM (2003, Appendix 1 p. 13) listed the following possible management options to protect *A. m. var. peirsonii* and its habitat: (1) Use restrictions based on a permit system that would allow a specified level of use (high, medium, low, no use); (2) temporally based closures or limitations (open during some months or years, closed in others); (3) recognition and management of certain areas within a management area; and/or (4) increased education and outreach to OHV users to avoid certain areas. Special management considerations needed may also include additional enforcement to ensure visitor compliance with these management options.

Criteria Used To Identify Critical Habitat

All proposed revised critical habitat units are within areas that we have determined were occupied at the time of listing, and that contain sufficient primary constituent elements (PCEs) to support life history functions essential for the conservation of the species. Lands were proposed for designation based on sufficient PCEs being present to support the life processes. Some lands contain only a portion of the PCEs necessary to support the particular use of that habitat.

We consider BLM's 2005 (Willoughby 2005b) survey data to be the best available information on the distribution and range of *Astragalus magdalenae* var. *peirsonii* on the Algodones Dunes. As discussed in the "Background" section of this proposed rule, an exceptional amount of rainfall was recorded during the 2004–2005 growing season, resulting in the highest recorded abundance of the species to date with an estimated 1,831,076 plants (39.8 plants/ac (86 plants/ha)) in the dunes (Willoughby 2005b, pp. 9–11). This rainfall event coincided with the start of BLM's revised survey methodology, which consisted of a more detailed survey approach, as previously described in the "Background" section, and covered a larger portion of the dunes (Willoughby 2005a, pp. 1–5). The 2005 survey contained 123,488 sample points covering an effective area of 53,000 acres. Because these surveys occurred under the best possible growth and germination conditions for the plant and covered the largest area and greatest number of sample point locations, we

relied on BLM's raw 2005 survey data as the basis for our criteria and GIS model to delineate proposed critical habitat for *A. m. var. peirsonii*.

As discussed in further detail below, we used the following criteria to delineate proposed critical habitat: (1) Areas occupied by the species at the time of listing; (2) areas occupied at a density greater than 100 plants per ha according to BLM's 2005 survey data (Willoughby 2005b); and (3) areas containing the features essential to the conservation of the species. As stated in the final listing rule (63 FR 53596), the Algodones Dunes was, and continues to be, the only area in the United States known to be occupied by *Astragalus magdalenae* var. *peirsonii*.

We delineated the revised proposed critical habitat boundaries using the following GIS model:

(1) We selected occupied cells (defined in Willoughby (2005b) as 25-m² survey areas) with a plant density greater than 100 plants per ha (6 plants per cell) as core areas. About half of the plants observed in 2005 were in cells with a density more than or equal to 100 plants per ha. We used a density of 100 plants per ha since this captured the majority of the large clusters of standing plants. We believe these higher density core areas contain a larger extent of high quality habitat (e.g., suitable dune morphology and soil moisture) and therefore the PCEs required by this species. Also, since these core areas contain higher numbers of standing plants in proximity to each other, we believe that these areas likely support relatively large seed banks (a greater number of seeds being contributed by a greater number of standing plants). Therefore, based on our assumptions that these core areas contain a larger extent of high quality habitat and larger seed banks, we considered these areas most likely to contribute to the recovery of the species.

(2) We expanded each core area to 1 ha then merged 1-ha core areas within 100-m distances of each other to form aggregated core areas. We expanded core areas to one ha to capture the entire population and seed bank in a dune bowl, based on our field observations that most occupied dune bowls are approximately one ha in size. We aggregated the 1-ha core areas within 100 m of each other to maintain space for wind dispersal of seeds between occupied dune bowls. This 100-m distance is a dunes-wide approximation of the average distance between aggregated core areas.

(3) We then eliminated outlying or remote core areas greater than 400 meters (4 bowls) from adjacent core

areas and core areas less than 400 m away but with a plant density less than approximately 370 plants (= 0.0005 of the total observed population of 739,805) within the aggregated core area. This step allowed us to remove core areas with low numbers of plants considered not essential to the conservation of the species. Since these areas are a greater distance from aggregated core areas and/or contain relatively fewer standing plants, we believe these areas either contain a smaller extent of high quality habitat (e.g., suitable dune morphology and soil moisture) and/or support relatively small seed banks. Since we were not able to determine the importance of these outlying or remote areas to the long-term conservation of the species, we did not include them in the proposed designation.

(4) We then overlaid a 100-m² grid onto the final core areas to define the legal boundaries of the proposed critical habitat. We removed remaining small polygons less than 400 m from the core habitat in which the plant density was low. Since these polygons contained a low number of standing plants, we believe these areas contain a smaller extent of high quality habitat (e.g., suitable dune morphology and soil moisture) and/or support relatively small seed banks. Since we are not able to determine the importance of these lower density areas to the long-term conservation of the species at this time, we did not include them in the proposed designation.

This methodology captured approximately 92 percent of the 2005 observed population and includes areas we believe contain high density core populations, a large extent of high quality habitat, and a large seed bank and therefore important for the recovery of the species.

Areas meeting the proposed critical habitat boundaries were then analyzed to determine if any existing conservation or management plans exist that benefit the taxon and its PCEs. As discussed in the 2004 final critical habitat rule (69 FR 47330), BLM released a proposed Recreation Area Management Plan (RAMP) for the ISDRA in 2003 (BLM 2003). The RAMP includes an intensive monitoring/study plan that the BLM has implemented (BLM 2003). As a result of the September 25, 2006, order and injunction regarding final relief, referenced in the "Background" section of this proposed rule, the Environmental Impact Statement associated with the 2003 RAMP was remanded back to the BLM for further consideration.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for *Astragalus magdalenae* var. *peirsonii*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision of the areas we proposed to designate as critical habitat for *Astragalus magdalenae* var. *peirsonii* on August 5, 2003 (68 FR 46143), and designated on August 4, 2004 (69 FR 47330). The main differences include the following:

1. This proposed revision includes 16,108 ac (6,519 ha) of land in Imperial County, California, a reduction of 36,672 acre (14,840 ha) from the 2003 proposed rule (68 FR 46143) and 5,728 ac (2,329 ha) from the 2004 final critical habitat rule (69 FR 47330). The differences in data and selection criteria between the currently designated critical habitat and this proposed revision are described further below.

2. The reduction in total acreage from the 2003 proposed critical habitat designation is primarily the result of a revised methodology to delineate critical habitat. The model used to delineate critical habitat boundaries in the 2003 proposed rule was based primarily on species survey data collected by the BLM from 1998 through 2002 along transects throughout the areas of the Algodones Dunes occupied by *Astragalus magdalenae* var. *peirsonii*. Each transect was composed of a series of grid squares measuring approximately 0.45 mi². In order to create the model, we used the coarse scale BLM survey data to extrapolate the values for four variables: (1) The presence or absence of standing plants

of *A. m.* var. *peirsonii*; (2) the abundance of *A. m.* var. *peirsonii*; (3) the frequency of occurrence of *A. m.* var. *peirsonii* over the survey years; and (4) the number of associated rare psammophytic plant taxa present. These variables were scored, then standardized, and finally compiled. Because of the dynamic nature of the distribution of this plant, the cyclic nature of suitable climatic regimes, and the presence of a seed bank for *A. m.* var. *peirsonii*, grid squares where this plant was not found were included in critical habitat if they were contiguous with occupied grid squares (68 FR 46143). The data used to create the 2003 model was considered the best available at that time and allowed us to identify areas known to be occupied by *A. m.* var. *peirsonii* as well as areas likely to be occupied based on the presence of suitable habitat (e.g. presence of associated psammophytic plant taxa).

As discussed in the "Background" and "Criteria Used to Identify Critical Habitat" sections of this proposed rule, the model used to delineate revised critical habitat boundaries in this revised proposed rule is based on survey data collected by BLM in 2005 (Willoughby 2005b). A higher than average rainfall occurred during the 2004–2005 growing season, resulting in the highest *Astragalus magdalenae* var. *peirsonii* densities to date. Based on these survey data, our revised model uses occupancy and density to outline areas known to be occupied by the species. The model used to delineate the revised proposed critical habitat is based on data collected along a larger number of transects (510 versus 34) during a year of the highest recorded *A. m.* var. *peirsonii* abundance. Therefore, the data are more robust, relying primarily on occupancy documented over a larger area of the dunes and at a finer spatial resolution (25 m² grid cells) during optimal environmental conditions instead of on the presence of suitable habitat (e.g., the presence of associated rare psammophytic plant taxa) as did the 2003 model.

In summary, we consider the model used to delineate revised critical habitat boundaries in this proposed rule to more accurately depict the areas known to be occupied by the species than the model used to delineate the 2003 proposed critical habitat boundaries. We believe that the 2003 designation was more inclusive due to limited data and

the rough spatial scale of the data, and the 2005 data now provide more specific and reliable information regarding abundance and distribution, allowing us to more precisely identify habitat essential to the conservation of the species associated with core population areas. Based on the new model, we determined that 36,535 ac (14,785 ha) previously proposed as critical habitat in 2003 are not essential to the conservation of the taxon, and therefore did not include these areas in the revised proposed critical habitat designation.

3. Of the 16,108 ac (6,519 ha) included in this proposed revision to critical habitat, 14 ac (6 ha) in Subunit 3B, 331 ac (134 ha) in Subunit 3C, and 75 ac (30 ha) in Unit 4 were not included in the 2003 proposed critical habitat rule. Also, 9,573 ac (3,874 ha) in Subunits 2A, 2B, 3A, 3B, 3C and all of Unit 4 (218 ac (88 ha)) were not included in the 2004 final rule (see Table 2 below). These 9,573 ac (3,874 ha) were excluded in the 2004 final rule under section 4(b)(2) of the Act as the Secretary determined that the economic benefits of excluding these lands outweighed the conservation benefits of including these lands in the designation due to the large potential economic and human costs of the designation (69 FR 47330). These lands are again under consideration for critical habitat in this proposed revision to critical habitat.

All lands proposed for critical habitat have been re-evaluated in a revised economic analysis, consistent with the lawsuit discussed in the "Previous Federal Actions" section of this proposed rule. The new draft economic analysis is available for public review and comment concurrently with this rule (see "Economic Analysis" section below). Based on public comment and information in the economic analysis, habitat being proposed as critical habitat herein may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act and in our implementing regulations at 50 CFR 424.19. Table 2 below outlines the changes in Unit/Subunit number and area between the 2003 proposed critical habitat rule, the 2004 final critical habitat rule, and the 2007 revised proposed critical habitat rule for *Astragalus magdalenae* var. *peirsonii*.

TABLE 2.—CHANGES IN UNIT/SUBUNIT NUMBERING AND AREA (IN ACRES (AC) AND HECTARES (HA)) BETWEEN THE 2003 PROPOSED CRITICAL HABITAT RULE, THE 2004 FINAL CRITICAL HABITAT RULE, AND THE 2007 REVISED PROPOSED CRITICAL HABITAT RULE FOR *Astragalus magdalenae* VAR. *peirsonii*

2003 proposed rule (68 FR 46143)		2004 Final rule (69 FR 47330)		2007 revised proposed rule	
Unit/ Subunit	Area (ac (ha))	Unit/ Subunit	Area (ac (ha))	Unit/ Subunit	Area (ac (ha))
1A	16,510 (6,681)	1A	16,509 (6,681)	1A, 1B, 1C, 1D	4,675 (1,892)
1B	34,333 (13,894)	1B	¹ 5,355 (2,167)	2A, 2B, 3A, 3B, 3C	⁴ 11,215 (4,539)
1C	1,490 (603)	1C	² 0 (0)	4	⁵ 218 (88)
1D	447 (181)	1D	³ 0 (0)	(none)	(none)
Totals	52,780 (21,359)	.....	21,863 (8,848)	.....	16,108 (6,519)

¹ 28,978 ac (11,727 ha) excluded from final designation under section 4(b)(2) of the Act.

² Excluded from the final designation under section 4(b)(2) of the Act.

³ Removed from the final designation; not essential to the conservation of the species.

⁴ Includes 331 ac (134 ha) not included in the 2004 final designation.

⁵ Includes 75 ac (30 ha) not designated in the 2004 final designation.

Proposed Revisions to the Critical Habitat Designation

We are proposing approximately 16,245 ac (6,574 ha) as critical habitat for *Astragalus magdalenae* var. *peirsonii* within 4 units further divided into 9 subunits. These lands are under Federal (15,995 ac (6,473 ha)), private (239 ac (97 ha)), and State (11 ac (4 ha)) ownership. The approximate area (ac

(ha)) encompassed within each proposed critical habitat unit/subunit and landownership is shown in Table 3 below. We are not proposing to exclude under section 4(b)(2) any areas from the final designation (see “Exclusions Under Section 4(b)(2) of the Act” for a detailed discussion). These units generally correspond to those units in the 2004 designation (see Table 2), and if finalized would entirely replace the

current critical habitat designation for *A. m.* var. *peirsonii* in 50 CFR 17.95(a). The critical habitat areas described below constitute our best current assessment of areas determined to be occupied at the time of listing on which are found the primary constituent elements that may require special management considerations or protection.

TABLE 3.—PROPOSED CRITICAL HABITAT (ACRES (AC), HECTARES (HA)) FOR *Astragalus magdalenae* VAR. *peirsonii*
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Critical habitat subunit	Land ownership ¹	Total area (ac (ha))
Unit 1—Mammoth Wash/North Algodones Dunes Wilderness.	.....	.....	4,675 (1,892)
	Subunit 1A	BLM	203 (82)
	.....	Private	218 (88)
	Subunit 1B	BLM	1,389 (562)
	.....	Private	22 (9)
Unit 2—Gecko/Glamis	Subunit 1C	BLM	730 (296)
	.....	State	11 (4)
	Subunit 1D	BLM	2,103 (851)
	.....	.....	4,003 (1,620)
	Subunit 2A	BLM	2,716 (1,099)
Unit 3—Adaptive Management Area/Ogilby	Subunit 2B	BLM	1,287 (521)
	.....	.....	7,212 (2,919)
	Subunit 3A	BLM	4,487 (1,816)
	Subunit 3B	BLM	1,176 (476)
	Subunit 3C	BLM	1,549 (627)
Unit 4—Buttercup .....	.....	BLM	218 (88)
Total .....	.....	.....	16,108 (6,519)

¹ BLM = Bureau of Land Management; State = California State Lands Commission.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Astragalus magdalenae* var. *peirsonii*, below.

Unit 1—Mammoth Wash/North Algodones Dunes Wilderness (4,675 ac (1,892 ha))

Unit 1 consists of 4,675 ac (1,892 ha) of land, further divided into 4 subunits (1A, 1B, 1C, 1D), primarily under BLM ownership (Table 2). This unit includes land in the BLM’s Mammoth Wash and

North Algodones Dunes Wilderness Management Areas.

Subunits 1A (421 ac (170 ha)) and 1B (1,411 ac (571 ha))

Subunits 1A and 1B are in the Mammoth Wash area. About half of the land in Subunit 1A is under BLM ownership, and the other half is under

private ownership (Table 2). The majority of the land in Subunit 1B is owned by the BLM (Table 2). Both subunits were occupied at the time of listing, are currently occupied, and contain all of the features (PCEs 1, 2, and 3) essential to the conservation of the species. Additionally, habitat in Subunits 1A and 1B supports the largest numbers of *Astragalus magdalenae* var. *peirsonii* in the Mammoth Wash Management Area, with approximately 8,002 plants observed in Subunit 1A and 24,623 plants observed in Subunit 1B (based on our calculations using BLM's 2005 raw survey data). Habitat within these subunits contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.

The Mammoth Wash Management Area is used for camping, hunting, rights of way, motion picture/television filming, and OHV recreation (BLM 2003, p. 67). The majority of Subunit 1B is within an interim closure area, temporarily closed to OHV activity. Because the area outside of the interim closure area is remote and difficult to access, OHV recreationists give it relatively light visitation on holiday weekends and minimal visitation during the week (BLM 2003, p. 67). This management area had the lowest average annual visitation (approximately 80 vehicles) of all management areas open for OHV use during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006).

The PCEs found in Subunit 1A may require special management considerations or protection such as use restrictions and/or additional enforcement to minimize impacts associated with OHV use and associated recreational activity. The majority of the habitat in Subunit 1B is currently being managed by the BLM to minimize impacts associated with OHV use through an interim closure of the area. However, regardless of the future status of this interim closure area, the PCEs found in this subunit may require special management considerations or protection, such as OHV-use restrictions and/or additional enforcement in the future to minimize impacts associated with OHV recreation (see “Special Management Considerations or Protection” section).

Subunits 1C (741 ac (300 ha)) and 1D (2,103 ac (851 ha))

The majority of land in Subunit 1C and all of the land in Subunit 1D is owned by the BLM (Table 2). Both subunits were occupied at the time of

listing, are currently occupied, and contain all of the features (PCEs 1, 2, and 3) essential to the conservation of the species. Additionally, habitat in Subunits 1C and 1D retains the most natural and pristine features of the Algodones Dunes ecosystem, and includes the best remaining example of a dune system undisturbed by intensive OHV recreation in the ISDRA. These areas also support the largest numbers of *Astragalus magdalenae* var. *peirsonii* in the North Algodones Dunes Wilderness Management Area with approximately 15,519 plants observed in Subunit 1C and 42,673 plants observed in Subunit 1D (based on our calculations using BLM's 2005 raw survey data). Habitat within these subunits contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.

The North Algodones Dunes Wilderness Management Area is a 32,000-ac (12,955 ha) area that was designated as a wilderness area in 1994 to protect a number of rare and endemic plant and animal species, including *Astragalus magdalenae* var. *peirsonii*. Activities in this area include photographic activities, sightseeing, walking, hiking, backpacking, camping, nature study, horseback riding, hunting, rights-of-way, and wildlife viewing (BLM 2003, p. 71). No recreational use of mechanized vehicles of any kind (OHVs, motorcycles, bicycles, hang gliders, motorized equipment, or motorboats) is allowed in the wilderness area; management takes the form of “minimal and subtle on-site controls and restrictions” (Willoughby 2003). However, people occasionally trespass with motorized vehicles, and the BLM acknowledges that the amount of motorized trespasses in this area should be reduced (BLM 2003, p. 71).

The PCEs found in both subunits may require special management considerations or protection, such as additional enforcement to minimize impacts associated with unauthorized trespass by motorized vehicles (see “Special Management Considerations or Protection” section).

Unit 2—Gecko/Glamis (4,003 ac (1,620 ha))

Unit 2 consists of 4,003 ac (1,620 ha) of land further divided into 2 subunits (2A and 2B) entirely under BLM ownership (Table 2). This unit includes lands in the BLM's Gecko and Glamis Management Areas, with the majority being in the Gecko Management Area.

Subunits 2A (2,716 ac (1,099 ha)) and 2B (1,287 ac (521 ha))

Both subunits were occupied at the time of listing, are currently occupied, and contain all of the features (PCEs 1, 2, and 3) essential to the conservation of the species. Additionally, habitat in Subunits 2A and 2B supports the largest numbers of *Astragalus magdalenae* var. *peirsonii* in the Gecko/Glamis Management Areas with approximately 37,234 plants observed in Subunit 2A and 20,865 plants observed in Subunit 2B (based on our calculations using BLM's 2005 raw survey data). Habitat within these subunits contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.

Subunits 2A and 2B are almost entirely within BLM's Gecko Management Area, the most developed of the eight management areas within the ISDRA. It contains campgrounds, toilets, trash stations, camping pads, overlooks, commercial vending, and a ranger station (BLM 2003, pp. 75–76). The Gecko Management Area had the highest average annual visitation (approximately 144,421 vehicles) of the management areas open for OHV use during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006). However, the majority of Subunit 2B is within an interim closure area, temporarily closed to OHV activity.

The PCEs found in Subunit 2A may require special management considerations or protection, such as use restrictions and/or additional enforcement to minimize impacts associated with intensive OHV activity. The majority of the habitat in Subunit 2B is currently being managed by the BLM to minimize impacts associated with OHV-use through an interim closure of the area. However, regardless of the future status of this interim closure area, the PCEs found in this subunit may require special management considerations or protection such as OHV-use restrictions and/or additional enforcement in the future to minimize impacts associated with OHV recreation (see “Special Management Considerations or Protection” section).

Unit 3—Adaptive Management Area (AMA)/Ogilby (7,212 ac (2,919 ha))

Unit 3 consists of (7,212 ac (2,919 ha)) of land further divided into 3 subunits (3A, 3B, 3C) entirely under BLM ownership (Table 2). This unit includes lands in the BLM's AMA and Ogilby Management Area.

Subunits 3A (4,487 ac (1,816 ha)), 3B (1,176 ac (476 ha)), and 3C (1,549 ac (627 ha))

All three subunits were occupied at the time of listing, are currently occupied, and contain all of the features (PCEs 1, 2, and 3) essential to the conservation of the species. Additionally, habitat in Subunits 3A, 3B, and 3C represents the largest, widest, and highest sand dune fields within the Algodones Dunes and supports the largest numbers of *Astragalus magdalenae* var. *peirsonii* dunes-wide, with approximately 200,021 plants observed in Subunit 3A; 178,837 plants observed in Subunit 3B; and 125,526 plants observed in Subunit 3C (based on our calculations using BLM's 2005 raw survey data). Habitat within these subunits contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.

All of Subunit 3A and about half of Subunit 3B are in the BLM's AMA. The other half of Subunit 3B and all of Subunit 3C are in the Ogilby Management Area. The AMA is intended primarily for OHV recreation, although there is also rights-of-way use (BLM 2003, p. 84). However, the entire AMA, including all of Subunit 3A and most of Subunit 3B, is within an interim closure area, temporarily closed to OHV activity. The Ogilby Management Area is used for camping, OHV recreation, and rights-of-way (BLM 2003, p. 90). A portion of the Ogilby Management Area, including a small portion of Subunit 3C, is within an interim closure area, temporarily closed to OHV activity. Areas of the Ogilby Management Area open to OHV use had average annual visitation of approximately 12,951 vehicles during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006).

The PCEs found in Subunit 3C not within the interim closure area may require special management considerations or protection such as use restrictions and/or additional enforcement to minimize impacts associated with OHV recreation. Habitat in Subunits 3A and 3B, and a small portion of Subunit 3C, are currently being managed by the BLM to minimize impacts associated with OHV use through an interim closure of the area. However, regardless of the future status of this interim closure area, the PCEs found in these subunits may require special management considerations or protection such as OHV-use restrictions and/or additional enforcement in the

future to minimize impacts associated with OHV recreation (see “Special Management Considerations or Protection” section).

Unit 4—Buttercup (218 ac (88 ha))

Unit 4 consists of 218 ac (88 ha) of land entirely under BLM ownership (Table 2). This unit includes lands in the BLM's Buttercup Management Area. This unit was occupied at the time of listing, is currently occupied, and contains all of the features (PCEs 1, 2, and 3) essential to the conservation of the species. Additionally, habitat in Unit 4 supports the largest number of *Astragalus magdalenae* var. *peirsonii* in the Buttercup Management Area with approximately 30,011 plants observed (based on our calculations using BLM's 2005 raw survey data). Habitat within these subunits contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.

This area is used for camping, OHV recreation, sightseeing, commercial vending, education, filming and rights of way (BLM 2003, p. 97). The Buttercup Management Area had the second highest average annual visitation (approximately 78,629 vehicles) of the management areas open for OHV use during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006). Due to its proximity to Mexico, there are also many United States–Mexico international border issues (e.g. illegal border crossings and smuggling of goods and contraband) in this management area requiring frequent patrol by the U.S. Border Patrol (BLM 2003, p. 97). The PCEs found in Unit 4 may require special management considerations or protection such as use restrictions and/or additional enforcement to minimize impacts associated with intensive OHV activity (see “Special Management Considerations or Protection” section).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to

destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of adversely modify (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its 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 or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action because of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference

opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in certain instances, including where a new species is listed or critical habitat is subsequently designated that may be affected by the Federal action and the Federal agency has retained

discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the *Astragalus magdalenae* var. *peirsonii* or its designated critical habitat require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also subject to the section 7(a)(2) 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(a)(2) consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Astragalus magdalenae var. *peirsonii* and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for *Astragalus magdalenae* var. *peirsonii* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of *A. m.* var. *peirsonii*. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the *Astragalus magdalenae* var. *peirsonii* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is warranted because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

For the reasons described in the Director's December 9, 2004, memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species. Generally, the conservation role of *Astragalus magdalenae* var. *peirsonii* critical habitat units is to support viable core populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Astragalus magdalenae* var. *peirsonii* is appreciably reduced. Such activities may also jeopardize the continued existence of the species.

Nearly the entire designated critical habitat is on BLM lands. Activities on BLM lands or by Federal agencies that may affect *Astragalus magdalenae* var. *peirsonii* or its critical habitat require section 7(a)(2) consultation. Activities on private or State lands requiring a permit from BLM or any other activity requiring Federal action (i.e., funding or authorization) that may affect this species or its critical habitat will also continue to be subject to the section 7(a)(2) consultation requirement. Federal actions not affecting *A. m.* var. *peirsonii* or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7(a)(2) consultations for this species.

The areas proposed to be designated as critical habitat are occupied by either above-ground plants or a soil seed bank of *Astragalus magdalenae* var. *peirsonii*. BLM and other Federal agencies already consult with us on activities where the species may be present to ensure that their actions do not jeopardize the continued existence of the species or destroy or adversely modify its currently designated critical habitat. Actions on which Federal agencies consult with us on effects to *A. m.* var. *peirsonii* or its critical habitat include, but are not limited to:

(1) Development of the Recreational Area Management Plan for the Imperial

Sand Dunes Recreation Area by the Bureau of Land Management;

(2) Issuance of permits for private actions (e.g. filming) on Federal lands within the Algodones Dunes by the Bureau of Land Management;

(3) Modifications to the All American Canal by the Bureau of Reclamation; and

(4) Construction and maintenance of facilities by the U.S. Border Patrol.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7(a)(2) consultation be conducted include, but are not limited to:

(1) Activities that disrupt the natural processes that support dune formation, movement, and structure; or otherwise change the morphology of the dunes (e.g., ridges, slip faces, bowls, swales); and

(2) Activities that degrade or diminish psammophytic scrub, including activities that (a) disturb the sand such that soil moisture is lost resulting in decreased seed germination or desiccation of plants resulting in premature death, or (b) bury or expose seeds resulting in decreased seed germination; or (c) physically impact or dislodge plants resulting in premature death.

We consider all of the units proposed as critical habitat to contain features essential to the conservation of *Astragalus magdalenae* var. *peirsonii*. All units are within the geographic range of this taxon, all were occupied by the species at the time of listing, and are currently occupied by the *A. m.* var. *peirsonii*. Federal agencies already consult with us on activities in areas currently occupied by *A. m.* var. *peirsonii*, or if the species or its currently designated critical habitat may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *A. m.* var. *peirsonii* or destroy or adversely modify its designated critical habitat.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if 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 is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor. However, we are not proposing to exclude any lands under provisions of section 4(b)(2) in this proposed rule.

Economic Analysis

An analysis of the economic impacts of the revised proposal of critical habitat for *Astragalus magdalenae* var. *peirsonii* is available for review and comment. The comment period for the draft economic analysis runs concurrently with the comment period for this proposed rule. Copies of the draft economic analysis are available for downloading from the Internet at <http://www.fws.gov/carlsbad/> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Astragalus magdalenae* var. *peirsonii*, including costs associated with sections 4, 7, and 10 of the Act, and specifying the incremental effects attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *A. m.* var. *peirsonii* in habitat areas with features essential to the conservation of this taxon. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat (i.e., 2008–2027).

This analysis quantifies potential economic impacts that may result from the designation of critical habitat. Specifically, the analysis quantifies the impact of a loss of OHV trips that could result from the potential closures of portions of the critical habitat as a result of the designation, as well as expected administrative and project modification costs attributable to critical habitat designation. Additionally, the analysis provides information on the full value of OHV use of the ISDRA in the absence of closures resulting from critical habitat. The analysis also quantifies administrative costs attributable to critical habitat designation, potential project modification costs attributable to critical habitat, and potential public cost savings. At the lower bound, in the absence of closures to OHV use resulting from critical habitat, only impacts related to administrative efforts are expected. At the upper bound, the forecast impacts assume this designation will result in restrictions in OHV use, and that as a result of these restrictions, some OHV recreationists may no longer visit the ISDRA, potentially resulting in a consumer surplus loss. Specifically, upper bound impacts reflect a potential loss of visitation in portions of the area proposed for critical habitat. Within the upper bound scenario, a range of impacts is estimated, representing differing assumptions underlying the forecast visitation growth rate for the ISDRA.

The total potential post-designation efficiency impacts for 2008–2027 range from a lower bound of zero to an upper bound range of \$91.8 million in undiscounted dollars. In annualized terms, the impacts range from zero to \$4.59 million. At a three percent discount rate, the impacts range from zero to \$67.7 million over 20 years. At a seven percent discount rate, the impacts range from zero to \$47.6 million over 20 years.

We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Peer Review

In accordance with our joint policy published in the **Federal Register** on

July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Upon publication of this proposed rule, we are announcing that public hearings will be held on both the proposed critical habitat rule and the draft economic analysis on August 23, 2007, from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. at the Carlsbad Fish and Wildlife Office in Carlsbad, California (see **ADDRESSES**). The location, date, and times of these public hearings will also be announced in local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

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

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail

your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this revised proposed designation of critical habitat is a significant rule in that it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed revised critical habitat designation, the total potential post-designation efficiency impacts for 2008–2027 range from a lower bound of zero impact to an upper bound of \$91.8 million in undiscounted dollars. In annualized terms, the impacts would range from zero to \$4.59 million. At a three percent discount rate, the impacts would be zero to 67.7 million over 20 years. At a seven percent discount rate, the impacts would be zero to \$47.6 million over 20 years. Therefore, based on our draft economic analysis, we have determined that the proposed revised critical habitat designation for *Astragalus magdalenae* var. *peirsonii* will not result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination

thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., OHV recreation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when proposed critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to proposed designation of critical habitat for *Astragalus magdalenae* var. *peirsonii*. In our analysis of impacts to small entities (appendix A of draft economic analysis, we estimated that a total of up to 827 small entities in OHV-related sectors could be impacted by critical habitat designation, with 398 of those businesses in Imperial County and 429 in Yuma County. Exhibit A-4 of our Draft Economic Analysis (on page A-8) presents an estimated "per business impact to small entities." In Imperial County, the average impact per small entity is estimated to be \$44,300, which is 3.22% of the estimated average per business annual sales of \$1,370,000. In Yuma County the average impact per small entity is estimated to be \$7,400, which is 0.51% of the estimated average per business annual sales of \$1,440,000. The composite average for both Counties is estimated to be \$25,400 per small entity, which is 1.78% of the estimated average per business annual sales of \$1,410,000. Although a number of small entities will be affected by the designation, we do not believe the economic impact will be significant. Therefore, we certify that this proposed regulation will not result in a significant economic impact on a substantial

number of small business entities. Please refer to our draft economic analysis of this designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Energy-related impacts associated with the proposed *A. m. var. peirsonii* critical habitat are not expected. As noted by BLM, the likelihood of any energy-related activity occurring within the proposed critical habitat is minimal for a number of reasons. First, utility corridors exist outside of the proposed critical habitat area. Second, areas of the ISDRA likely to experience development are not included in the proposed designation. Third, the construction and maintenance of projects (such as utility lines) away from current roads, canals, and railways and through the central, more remote portions of the dunes is likely to be economically infeasible. Thus, this proposed designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is

provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments, because the majority of the lands (98 percent) involved in the proposed designation are federally owned. As such, Small Government Agency Plan is not required. However, we will, further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we

have analyzed the potential takings implications of designating critical habitat for the *Astragalus magdalenae* var. *peirsonii* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for *A. m.* var. *peirsonii* does not pose significant takings implications. However, we will, further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with Executive Order 13132 (Federalism), the 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 majority of the lands (98 percent) involved in the proposed designation are federally owned and, therefore, the proposed designation 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 species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus magdalenae* var. *peirsonii*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork

Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential to the conservation and no Tribal lands that are unoccupied areas that are essential for the conservation of *Astragalus magdalenae* var. *peirsonii*. Therefore, designation of critical habitat for *A. m.* var. *peirsonii* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available for downloading from the Internet at <http://www.fws.gov/carlsbad/> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Author(s)

The primary authors of this package are Tannika Engelhard and Lloyd B. McKinney of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.96 (h), revise the entry for "Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)" under "FLOWERING PLANTS" to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)

(1) Critical habitat units are depicted for this species are found in Imperial County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus magdalenae* var. *peirsonii* are the habitat components that provide:

(i) West and/or northwest-facing sides of bowls, swales, and slopes consisting of Rositas fine sands within intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds) in the existing range of the species that provide space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(ii) The associated co-adapted psammophytic scrub plant community characterized by *Croton wigginsii*, *Eriogonum deserticola*, *Helianthus niveus* ssp. *tephrodes*, *Palafoxia arida* var. *gigantea*, *Pholisma sonora*, *Tiquilia plicata*, *Petalonyx thurberi*, and *Panicum urvilleanum* that provides habitat for insect pollinators, particularly the white-faced digger bee (*Habropoda pallida*), required for reproduction; and

(iii) Areas within intact, active sand dune systems between occupied bowls, swales, and slopes that allow for pollinator movement and wind dispersal of fruit and seeds.

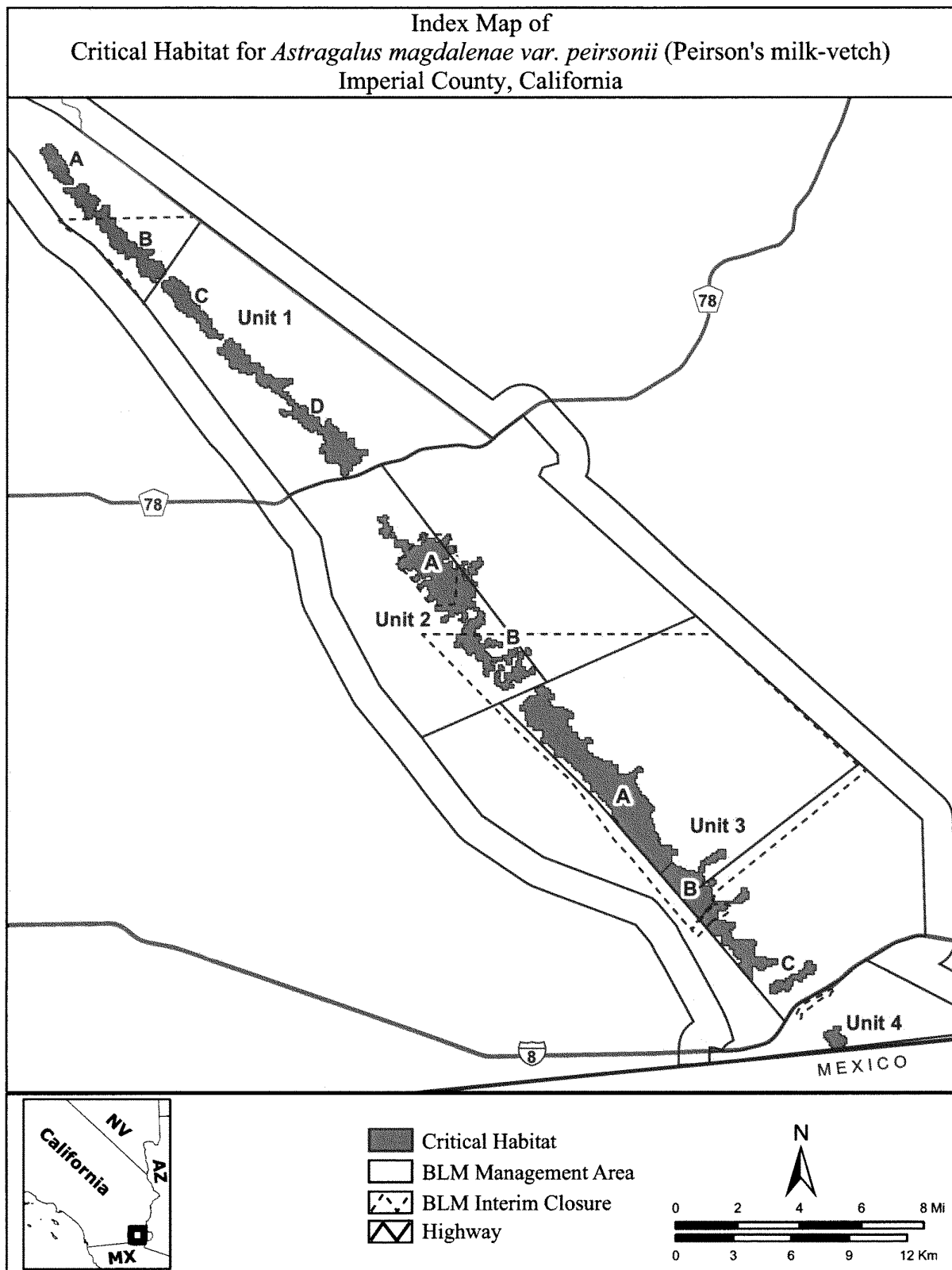
(3) Critical habitat does not include manmade structures, such as buildings, aqueducts, airports, roads, and the land on which such structures are located existing on the effective date of this rule

and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Data layers defining map units were created using USGS 1:24,000 quadrangles.

(5) Note: Index map (Map 1) follows:

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

(6) Unit 1: Imperial County, California.

(i) Subunit 1A, Mammoth Wash, Imperial County, California. From USGS 1:24,000 quadrangles Amos and Tortuga, lands bounded by the following UTM NAD83 coordinates (E, N): 657000, 3668000; 657300, 3668000; 657300, 3667900; 657400, 3667900; 657400, 3667800; 657500, 3667800; 657500, 3667700; 657600, 3667700; 657600, 3667400; 657800, 3667400; 657800, 3667200; 657900, 3667200; 657900, 3667100; 658000, 3667100; 658000, 3666900; 658100, 3666900; 658100, 3666700; 658200, 3666700; 658200, 3666500; 658100, 3666500; 658100, 3666400; 658200, 3666400; 658200, 3666300; 658300, 3666300; 658300, 3666200; 658400, 3666200; 658400, 3665900; 657900, 3665900; 657900, 3666000; 657700, 3666000; 657700, 3666100; 657600, 3666100; 657600, 3666200; 657400, 3666200; 657400, 3666500; 657300, 3666500; 657300, 3666600; 657100, 3666600; 657100, 3667000; 657000, 3667000; 657000, 3667200; 656900, 3667200; 656900, 3667400; 656800, 3667400; 656800, 3667500; 656700, 3667500; 656700, 3667700; 656800, 3667700; 656800, 3667800; 657000, 3667800; thence returning to 657000, 3668000.

(ii) Subunit 1B, Mammoth Wash, Imperial County, California. From USGS 1:24,000 quadrangle Amos, lands bounded by the following UTM NAD83 coordinates (E, N): 658700, 3665900; 659100, 3665900; 659100, 3665800; 659200, 3665800; 659200, 3665500; 659100, 3665500; 659100, 3665400; 659300, 3665400; 659300, 3665300; 659600, 3665300; 659600, 3665200; 659700, 3665200; 659700, 3665100; 659800, 3665100; 659800, 3665000; 659700, 3665000; 659700, 3664800; 659600, 3664800; 659600, 3664600; 659500, 3664600; 659500, 3664500; 659800, 3664500; 659800, 3664600; 659900, 3664600; 659900, 3664800; 660300, 3664800; 660300, 3664300; 660200, 3664300; 660200, 3664200; 660300, 3664200; 660300, 3664100; 660600, 3664100; 660600, 3663700; 660700, 3663700; 660700, 3663600; 660900, 3663600; 660900, 3663500; 661000, 3663500; 661000, 3663400; 661200, 3663400; 661200, 3663000; 661300, 3663000; 661300, 3662900; 661600, 3662900; 661600, 3662800; 661700, 3662800; 661700, 3662600; 662000, 3662600; 662000, 3662500; 662600, 3662500; 662600, 3662300; 662500, 3662300; 662500, 3662200; 662300, 3662200; 662300, 3662000; 662600, 3662000; 662600, 3661900; 663000, 3661900; 663000, 3661700; 663100, 3661700; 663100, 3661500; 663200, 3661500; 663200, 3661200;

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(iii) Subunit 1C, North Algodones Wilderness Area, Imperial County, California. From USGS 1:24,000 quadrangles Acolita and Amos, lands bounded by the following UTM NAD83 coordinates (E, N): 663400, 3661100; 663700, 3661100; 663700, 3661000; 663800, 3661000; 663800, 3660900; 664000, 3660900; 664000, 3660800; 664100, 3660800; 664100, 3660700; 664200, 3660700; 664200, 3660600; 664400, 3660600; 664400, 3660300; 664500, 3660300; 664500, 3659900; 664600, 3659900; 664600, 3659800; 664700, 3659800; 664700, 3659700; 664800, 3659700; 664800, 3659600; 665000, 3659600; 665000, 3659300; 665200, 3659300; 665200, 3659200; 665300, 3659200; 665300, 3659100; 665400, 3659100; 665400, 3658900; 665600, 3658900; 665600, 3658400; 665800, 3658400; 665800, 3658300; 665900, 3658300; 665900, 3658100; 666200, 3658100; 666200, 3657900; 666100, 3657900; 666100, 3657800; 666000, 3657800; 666000, 3657900; 665400, 3657900; 665400, 3658000; 665300, 3658000; 665300, 3658200; 665200, 3658200; 665200, 3658300; 665000, 3658300; 665000, 3658700; 664800, 3658700; 664800, 3658900; 664700, 3658900; 664700, 3659000; 664300, 3659000; 664300, 3659200; 664100, 3659200; 664100, 3659300; 663900, 3659300; 663900, 3659400;

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(iv) Subunit 1D, North Algodones Wilderness Area, Imperial County, California. From USGS 1:24,000 quadrangles Acolita and Glamis NW, lands bounded by the following UTM NAD83 coordinates (E, N): 666500, 3657900; 666700, 3657900; 666700, 3657700; 666800, 3657700; 666800, 3657600; 667100, 3657600; 667100, 3657300; 667300, 3657300; 667300, 3657000; 667600, 3657000; 667600, 3656600; 668100, 3656600; 668100, 3656400; 668300, 3656400; 668300, 3656000; 668700, 3656000; 668700, 3655900; 668800, 3655900; 668800, 3655800; 669500, 3655800; 669500, 3655700; 669600, 3655700; 669600, 3655800; 669800, 3655800; 669800, 3655500; 669600, 3655500; 669600, 3655400; 669400, 3655400; 669400, 3655300; 669300, 3655300; 669300, 3655100; 669600, 3655100; 669600, 3655000; 669500, 3655000; 669500, 3654900; 669700, 3654900; 669700, 3654700; 669900, 3654700; 669900, 3654500; 670100, 3654500; 670100, 3654300; 670200, 3654300; 670200, 3654400; 670500, 3654400; 670500, 3654300; 670600, 3654300; 670600, 3653900; 670900, 3653900; 670900, 3653800; 671200, 3653800; 671200, 3653400; 671300, 3653400; 671300, 3653300; 671500, 3653300; 671500, 3653600; 671600, 3653600; 671600, 3653700; 671800, 3653700; 671800, 3653400; 671900, 3653400; 671900, 3653300; 672100, 3653300; 672100, 3653200; 672200, 3653200; 672200, 3653000; 672600, 3653000; 672600, 3652600; 672700, 3652600; 672700, 3652700; 673000, 3652700; 673000, 3652200; 673100, 3652200; 673100, 3652100; 673700, 3652100; 673700, 3651800; 673400, 3651800; 673400, 3651700; 673300, 3651700; 673300, 3651600; 673400, 3651600; 673400, 3651500; 673300, 3651500; 673300, 3651400; 673100, 3651400; 673100, 3651300; 672900, 3651300; 672900, 3651000; 672700, 3651000; 672700, 3650800; 672600, 3650800; 672600, 3650700; 672400, 3650700; 672400, 3650800; 672300, 3650800; 672200, 3651300; 672200, 3651400; 671600, 3651400; 671600, 3651500; 671500, 3651500; 671500, 3652000; 671400, 3652000; 671400,

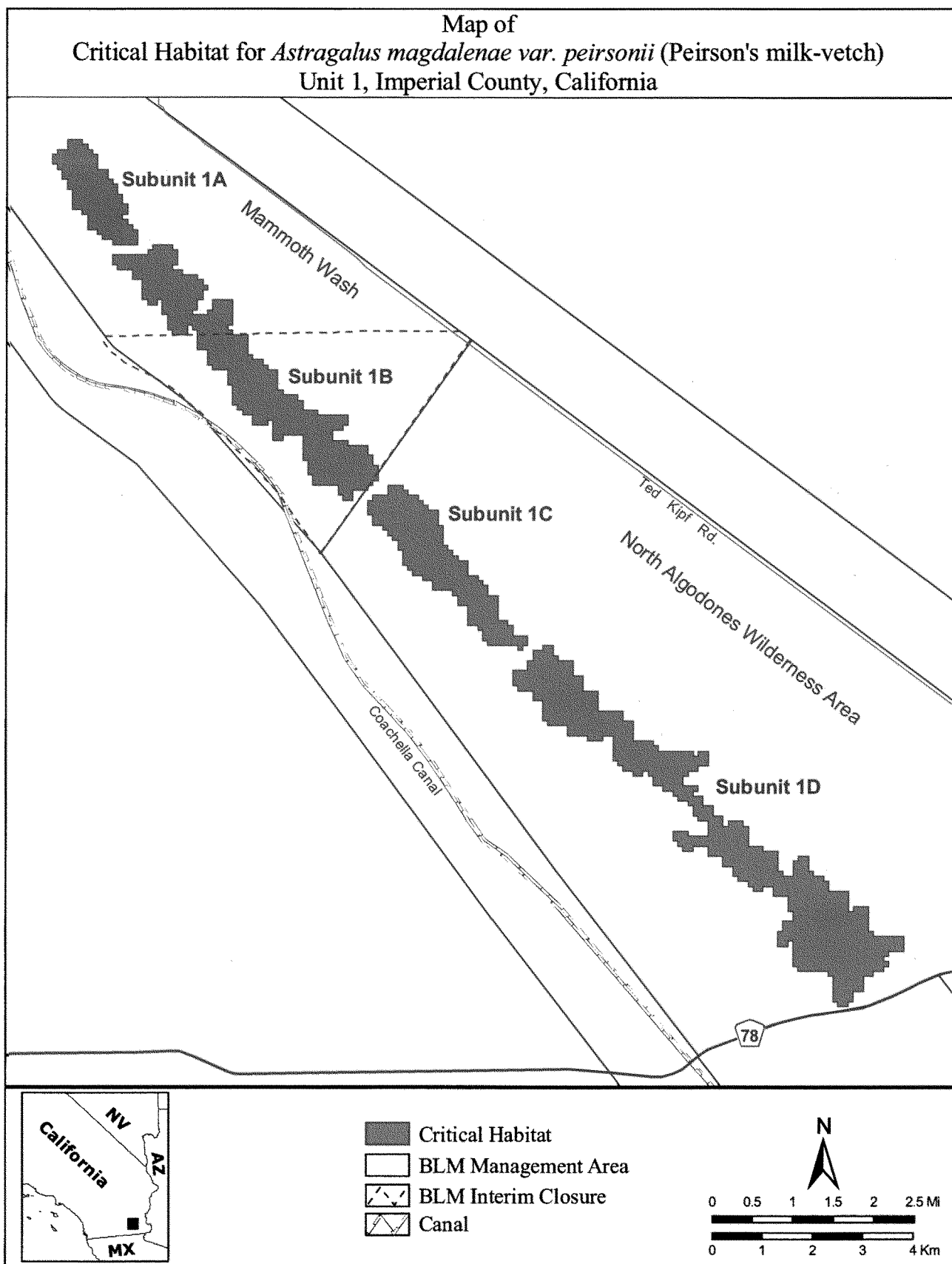
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returning to 666500, 3657900.

(v) Note: Map of Unit 1 (Map 2)
follows:

BILLING CODE 4310-55-P



(7) Unit 2: Imperial County, California.

(i) Subunit 2A, Gecko, Imperial County, California. From USGS 1:24,000 quadrangles Glamis and Glamis NW, lands bounded by the following UTM

NAD83 coordinates (E, N): 674500, 3648700; 674700, 3648700; 674700, 3648600; 674800, 3648600; 674800, 3648500; 674700, 3648300; 674800, 3648300; 674800, 3648100; 675000, 3648100; 675000, 3647900; 674900, 3647900; 674900, 3647800; 675100, 3647800; 675100, 3647600; 675200, 3647600; 675200, 3647400; 675800, 3647400; 675800, 3647200; 676100, 3647200; 676100, 3647100; 676500, 3647100; 676500, 3647300; 676700, 3647300; 676700, 3647400; 676400, 3647400; 676400, 3647700; 676500, 3647700; 676500, 3647800; 676700, 3647800; 676700, 3647700; 676800, 3647700; 676800, 3647600; 676700, 3647600; 676700, 3647500; 677200, 3647500; 677200, 3647300; 677400, 3647300; 677400, 3647400; 677600, 3647400; 677600, 3647500; 677700, 3647500; 677700, 3647600; 677800, 3647600; 677800, 3647700; 678000, 3647700; 678000, 3647400; 677900, 3647400; 677900, 3647200; 677800, 3647200; 677800, 3647000; 677900, 3647000; 677900, 3647100; 678300, 3647100; 678300, 3646800; 678200, 3646800; 678200, 3646700; 677900, 3646700; 677900, 3646400; 677600, 3646400; 677600, 3646200; 677900, 3646200; 677900, 3646300; 678100, 3646300; 678100, 3645900; 678400, 3645900; 678400, 3646100; 678600, 3646100; 678600, 3646300; 678900, 3646300; 678900, 3646100; 678700, 3646100; 678700, 3645900; 678800, 3645900; 678800, 3645700; 678700, 3645700; 678700, 3645600; 678600, 3645600; 678600, 3645500; 678700, 3645500; 678900, 3645300; 678900, 3645300; 678800, 3645400; 678800, 3645600; 679000, 3645600; 679000, 3645700; 678900, 3645700; 678900, 3646000; 679100, 3646000; 679100, 3646100; 679000, 3646100; 679000, 3646200; 679100, 3646200; 679100, 3646300; 679400, 3646300; 679400, 3646500; 679600, 3646500; 679600, 3646300; 679700, 3646300; 679700, 3646100; 679600, 3646100; 679600, 3646000; 679500, 3646000; 679500, 3645900; 679300, 3645900; 679300, 3645800; 679400, 3645800; 679400, 3645600; 679100, 3645600; 679100, 3645300; 679200, 3645300; 679200, 3645200; 679400, 3645200; 679400, 3645000; 679300, 3645000; 679300, 3644400; 679100, 3644400; 679100, 3644200; 679300, 3644200; 679300, 3643900; 679500, 3643900; 679500,

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(ii) Subunit 2B, Gecko, Imperial County, California. From USGS 1:24,000 quadrangle Glamis, lands bounded by the following UTM NAD83 coordinates (E, N): 679400, 3643700; 679500, 3643700; 679700, 3643700; 679700, 3643600; 679800, 3643600; 679800, 3643400; 679700, 3643400; 679700, 3643300; 679800, 3643300; 679800,

3643000; 679600, 3643000; 679600, 3642900; 679500, 3642900; 679500, 3642800; 679300, 3642800; 679300, 3642600; 679200, 3642600; 679200, 3642400; 679600, 3642400; 679600, 3642200; 679500, 3642200; 679500, 3642000; 679800, 3642000; 679800, 3642200; 679900, 3642200; 679900, 3642300; 680100, 3642300; 680100, 3642200; 680400, 3642200; 680400, 3642100; 680700, 3642100; 680700, 3641800; 680500, 3641800; 680500, 3641900; 680300, 3641900; 680300, 3641800; 680100, 3641800; 680100, 3641900; 680000, 3641900; 680000, 3641800; 679800, 3641800; 679800, 3641600; 679900, 3641600; 679900, 3641500; 680000, 3641500; 680000, 3641400; 680100, 3641400; 680100, 3641300; 680700, 3641300; 680700, 3641400; 681000, 3641400; 681000, 3641700; 681300, 3641700; 681300, 3641800; 681500, 3641800; 681500, 3641600; 681900, 3641600; 681900, 3641800; 682100, 3641800; 682100, 3641700; 682200, 3641700; 682200, 3641400; 681800, 3641400; 681800, 3641200; 681700, 3641200; 681700, 3640800; 681900, 3640800; 681900, 3640600; 682100, 3640600; 682100, 3640700; 682200, 3640700; 682200, 3640800; 682400, 3640800; 682400, 3640400; 682100, 3640400; 682100, 3640300; 681900, 3640300; 681900, 3640200; 681700, 3640200; 681700, 3640000; 681400, 3640000; 681400, 3640100; 681200, 3640100; 681200, 3640000; 681100, 3640000; 681100, 3639900; 681300, 3639900; 681300, 3639700; 681000, 3639700; 681000, 3639600; 680700, 3639600; 680700, 3639700; 680600, 3639700; 680600, 3639800; 680400, 3639800; 680400, 3639900; 680300, 3639900; 680300, 3640500; 680400, 3640500; 680400, 3640600; 680500, 3640600; 680500, 3640500; 680600, 3640500; 680600, 3640300; 680500, 3640300; 680500, 3640200; 680600, 3640200; 680600, 3640000; 680800, 3640000; 680800, 3640100; 680900, 3640100; 680900, 3640200; 680800, 3640200; 680800, 3640500; 681200, 3640500; 681200, 3640800; 681400, 3640800; 681400, 3641100; 681500, 3641100; 681500, 3641500; 681400, 3641500; 681400, 3641300; 681200, 3641300; 681200, 3640900; 680900, 3640900; 680900, 3641100; 680800, 3641100; 680800, 3641200; 680700, 3641200; 680700, 3641100; 680400, 3641100; 680400, 3641000; 680200, 3641000; 680200, 3641100; 680100, 3641100; 680100, 3640900; 680300, 3640900; 680300, 3640600; 680000, 3640600; 680000, 3640300; 679800, 3640300; 679800, 3640400; 679700, 3640400; 679700, 3640600; 679800, 3640600; 679800,

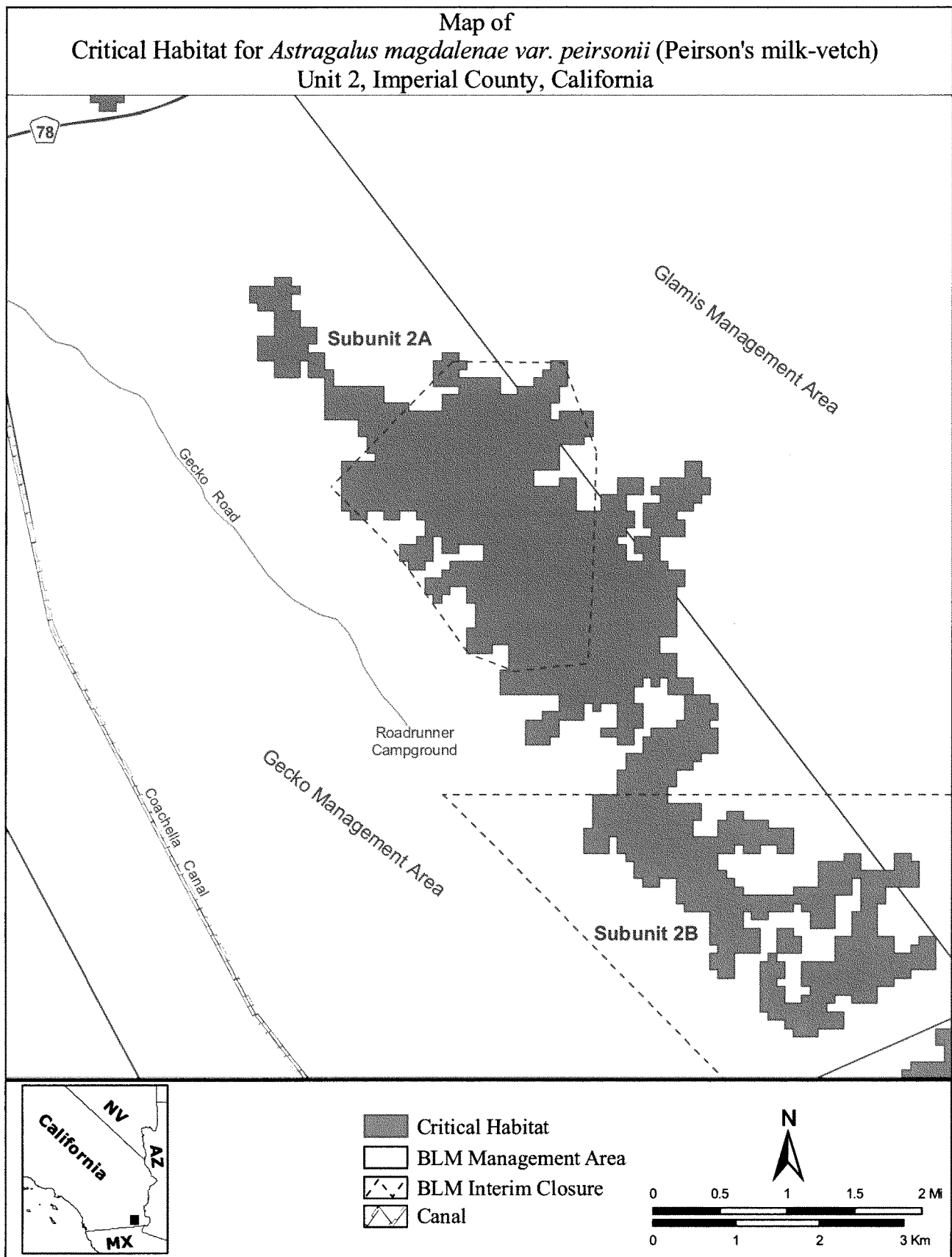
3640700; 679700, 3640700; 679700,
3641100; 679400, 3641100; 679400,
3641200; 679300, 3641200; 679300,
3641500; 679100, 3641500; 679100,
3641400; 678900, 3641400; 678900,
3641500; 678800, 3641500; 678800,
3641700; 678700, 3641700; 678700,
3641800; 678600, 3641800; 678600,
3642000; 678500, 3642000; 678500,

3641800; 678200, 3641800; 678200,
3642100; 678300, 3642100; 678300,
3642500; 678600, 3642500; 678600,
3642800; 678700, 3642800; 678700,
3643000; 678900, 3643000; 678900,
3643200; 679000, 3643200; 679000,
3643300; 679300, 3643300; 679300,
3643400; 679400, 3643400; thence
returning to 679400, 3643700; and lands

bounded by 680500, 3640900; 680700,
3640900; 680700, 3640800; 680800,
3640800; 680800, 3640600; 680500,
3640600; thence returning to 680500,
3640900.

(iii) Note: Map of Unit 2 (Map 3)
follows:

BILLING CODE 4310-55-P



(8) Unit 3: Imperial County, California.

(i) Subunit 3A, AMA, Imperial County, California. From USGS 1:24,000 quadrangles Cactus, Glamis and Glamis SE, lands bounded by the following UTM NAD83 coordinates (E, N):

682600, 3639800; 682900, 3639800; 682900, 3639700; 683100, 3639700; 683100, 3639600; 683200, 3639600; 683200, 3639400; 683400, 3639400; 683400, 3639100; 683100, 3639100; 683100, 3639000; 683200, 3639000; 683200, 3638800; 683300, 3638800; 683300, 3638700; 683900, 3638700; 683900, 3638600; 684100, 3638600; 684100, 3638500; 684300, 3638500; 684300, 3638400; 684400, 3638400; 684400, 3638100; 684100, 3638100; 684100, 3637700; 684300, 3637700; 684300, 3637400; 684600, 3637400; 684600, 3637100; 684700, 3637100; 684700, 3637000; 685000, 3637000; 685000, 3637100; 685300, 3637100; 685300, 3637000; 685400, 3637000; 685400, 3636800; 685100, 3636800; 685100, 3636400; 685200, 3636400; 685200, 3636300; 685400, 3636300; 685400, 3636100; 685700, 3636100; 685700, 3636000; 685900, 3636000; 685900, 3635900; 686400, 3635900; 686400, 3635700; 686700, 3635700; 686700, 3635200; 687300, 3635200; 687300, 3635300; 687500, 3635300; 687500, 3635400; 687600, 3635400; 687600, 3635500; 687700, 3635500; 687700, 3635600; 687900, 3635600; 687900, 3635500; 688000, 3635500; 688000, 3635300; 687700, 3635300; 687700, 3635000; 687600, 3635000; 687600, 3634700; 687700, 3634700; 687700, 3634500; 687800, 3634500; 687800, 3634300; 687900, 3634300; 687900, 3634100; 688100, 3634100; 688100, 3634000; 688200, 3634000; 688200, 3633900; 688300, 3633900; 688300, 3633700; 688300, 3633700; 688400, 3633700; 688400, 3633600; 688500, 3633600; 688500, 3633500; 688600, 3633500; 688600, 3633300; 688500, 3633300; 688500, 3633200; 688400, 3633200; 688400, 3632900; 688500, 3632900; 688500, 3632600; 688600, 3632600; 688600, 3632200; 688700, 3632200; 688700, 3632100; 688800, 3632100; 688800, 3631900; 688900, 3631900; 688900, 3631800; 688800, 3631800; 688800, 3631700; 688900, 3631700; 688900, 3631500; 689500, 3631500; 689500, 3631300; 689800, 3631300; 689800, 3631000; 689500, 3631000; 689500, 3630600; thence southwestward to y-coordinate 3630000 at the Management Area boundary; thence northwestward along the Management Area boundary to x-coordinate 686700; thence to 686700, 3632800; 686600, 3632800; 686600, 3632900; 686500,

3632900; 686500, 3633000; 686400, 3633000; 686400, 3633400; 686300, 3633400; 686300, 3633500; 686200, 3633500; 686200, 3633600; 686100, 3633600; 686100, 3633800; 685900, 3633800; 685900, 3633900; 685800, 3633900; 685800, 3634000; 685700, 3634000; 685700, 3634200; 685600, 3634200; 685600, 3634300; 685300, 3634300; 685300, 3634700; 685200, 3634700; 685200, 3634800; 685000, 3634800; 685000, 3634900; 684900, 3634900; 684900, 3635200; 684800, 3635200; 684800, 3635300; 684700, 3635300; 684700, 3635400; 684500, 3635400; 684500, 3635500; 684400, 3635500; 684300, 3635600; 684300, 3635800; 684100, 3635800; 684100, 3635900; 684000, 3635900; 684000, 3636000; 683900, 3636000; 683900, 3636100; 683500, 3636100; 683500, 3636200; 683400, 3636200; 683400, 3636500; 683300, 3636500; 683300, 3636600; 683200, 3636600; 683200, 3636700; 683100, 3636700; 683100, 3636800; 682800, 3636800; 682800, 3636900; 682700, 3636900; 682700, 3637100; 682800, 3637100; 682800, 3637500; 682300, 3637500; 682300, 3637700; 682000, 3637700; 682000, 3638000; 681900, 3638000; 681900, 3638500; 681600, 3638500; 681600, 3638800; 681800, 3638800; 681800, 3639000; 681800, 3639000; 681900, 3639100; 682000, 3639100; 682000, 3639200; 682100, 3639200; 682100, 3639300; 682500, 3639300; 682500, 3639500; 682400, 3639500; 682400, 3639700; 682600, 3639700; thence returning to 682600, 3639800.

(ii) Subunit 3B, AMA/Ogilby, Imperial County, California. From USGS 1:24,000 quadrangle Cactus, lands bounded by the following UTM NAD83 coordinates (E, N): 691900, 3631300; 692300, 3631300; 692300, 3630800; 691900, 3630800; 691900, 3630700; 691800, 3630700; 691800, 3630600; 691500, 3630600; 691500, 3630500; 691200, 3630500; 691200, 3630100; 691100, 3630100; 691100, 3629900; 691200, 3629900; 691200, 3629600; 691100, 3629600; 691100, 3629400; 691400, 3629400; 691400, 3629700; 691600, 3629700; 691600, 3629800; 691700, 3629800; 691700, 3629700; 691800, 3629700; 691800, 3629500; 691700, 3629500; 691700, 3629400; 691500, 3629400; 691500, 3629300; 691600, 3629300; 691600, 3628700; 691700, 3628700; 691700, 3628600; thence southwestward to the Management Area boundary at y-coordinate 3627650; thence northwestward along the Management Area boundary to y-coordinate 3630000; thence northeastward to 689500,

3630600; thence to 689600, 3630600; 689600, 3630500; 689700, 3630500; 689700, 3630400; 690000, 3630400; 690000, 3630300; 690200, 3630300; 690200, 3630200; 690700, 3630200; 690700, 3630100; 690900, 3630100; 690900, 3630400; 691000, 3630400; 691000, 3630700; 691200, 3630700; 691200, 3630800; 691300, 3630800; 691300, 3630900; 691500, 3630900; 691500, 3631000; 691600, 3631000; 691600, 3631100; 691800, 3631100; 691800, 3631200; 691900, 3631200; thence returning to 691900, 3631300.

(iii) Subunit 3C, Ogilby, Imperial County, California. From USGS 1:24,000 quadrangle Cactus and Grays Well, lands bounded by the following UTM NAD83 coordinates (E, N): 693100, 3629300; 693400, 3629300; 693400, 3629100; 693500, 3629100; 693500, 3628700; 693300, 3628700; 693300, 3628600; 693200, 3628600; 692400, 3628500; 692400, 3628200; 692300, 3628200; 692300, 3628100; 691900, 3628100; 691900, 3627600; 692300, 3627600; 692300, 3627500; 692800, 3627500; 692800, 3627200; 692700, 3627200; 692700, 3627100; 692500, 3627100; 692500, 3627000; 692600, 3627000; 692600, 3626700; 692700, 3626700; 692700, 3626600; 693800, 3626600; 693800, 3626500; 693900, 3626500; 693900, 3626300; 693800, 3626300; 693800, 3625700; 694400, 3625700; 694400, 3625600; 695000, 3625600; 695000, 3625300; 694700, 3625300; 694700, 3625200; 694400, 3625200; 694400, 3625100; 694300, 3625100; 694300, 3625000; 694000, 3625000; 694000, 3625100; 693900, 3625100; 693900, 3625200; 693700, 3625200; 693700, 3624500; thence westward to the Management Area boundary at y-coordinate 3624500; thence northwestward along the Management Area boundary at x-coordinate 693000; thence to 693000, 3625400; 693100, 3625400; 693100, 3625600; 692900, 3625600; 692900, 3625700; 692800, 3625700; 692800, 3625800; 692700, 3625800; 692500, 3626100; 692500, 3626300; 692100, 3626300; 692100, 3626800; thence westward to the Management Area boundary at y-coordinate 3626800; thence northwestward to y-coordinate 3627650; thence to 691700, 3628600; 692700, 3628600; 692700, 3628700; 692800, 3628700; 692800, 3628800; 692900, 3628800; 692900, 3628900; 693000, 3628900; 693000, 3629000; 693100, 3629000; thence returning to 693100, 3629300; and lands bounded by 696500, 3625500; 696800, 3625500; 696800, 3625300; 697000, 3625300; 697000, 3625000; 696900, 3625000;

696900, 3624800; 696500, 3624800;
696500, 3624600; 696300, 3624600;
696300, 3624400; 696100, 3624400;
696100, 3624500; 695800, 3624500;
695800, 3624200; 695700, 3624200;
695700, 3624000; 695600, 3624000;
695600, 3623900; 695400, 3623900;
695400, 3624000; 695200, 3624000;
695200, 3623900; 695000, 3623900;
695000, 3623800; 694600, 3623800;
694600, 3624300; 694800, 3624300;
694800, 3624400; 694900, 3624400;
694900, 3624500; 695300, 3624500;
695300, 3624400; 695400, 3624400;
695400, 3624600; 695600, 3624600;
695600, 3624700; 695700, 3624700;
695700, 3624800; 696100, 3624800;
696100, 3625000; 696300, 3625000;
696300, 3625100; 696400, 3625100;
696400, 3625400; 696500, 3625400;
thence returning to 696500, 3625500.

Subunit 3C, Ogilby, Imperial County, California. From USGS 1:24,000 quadrangle Cactus and Grays Well, lands bounded by the following UTM NAD83 coordinates (E, N): 693100, 3629300; 693400, 3629300; 693400, 3629100; 693500, 3629100; 693500, 3628700; 693300, 3628700; 693300, 3628600; 693200, 3628600; 693200, 3628500; 692400, 3628500; 692400, 3628200; 692300, 3628200; 692300, 3628100; 691900, 3628100; 691900, 3627600; 692300, 3627600; 692300, 3627500; 692800, 3627500; 692800, 3627200; 692700, 3627200; 692700, 3627100; 692500, 3627100; 692500, 3627000; 692600, 3627000; 692600, 3626700; 692700, 3626700; 692700, 3626600; 693800, 3626600; 693800, 3626500; 693900, 3626500; 693900, 3626300; 693800, 3626300; 693800,

3625700; 694400, 3625700; 694400, 3625600; 695000, 3625600; 695000, 3625300; 694700, 3625300; 694700, 3625200; 694400, 3625200; 694400, 3625100; 694300, 3625100; 694300, 3625000; 694000, 3625000; 694000, 3625100; 693900, 3625100; 693900, 3625200; 693700, 3625200; 693700, 3624500; 693400, 3624500; 693400, 3624700; 693300, 3624700; 693300, 3624800; 693200, 3624800; 693200, 3624900; 693100, 3624900; 693100, 3625000; 693000, 3625000; 693000, 3625400; 693100, 3625400; 693100, 3625600; 692900, 3625600; 692900, 3625700; 692800, 3625700; 692800, 3625800; 692700, 3625800; 692700, 3626100; 692500, 3626100; 692500, 3626300; 692100, 3626300; 692100, 3626800; 691400, 3626800; 691400, 3627000; 691300, 3627000; 691300, 3627100; 691200, 3627100; 691200, 3627400; 690900, 3627400; 690900, 3627500; 690800, 3627501; 691700, 3628600; 692700, 3628600; 692700, 3628700; 692800, 3628700; 692800, 3628800; 692900, 3628800; 692900, 3628900; 693000, 3628900; 693000, 3629000; 693100, 3629000; thence returning to 693100, 3629300; and lands bounded by 696500, 3625500; 696800, 3625500; 696800, 3625300; 697000, 3625300; 697000, 3625000; 696900, 3625000; 696900, 3624800; 696500, 3624800; 696500, 3624600; 696300, 3624600; 696300, 3624400; 696100, 3624400; 696100, 3624500; 695800, 3624500; 695800, 3624200; 695700, 3624200; 695700, 3624000; 695600, 3624000; 695600, 3623900; 695400, 3623900; 695400, 3624000; 695200, 3624000; 695200, 3623900; 695000,

3623900; 695000, 3623800; 694600, 3623800; 694600, 3624300; 694800, 3624300; 694800, 3624400; 694900, 3624400; 694900, 3624500; 695300, 3624500; 695300, 3624400; 695400, 3624400; 695400, 3624600; 695600, 3624600; 695600, 3624700; 695700, 3624700; 695700, 3624800; 696100, 3624800; 696100, 3625000; 696300, 3625000; 696300, 3625100; 696400, 3625100; 696400, 3625400; 696500, 3625400; thence returning to 696500, 3625500.

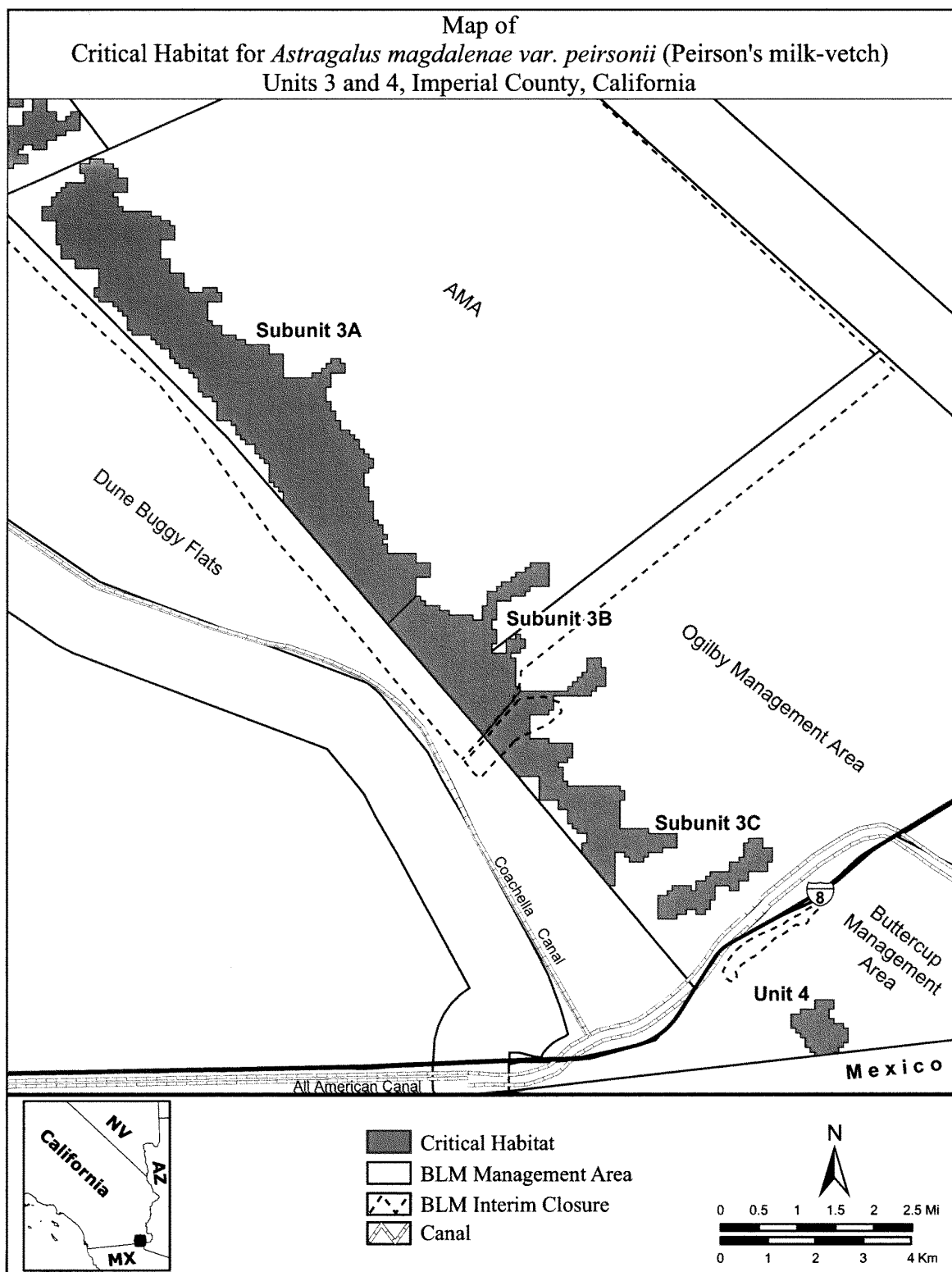
(iv) Note: The map depicting Unit 3 is found at paragraph (9)(ii) of this entry.

(9) Unit 4: Buttercup, Imperial County, California.

(i) From USGS 1:24,000 quadrangle Grays Well, lands bounded by the following UTM NAD83 coordinates (E, N): 697900, 3622100; 698300, 3622100; 698300, 3621900; 698200, 3621900; 698200, 3621700; 698300, 3621700; 698300, 3621600; 698500, 3621600; 698500, 3621500; 698600, 3621500; 698600, 3621200; 698500, 3621200; 698500, 3621100; 698400, 3621100; 698400, 3621000; 698300, 3621000; 698300, 3620970; 697900, 3620925; 697900, 3621000; 697800, 3621000; 697800, 3621100; 697700, 3621100; 697700, 3621300; 697600, 3621300; 697600, 3621400; 697500, 3621400; 697500, 3621500; 697400, 3621500; 697400, 3621800; 697600, 3621800; 697600, 3621900; 697900, 3621900; thence returning to 697900, 3622100.

(ii) Note: Map of Units 3 and 4 (Map 4) follows:

BILLING CODE 4310-55-P



Dated: July 19, 2007.

Todd Willens,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 07-3674 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-55-C

Notices

Federal Register

Vol. 72, No. 144

Friday, July 27, 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

Submission for OMB Review; Comment Request

July 24, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Food Donation Programs (Food for Progress & Section 416(b) and McGovern-Dole International Food for Education and Child Nutrition Program).

OMB Control Number: 0551-0035.

Summary of Collection: The U.S. Department of Agriculture's Foreign Agricultural Service (FAS) helps provide U.S. agricultural commodities to feed millions of hungry people in needy countries through direct donations and concessional programs. Food aid may be provided through four program authorities: Food for Progress; Section 416(b); the McGovern-Dole International Food for Education and Child Nutrition Program; and Public Law 480 (Pub. L. 480). The authorities to collection information for these programs are under 7 CFR Part 1499, Foreign Donation Programs and 7 CFR Part 1599, McGovern-Dole International Food for Education and Child Nutrition Program.

Need and Use of the Information: FAS will collect information from the Cooperating Sponsor to determine its ability to carry out a food aid program, to establish terms under which the commodities will be provided, to monitor the progress of commodity distribution, including how transportation is procured, and to evaluate both the program's success and the Cooperating Sponsor's effectiveness in meeting certain goals. Information is also collected from ship owners/brokers shipping the commodity to its destination.

Description of Respondents: Not for-profit institutions; Business or other for-profit.

Number of Respondents: 241.

Frequency of Responses: Recordkeeping; Reporting; Semi-annually; Quarterly.

Total Burden Hours: 50,434.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-14561 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 24, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Food Stamp Program: State Agency Options.

OMB Control Number: 0584-0496.

Summary of Collection: The Food Stamp Act of 1977, as amended by the Personal Responsibility and Work

Opportunity Reconciliation Act (PRWORA) establishes a program whereby needy households apply for and receive food stamp benefits. It specifies national eligibility standards but allows State agencies certain options in administering the program. These options relate to establishing a homeless shelter deduction; establishing periodically reviewing, and updating standard utility allowances to be used in excess shelter cost computation; and establishing a methodology for offsetting costs of producing self-employment income. The Food and Nutrition Service (FNS) will collect information from state agencies on the methods used to calculate these deductions and allowances.

Need and Use of the Information: FNS will collect information from State agencies on how the various Food Stamp Program implementation options will be determined. The information collected will be used by FNS to establish quality control reviews, standards and self-employment costs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 236.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-14562 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 24, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information

technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

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Animal & Plant Health Inspection Service

Title: Small Enterprise Chicken Study.

OMB Control Number: 0579-0260.

Summary of Collection: The Small Enterprise Chicken Study is an information collection by the Animal and Plant Health Inspection Service (APHIS). This study is designed to collect information on flocks with 1,000 to 19,999 chickens. In the past, APHIS poultry studies, conducted by National Animal Health Monitoring System (NAHMS) have focused on the commercial table-egg layer industry, backyard poultry, and live poultry markets. The objectives of the study are as follows: (1) To describe characteristics of operations with 1,000 to 19,999 chickens, including bird species on-hand, seasonal inventory, and marketing of free-range chickens or eggs, and organic, or other niche-market products; (2) describe movements of animals, people, waste products, vehicles, and equipment on and off operations, and estimate the distances associated with these movements; (3) examine biosecurity practices, including bird access to the outdoors. The information will be collected using NAHMS form 200.

Need and Use of the Information: The information from the study will be used to develop parameters for two disease simulation models: The North American Animal Disease Spread Model and the Multiscale Epidemiologic/Economic Simulation and Analysis Model. The information will also be used to develop background information on this segment of the poultry industry.

Description of Respondents: Farms.

Number of Respondents: 2,500.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 1.250.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-14564 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 24, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Aquaculture Survey.

OMB Control Number: 0535-0150.

Summary of Collection: The primary function of the National Agricultural Statistics Service is to estimate production and stocks of agricultural food, fiber, and specialty commodities. Congress has mandated the collection of basic data for aquaculture and provides funding for these surveys. Public Law 96-362 was passed to increase the overall effectiveness and productivity of Federal aquaculture programs by improving coordination and communication among Federal agencies involved in those programs. Aquaculture is an alternative method to produce a high protein, low fat product demanded by the consumer. Aquaculture surveys provide information on trout and catfish inventory, acreage and sales as well as catfish processed.

Need and Use of the Information: The survey results is useful in analyzing changing trends in the number of commercial operations and production levels by State. The information collected is used to demonstrate the growing importance of aquaculture to officials of Federal and State government agencies who manage and direct policy over programs in agriculture and natural resources. The type of information collected and reported provides extension educators and research scientists with data that indicates important areas that require special educational and/or research efforts, such as causes for losses of fish and pond inventories of fish of various sizes. The data gathered from the various reports provide information to establish contract levels for fishing programs and to evaluate prospective loans to growers and processors.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 3,069.

Frequency of Responses: Reporting: Monthly; Semi-annually; Annually.

Total Burden Hours: 740.

National Agriculture Statistics Service

Title: Cotton Ginning Survey.

OMB Control Number: 0535-0220.

Summary of Collection: Primary function of the National Agricultural Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production, disposition and prices as well as specialty agricultural and environmental statistics. The Cotton Ginning Survey provides statistics concerning cotton ginning for specific dates and geographic regions and aids in

forecasting cotton production, which is required under U.S.C. Title 13, Section 42(a).

Need and Use of the Information: The ginning data collected provides (1) All segments of the cotton industry—buyers, brokers, crushers, shippers, textile firms, and researches with exact quantities of cotton available at specific geographic locations within the U.S. on a regular basis; (2) precise statistics, especially when at least 50 percent of the forecasted cotton production has been ginned in a state; and (3) final season ginning data is used to establish final production. If the information were collected less frequent, the cotton industry would be without county level quantities ginned that could seriously affect transportation costs and marketing strategies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 820.

Frequency of Responses: Reporting: Other (biweekly Sept.–Jan).

Total Burden Hours: 825.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7-14565 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service****Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 2007**

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2007. The commodities made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies for use in preparing meals, and/or for distribution to households for home consumption.

DATES: *Effective Date:* October 1, 2006.

FOR FURTHER INFORMATION CONTACT:

Lillie 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:

In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7502, and the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, the Department makes commodities and administrative funds available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with 7 CFR 251.3(h), each State's share of TEFAP commodities and administrative funds is based 60 percent on the number of low-income households within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the commodities will be used by eligible recipient agencies (ERAs) in providing nutrition assistance to those in need, and for allocating commodities and administrative funds among those agencies. States have full discretion in determining the amount of commodities that will be made available to ERAs for use in preparing meals, and/or for distribution to households for home consumption.

The types of commodities the Department expects to make available to States for distribution through TEFAP in FY 2007 are described below.

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of commodities typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

In FY 2007, the Department anticipates that there will be sufficient quantities of apple products, cherry products, grape juice, grapefruit juice, and fresh tomatoes under section 32, to support the distribution of these commodities through TEFAP. Other surplus commodities may be made available to TEFAP throughout the year. The Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the availability of commodities is subject to change.

Approximately \$10 million in surplus commodities purchased in FY 2006 are being delivered to States in FY 2007.

These commodities include frozen and canned asparagus, cranberry juice concentrate, cranberry sauce, fig pieces, and instant nonfat dry milk.

Purchased Commodities

In accordance with section 27 of the Food Stamp Act of 1977, 7 U.S.C. 2036, the Secretary is directed annually, through FY 2007, to purchase \$140 million worth of commodities for distribution through TEFAP. These commodities are made available to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. However, the Revised Continuing Appropriations Resolution, 2007, (Pub. L. 110-5) permits States to convert any or their entire fair share of \$10 million of these funds to administrative funds to pay costs associated with the distribution of TEFAP commodities at the State and local level.

For FY 2007, the Department anticipates purchasing the following commodities for distribution through TEFAP: Egg mix, blackeye beans, great northern beans, kidney beans, lima beans, pinto beans, bakery mix, lowfat bakery mix, egg noodles, white and yellow corn grits, macaroni, oats, peanut butter, rice, spaghetti, vegetable oil, rice cereal, corn flakes, corn squares, oat cereal, bran flakes, frozen ground beef, frozen chicken, frozen ham, frozen turkey roast, and the following canned items: Mixed vegetables, green beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, peas, pumpkin, spinach, sliced potatoes, spaghetti sauce, tomatoes, tomato sauce, tomato soup, vegetable soup, sweet potatoes, diced tomatoes, apple juice, cranapple juice, grape juice, orange juice, pineapple juice, tomato juice, mixed fruits, apricots, peaches, pineapples, applesauce, pears, plums, beef, beef stew, chicken, pork, tuna, and roasted peanuts. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above.

Dated: July 23, 2007.

Roberto Salazar,

Administrator.

[FR Doc. E7-14526 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability (NOA) Record of Decision (ROD) for the Final Supplement to the 2004 Supplemental Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the National Forest Management Act (NFMA, 16 U.S.C. 1600-1614 *et seq.*), the Forest Service announces the decision to amend selected portions of the 1994 Record of Decision for the Northwest Forest Plan. Specifically, the ROD amends 19 Land and Resource Management Plans for National Forests within the range of the northern spotted owl in western Washington and Oregon and northwestern California. The United States Department of the Interior, Bureau of Land Management (BLM), is expected to concurrently announce a similar decision amending their respective Resource Management Plans.

The Survey and Manage Mitigation Measure Standards and Guidelines added conservation measures for rare and little known species to BLM and Forest Service (Northwest Forest Plan) requirements for providing for late-successional and old-growth forest related species. These Standards and Guidelines were frustrating the Agencies' ability to meet the other resource management goals set forth in the Northwest Forest Plan (timber harvest, hazardous fuels treatment, ecosystem restoration). Although the Survey and Manage Standards and Guidelines are removed with this decision, conservation of rare and little known species will continue to be accomplished through the other elements of the Northwest Forest Plan and the Agency's Special Status Species Program. This ROD also complies with a Settlement Agreement between the Secretaries of Agriculture and the Interior and Douglas Timber Operators and American Forest Resource Council.

DATES: *Effective Date:* This decision is effective July 24, 2007.

ADDRESSES: The ROD is now available on the Internet at <http://www.reo.gov/s-m2006>. Requests to receive copies of the ROD should be sent to Carol Hughes, USDA Forest Service-NR, P.O. Box

3623, Portland, OR 97208-3623, or submit e-mail to ORSMSEIS@blm.gov. Printed copies will be available after August 10th at National Forest offices in western Washington and Oregon and northwestern California.

FOR FURTHER INFORMATION CONTACT:

Alan Christensen, Group Leader, Wildlife, Fisheries, Watershed, Soils and Range, USDA Forest Service-NR, P.O. Box 3623, Portland, Oregon 97208; telephone (503) 808-2922.

SUPPLEMENTARY INFORMATION: In June 2007, the BLM and Forest Service (the Agencies) released a Final Supplement to the 2004 FSEIS to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines. The Final Supplement presented the entire 2004 analysis, updated for new information and supplemented to include:

- Responses to three deficiencies identified in August 2005, by the U.S. District Court of the Western District of Washington, and;
- An additional alternative to respond to implications of a November 2006, decision by the U.S. Court of Appeals for the Ninth Circuit relative to the red tree vole on the BLM's Cow Catcher and Cottonsnake Timber Sales in Oregon.

The analysis covered 337 species of fungi, bryophytes, lichens, mollusks, vascular plants, and vertebrates and 4 arthropod groups. The analysis showed, when compared to the No-Action Alternatives, 53 species would have insufficient habitat in all or a portion of their Northwest Forest Plan range to support stable populations. However, the analysis points out these species are generally either secure in other areas of their range, or State Heritage programs do not rate them imperiled enough to qualify for the two Agencies' Special Status Species Programs. The analysis also shows the selected alternative improves the Agencies' ability to achieve other Northwest Forest Plan objectives.

Readers should note this decision was signed by the Under Secretary of Agriculture for Natural Resources and the Environment. Therefore, no administrative review ("appeal") through the Forest Service will be available on the Record of Decision under 36 CFR part 217.

Reference to previously published **Federal Register** documents: 71 FR 38601, July 7, 2006; 71 FR 38641, July 7, 2006; 72 FR 546, Jan. 5, 2007; 72 FR 31821, June 8, 2007; 72 FR 33737, June 19, 2007.

Dated: July 24, 2007.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. E7-14665 Filed 7-26-07; 8:45 am]

BILLING CODE 3410-11-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: August 26, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington Virginia 22202-3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Clocks, SelfSet & SelfSet (LOGO)

NSN: 6645-00-NIB-0108—Clocks, SelfSet.

NSN: 6645-00-NIB-0112—Clocks, SelfSet.

NSN: 6645-00-NIB-0114—Clocks, SelfSet.

NSN: 6645-00-NIB-0118—Clocks, SelfSet.

NSN: 6645-00-NIB-0123—Clocks, SelfSet.

NSN: 6645-00-NIB-0127—Clocks, SelfSet.

Coverage: A-List for the total Government requirement as specified by the General Services Administration.

Clocks, SelfSet (LOGO)

NSN: 6645-00-NIB-0109—Clocks, SelfSet (LOGO).

NSN: 6645-00-NIB-0113—Clocks, SelfSet (LOGO).

NSN: 6645-00-NIB-0115—Clocks, SelfSet (LOGO).

NSN: 6645-00-NIB-0119—Clocks, SelfSet (LOGO).

NSN: 6645-00-NIB-0124—Clocks, SelfSet (LOGO).

NSN: 6645-00-NIB-0128—Clocks, SelfSet (LOGO).

Coverage: B-List for the broad Government requirement as specified by the General Services Administration.

NPA: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL

Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7-14521 Filed 7-26-07; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or

have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

DATES: *Effective Date:* August 26, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On May 25 and June 1 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 29296; 30541) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services:

Service Type/Location: Document Destruction, Internal Revenue Service (9 locations in Florida): 1 Dependent Drive, 200 W. Forsyth Street, 4057 Carmichael Drive, 550 Water Street, 6800 Southpoint Parkway, 841 Prudential Drive, Jacksonville, FL.; 104 N. Main Street, Gainesville, FL.; 330 SW 34th Avenue

(Paddock Park), Ocala, FL.; 921 N. Nova Boulevard, Holly Hill, FL.
NPA: Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL.

Contracting Activity: Department of Treasury, Internal Revenue Services, Chamblee, GA.

Service Type/Location: Post-wide Administrative Support Services, Fort Bragg, Fort Bragg, NC.

NPA: Employment Source, Inc., Fayetteville, NC.

Contracting Activity: ARMY-BRAGG, Directorate of Contracting, Fort Bragg, NC.

Deletions

On June 1, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 30542) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Family Housing Maintenance, Watervliet Arsenal, Rotterdam Housing Area, Watervliet, NY.
NPA: Uncle Sam's House, Inc., Schenectady, NY.

Contracting Activity: Watervliet Arsenal, Watervliet, NY.

Service Type/Location: Food Service

Attendant, Air National Guard-Phoenix, 3200 E Old Tower Road, Phoenix, AZ.

NPA: Goodwill Community Services, Inc., Phoenix, AZ.

Contracting Activity: Air National Guard-Phoenix, Phoenix, AZ.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E7–14522 Filed 7–26–07; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meetings

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. Program Planning.

- FY 2007 Statutory Report.

IV. Future Agenda Items.

V. Adjourn.

CONTACT PERSON FOR FURTHER

INFORMATION: Manuel Alba, Press and Communications, (202) 376–8582.

Dated: July 24, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–3690 Filed 7–24–07; 4:42 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Notice of Public Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Meeting notice.

SUMMARY: The U.S. Department of Commerce, the European Commission, and the Article 29 Working Party on Data Protection will jointly sponsor a Conference on Cross Border Data Flows, Data Protection, and Privacy in Washington, DC, October 15–16, 2007.

DATES: October 15–16, 2007.

ADDRESSES: You may submit comments regarding this conference to the contact below. Please include your mailing address, e-mail address, telephone including area code, and/or fax number with your submission.

FOR FURTHER INFORMATION CONTACT:

Damon C. Greer, U.S. Department of Commerce, Office of Technology and Electronic Commerce, Safe Harbor Program, 1401 Constitution Avenue, NW., Room 2003, Washington, DC 20230; Telephone: 202–482–5023; Fax: 202–482–5522; e-mail: Safeharbor@mail.doc.gov.

SUPPLEMENTARY INFORMATION: This conference is open to the public but space is limited to approximately 150 attendees.

Dated: July 23, 2007.

Robin Layton,

Director, Office of Technology and Electronic Commerce.

[FR Doc. E7–14499 Filed 7–26–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD JUNE 21, 2007 THROUGH JULY 20, 2007

Firm	Address	Date petition accepted	Product
Lakeside Manufacturing Company	4999 Advance Way, Stevensville, MI 49127	7/20/2007	Parts for door closers and other machined metal products.
TNT Plastics Molding, Inc	1700 E. Via Burton, Anaheim, CA 92806	7/11/2007	Thermoplastic injection molded parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Donald M. Smith,

Project Officer for TAA.

[FR Doc. E7-14541 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 070718363-7368-01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Increasing the Proposed Fiscal Year 2008 Disposal Level for Beryllium Metal

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee, co-chaired by the Departments of Commerce and State, is seeking public comments on the potential market impact of increasing the National Defense Stockpile's proposed Fiscal Year 2008 Annual Materials Plan disposal level for beryllium metal.

DATES: To be considered, written comments must be received by August 27, 2007.

ADDRESSES: Address all comments concerning this notice to Michael Vaccaro, U.S. Department of Commerce, Bureau of Industry and Security, Office of Strategic Industries and Economic Security, 1401 Constitution Avenue, NW., Room 3876, Washington, DC 20230, fax: (202) 482-5650 (Attn: Michael Vaccaro), e-mail: MIC@bis.doc.gov; or Peter Haymond, U.S. Department of State, Bureau of Economic and Business Affairs, Office of International Energy and Commodity Policy, Washington, DC 20520, fax: (202) 647-8758 (Attn: Peter Haymond), or e-mail: haymondp@state.gov.

FOR FURTHER INFORMATION CONTACT: David Newsom, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482-7417.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98, *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, the Treasury, and Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the

Committee to consult with industry representatives that produce, process, or consume the materials contained in the stockpile.

The Committee is seeking public comments on the potential market impact of increasing the National Defense Stockpile's proposed Fiscal Year 2008 Annual Materials Plan disposal level for beryllium metal from 40 short tons to 80 short tons. The quantity listed for beryllium metal is not a disposal or sales target quantity, but rather a statement of the proposed maximum disposal quantity of the material that may be sold in a particular fiscal year by the DNSC. The quantity of the material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of the material approved for disposal by Congress.

Submission of Comments

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of this material. All comments must be submitted to the address indicated in this notice. All comments submitted through e-mail must include the phrase "Market Impact Committee Notice of Inquiry" in the subject line.

The Committee encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on August 27, 2007. The Committee will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public record. The Committee will seek to protect such information to the extent permitted by

law. All comments submitted in response to this notice will be made a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-1900 for assistance.

Dated: July 23, 2007.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E7-14559 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-809]

Partial Rescission of Antidumping Duty Administrative Review: Certain Forged Stainless Steel Flanges from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2924 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2007, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain forged stainless steel flanges (stainless steel flanges) from India for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (February 2, 2007). On February 20, 2007, Echjay Forgings Pvt., Ltd. (Echjay) requested an administrative review of its U.S. sales

that were subject to the antidumping duty order for this period. On February 23, 2007, Hilton Metal Forging Ltd. (Hilton) requested an administrative review of its U.S. sales that were subject to the antidumping duty order for this period. The Department also received requests for an administrative review from Nakshatra Enterprises Pvt., Ltd., and Shree Ganesh Forgings, Ltd. On March 28, 2007, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel flanges from India with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516, 14517 (March 28, 2007).

Partial Rescission of Review

On April 11, 2007 Hilton withdrew its request for an administrative review of its sales during the above-referenced period. On April 19, 2007, Echjay withdrew its request for an administrative review of its sales during the above-referenced period. Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review. Because Hilton and Echjay withdrew their requests for review within the 90-day period and no other party requested a review of their sales, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Hilton and Echjay.

The Department will issue appropriate appraisal instructions directly to the U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries of subject merchandise produced and/or exported by Hilton or Echjay during the period February 1, 2006, through January 31, 2007.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 20, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-14596 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-836]

Glycine from the People's Republic of China: Extension of Time Limit for the Final Results of the 2005-2006 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 27, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, 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) 482-2312.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2007, the Department of Commerce ("Department") published the preliminary results of the administrative review of glycine from the People's Republic of China ("PRC"), covering the period March 1, 2005, through February 28, 2006. *See Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Rescission, in Part*, 72 FR 18457 (April 12, 2007). On April 27, 2007, the Department extended the deadline for submitting factual information for the Department to consider in selecting the surrogate values ("SVs") for the final results of this review, from May 2, 2007, to June 1, 2007. The Department also extended the briefing schedule to accommodate the SV comment extension. On June 14, 2007, the Department issued a letter in response to interested parties' comments regarding certain SV information that had been placed on the record. Also on June 14, 2007, the Department issued a supplemental questionnaire to the respondent, Nantong Dongchang Chemical Industry Corp. ("NDCI"), seeking clarification regarding the ammonia input it uses in the glycine production process. In addition, the Department noted that the domestic interested party participating in this review, Geo Specialty Chemicals, Inc. ("Geo"), would have an opportunity to comment on and rebut any information submitted by NDCI in its response to the June 14, 2007, supplemental questionnaire. The Department again extended the briefing schedule, making case briefs due by July 16, 2007, and rebuttal briefs due by July

23, 2007. The final results of this review are currently due by August 10, 2007.

Extension of Time Limit of Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.213(h)(2), if the Department determines that it is not practicable to complete the review within the designated time period, the Department may extend the time limit for issuing the final results in a review from 120 days to 180 days after publication of the preliminary results.

The Department determines that it would not be practicable to complete the final results of this administrative review within the current time period. Given the extended briefing schedule and the new SV information submitted by parties, the Department requires additional time to analyze the parties' information and arguments, which encompass several issues the Department considers to be extraordinarily complicated, including, but not limited to, the valuation of the ammonia input. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of this review by 60 days, until October 9, 2007.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 17, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7-14598 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Revocation of Export Trade Certificate of Review Application No. 90-00004.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Dimick International & Associates on May 15, 1990. Because this Certificate Holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Dimick International & Associates.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International

Trade Administration, 202/482-5131. This is not a Toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("The Act") (Pub. L. 97-290, 15 U.S.C. 4011-21) Authorizes the Secretary of Commerce to Issue Export Trade Certificates of Review. The Regulations Implementing Title III ("the Regulations") are found at 15 CFR part 325 (1999). Pursuant to this Authority, a Certificate of Review was issued on May 15, 1990 to Dimick International & Associates.

A Certificate Holder is required by law to submit to the Secretary of Commerce Annual Reports that update financial and other information relating to business activities covered by its Certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The Annual Report is due within 45 days after the Anniversary Date of the Issuance of the Certificate of Review (Sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete Annual Report may be the Basis for Revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)). On May 6, 2006, the Secretary of Commerce sent to Dimick International & Associates a letter containing Annual Report questions stating that its annual report was due on June 29, 2006. A reminder was sent on May 31, 2007, with a due date of June 29, 2007. The Secretary has received no written response from Dimick International & Associates to any of these letters. On July 6, 2007, and in accordance with Section 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Secretary of Commerce sent a letter by Certified Mail to notify Dimick International & Associates that the Secretary was formally initiating the process to revoke its Certificate for failure to file an annual report. The Secretary has received no response from Dimick International & Associates. Pursuant to Section 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Secretary considers the failure of Dimick International & Associates to respond to be an admission of the statements contained in the notification letter. The Secretary has determined to revoke the Certificate issued to Dimick International & Associates for its failure to file an annual report. The Secretary has sent a letter, dated July 20, 2007 to notify the Dimick International & Associates of its final determination.

The Revocation is effective thirty (30) days from the date of publication of this notice (325.10(c)(4) of the Regulations, 15 CFR 325.10(c)). Any person

aggrieved by this decision may appeal to an appropriate U.S. District Court within 30 days from the date of publication of this notice in the **Federal Register** "(325.11 of the Regulations, 15 CFR 325.11)."

Dated: July 20, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7-14540 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XB69

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes a notification of fee percentages for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program (Program). This action is intended to provide holders of crab allocations with the fee percentage for the 2007-2008 crab fishing year to calculate the required payment for cost recovery fees due by July 31, 2008.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS on or before July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Crab Rationalization Program in the North Pacific. Fishing under the Program began in August 15, 2005. Regulations implementing the Program are set forth at 50 CFR part 680.

The Program is a limited access system authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program contains a cost recovery provision to collect fees to recover the actual costs directly related to the management and enforcement of the Program. NMFS developed the cost recovery provision to conform with statutory requirements

and to partially compensate the agency for the unique added costs of management and enforcement of the Program. Section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collecting, and enforcement costs up to three percent of the ex-vessel value of crab harvested under the Program. Additionally, section 313(j) requires the harvesting and processing sectors to each pay half the cost recovery fees. Catcher/processor quota share holders are required to pay the full fee percentage.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. The crab allocations include Individual Fishing Quota (IFQ), Crew IFQ, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect his or her own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed three percent) by the ex-vessel value of crab debited from the allocation. Specific details on the Program's cost recovery provision may be found in the implementing regulations set forth at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described in Federal regulations at § 680.44(c)(2). The formula for determining the fee percentage is the 'direct program costs' divided by 'value of the fishery', where 'direct program costs' are the direct program costs for the Crab Rationalization Program for the previous fiscal year, and 'value of the fishery' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Using this fee percentage formula, the estimated percentage of costs to value for the 2006/2007 fishery was 4.38 percent. However, the Magnuson-Stevens Act, at § 304(d)(2)(B), prohibits NMFS from collecting fees greater than three percent

of the ex-vessel value of the crab harvests under the Program. Therefore, the fee percentage will remain three percent for the 2007–2008 crab fishing year.

Authority: 16 U.S.C. 1862 *et seq.*

James P. Burgess,

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

[FR Doc. E7–14574 Filed 7–26–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042707A]

Marine Mammals; File No. 486–1919

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

ACTION: Notice; Denial of Permit.

SUMMARY: Notice is hereby given that a request for a permit to conduct scientific research on marine mammals, submitted by Brent Stewart, Ph.D, J.D, Hubbs-SeaWorld Research Institute, 2595 Ingraham Street, San Diego, CA 92109, has been denied.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 15, 2007, a notice was published in the **Federal Register** (72 FR 27291) that an application had been filed by the above named individual. The requested permit has been denied subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Dated: July 23, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–14588 Filed 7–26–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB17

Taking of Marine Mammals Incidental to Specified Activities; Central California Seabird Research Operations

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

ACTION: Notice of proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the PRBO Conservation Science (PRBO) for an authorization to take California sea lions, Pacific harbor seals, northern elephant seals and Steller sea lions, by harassment, incidental to central California seabird research operations on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes National Seashore (NS). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to PRBO to incidentally take, by harassment, small numbers of these species of pinnipeds during the next 12 months.

DATES: Comments and information must be received no later than August 27, 2007.

ADDRESSES: Comments on the application and draft Environmental Assessment (EA) should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing e-mail comments is PR1.0648-XB17@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. A copy of the application, NMFS' draft environmental assessment (EA), and other related documents may be obtained by writing to this address or by telephoning one of the contacts listed here (see **FOR**

FURTHER INFORMATION CONTACT) and is also available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

FOR FURTHER INFORMATION CONTACT: Shane Guan, NMFS, (301) 713-2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS

must either issue or deny issuance of the authorization.

Summary of Request

On December 15, 2006, PRBO submitted an application to NMFS requesting an Incidental Harassment Authorization (IHA) for the possible harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) incidental to central

California seabird research operations on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes NS. A detailed description of the proposed activity is presented below:

Southeast Farallon Island

The Southeast Farallon Island is located 28 miles (45 km) offshore of San Francisco, California (37° 41'55"N, 123° 00'10"W). Seabird research activities on the Southeast Farallon Island would involve observational and "hands on" ecological studies of breeding seabirds. Occasionally researchers may travel to coastal areas of the island to conduct observational seabird research where non breeding marine mammals are present. These sorts of tasks include viewing breeding seabirds from an observation blind or censusing shorebirds. This activity usually involves one or two observers. Access to the refuge involves landing in small, 14-18 ft (4.3 - 5.5 m) open motorboats which are hoisted onto the island using a derrick system.

Research on the Southeast Farallon Island would be conducted year round. Most intertidal areas of the island, where pinnipeds are present, would be rarely visited in seabird research. Most potential for incidental take will occur at the island's 2 landings, North Landing and East Landing. These sites would be visited approximately 1 - 3 times per day by researchers. In both locations researchers would not be approaching less than 50 ft (15 m) from any pinnipeds which may be hauled out. Most visits to these areas would be brief (approximately 15 minutes), though seabird observers would be present from 2 - 5 hours daily at North Landing from early April early August to conduct observational studies on breeding Common Murres. Boat landings to re-supply the field station, lasting 1 - 3 hours, would be conducted once every 2 weeks at one of the these locations. Activities involve launching of the boat with one operator, with 2 - 4 other researchers assisting with the operations from land. At East Landing,

the primary landing site, all personnel assisting with the landing would stay on the loading platform 30 ft (9 m) above the water. At North Landing, loading operations would occur at the water level in the intertidal.

Ano Nuevo Island

Ano Nuevo Island is located 0.25 mi (0.4 km) offshore of Ano Nuevo Point in San Mateo County, California (37°06'N, 122°20'W). All seabird research work on the Ano Nuevo Island would be in collaborations with Oikonos - Ecosystem Knowledge and through a collaborative agreement with the California State Parks. Procedures include accessing the island by a 12 ft (3.7 m) Zodiac boat. Non-breeding pinnipeds may occasionally be present on the small beach in the center of the island where the boat would be landed. Sea lions may also occasionally be present near a small group of subterranean seabird nest boxes on the island terrace. There are usually 2 - 3 researchers involved in island visits.

Research on the Ano Nuevo Island would be conducted once per week from April to August, and occasional intermittent visits would be made during the rest of the year. A component of the seabird research involves nesting habitat restoration and monitoring, which requires sporadic visits from September to November, between the seabird breeding season and the elephant seal pupping season. Most intertidal areas of the island where marine mammals are present will not be visited during seabird research, excepting the landing beach. Most likely, marine mammal incidental take would occur at this location as well as just north of this beach up on the island's terrace where a small number of seabird nest boxes are located. The landing beach would be visited upon arrival and departure during the weekly visit, and the nest boxes would be checked once on the day of visit. In both locations researchers would not approach less than 50 ft (15 m) away from any pinnipeds which may be hauled out. Landings and visits to nest boxes would be brief (approximately 15 minutes).

Point Reyes National Seashore

Point Reyes NS is located 40 miles (64 km) north of San Francisco Bay, California. The National Park Service (NPS) conducts research, resource management and routine maintenance services at Point Reyes NS. Research along the seashore includes monitoring seabird breeding and roosting colonies. Seabird monitoring usually would involve one or two observers. Surveys

would be conducted in small, 14 - 22 ft (4.3 - 6.7 m) open motorboats that survey along the shoreline. These activities could result in the incidental harassment of pinnipeds. Additionally, NPS would also conduct habitat restoration of the seashore, which would include removal of non-native plants and restoration of coastal dune habitat. Non-native plant removal would be timed to avoid the breeding seasons of pinnipeds, however, on occasion non-breeding animals may be present at various beaches throughout the year.

Description of the Marine Mammals Potentially Affected by the Activity

The marine mammals most likely to be found in the proposed seabird research areas are the California sea lions, Pacific harbor seals, Steller sea lions, and northern elephant seals. General information of these species can be found in Carretta *et al.* (2007), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2006.pdf>. Refer to that document for information on these species. Additional information on these species is presented below.

Northern Elephant Seal

The northern elephant breeding population is distributed from central Baja California, Mexico, to the Point Reyes Peninsula in northern California. Along this coastline there are 13 major breeding colonies. The northern elephant seal was exploited for its oil during the 18th and 19th centuries and by 1900 the population was reduced to 20–30 individuals on Guadalupe Island (Hoelzel *et al.*, 1993; Hoelzel, 1999). As a result of this bottleneck the genetic diversity found in this species is extremely low (Hoelzel, 1999). The recent formation of most rookeries indicates that there is no genetic differentiation among populations. Although movement and genetic exchange occurs among colonies, most seals return to their natal site to breed (Huber *et al.*, 1991). Recolonization of their former breeding range progressed north from the San Benito and Guadalupe Islands off Baja California to the most recent northernmost breeding site at Point Reyes Headlands. In the last three decades, annual pup production has increased at the rate of 9.43 + or – 0.51 percent per year in California and 5.19 + or – 0.33 percent per year over the entire range (Barlow *et al.*, 1993). A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is usually estimated by counting the

number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Stewart *et al.* (1994) used McCann's multiplier of 4.5 to extrapolate from 28,164 pups to a population estimate of 127,000 elephant seals in the U.S. and Mexico in 1991. The multiplier of 4.5 was based on a stable population. Boveng (1988) and Barlow *et al.* (1993) argue that a multiplier of 3.5 is more appropriate for a rapidly growing population such as the California stock of elephant seals. Based on the estimated 28,450 pups born in California and this 3.5 multiplier, the California stock was approximately 101,000 in 2001 (Carretta *et al.*, 2002). At Point Reyes, the population grew at 32.8 percent per year between 1988 and 1997 (Sydeman and Allen, 1999) and around 10 percent per year since 2000 (S. Allen, unpubl. data), and in 2006 around 700 pups were born at three primary breeding areas. The population on the Farallon Islands has declined by 3.4 percent per year since 1983, and in recent years numbers have fluctuated between 100 and 200 pups (W. Sydeman, D. Lee, unpubl. data).

Elephant seals congregate in central California to breed from late November to March. Females typically give birth to a single pup and attend the pup for up to 6 weeks. Breeding occurs after the pup is weaned by attending males. After breeding, seals migrate to the Gulf of Alaska or deeper waters in the eastern Pacific. Adult females and juveniles return to terrestrial colonies to molt in April and May, and males return in June and July to molt, remaining onshore for around 3 weeks.

Pacific Harbor Seal

Harbor seals are one of the most widely distributed northern hemisphere pinnipeds and are found in coastal, estuarine and some times fresh water of both the Atlantic Ocean and Pacific Oceans. There is considerable regional genetic differentiation between harbor seal populations as they are generally limited in migratory movements. Under the MMPA, six stocks of Pacific harbor seals are identified within the U.S. waters (Angliss and Lodge, 2004; Carretta *et al.*, 2006). Only the California stock of harbor seal is found in the proposed project area, and its abundance is estimated to be 34,233 (Carretta *et al.*, 2006). There is some question whether the San Francisco Bay population may be a separate stock based on genetic analyses (D. German, Sonoma State University, pers. com.). At Point Reyes, the harbor seal population is estimated to be 7,524 for the molt season based on a correction factor of

1.65 (Lowry *et al.*, 2005; Manna *et al.*, 2006).

In central California, harbor seals breed annually from March through May and molt in June and July. Females give birth to a single pup and attend the pup for around 30 days, at which time they wean pups. Mating occurs in the water around the time of weaning. Harbor seals are resident year round at terrestrial colonies, however, juveniles may disperse to other colonies ranging up to 500 km (311 mi). Individual adult seals may also migrate widely from breeding colonies.

California Sea Lion

California sea lions range from southern Mexico up to British Columbia and breed almost entirely on islands in southern California, Western Baja California and the Gulf of California. In recent years, California sea lions have begun to breed annually in small numbers at Ano Nuevo Island and South Farallon Island, California. One abandoned pup was found at Point Reyes NS at Wildcat Beach in 2003. This species is separated into three recognized stocks based on three geographic regions (U.S. stock, Western Baja stock, and the Gulf of California stock; Lowry *et al.* 1992). Some movement has been documented between these geographic stocks, but rookeries in the U.S. are widely separated from major rookeries of western Baja California, Mexico (Barlow *et al.*, 1995). The U.S. stock of California sea lion is the only stock present in the proposed research area. The California sea lion has the largest population of any sea lion species and is the only sea lion whose population is showing a healthy growth rate of 5 to 6.2 percent per annum. Annual incidental takes in fisheries is approximately 915 individuals; however, the population is growing by 8.2 percent per year and fishing mortality is declining (Barlow *et al.*, 1995). Current U.S. population estimates range from 237,000 to 244,000 (Carretta *et al.*, 2007).

California sea lions give birth in May through July and breeding occurs in July and August. Females and pups are resident at breeding colonies year round and males migrate north to feeding areas from central California to British Columbia, Canada. During years of low food availability (e.g., El Nino Southern Oscillation, or ENSO), females and juveniles may also migrate north in search of prey; and in some particularly poor years (1997 - 1998), there can be mass mortality of pups at rookeries.

On the Farallon Islands California sea lions haul out in many intertidal areas year round, fluctuating from several

hundred to several thousand animals. Breeding animals are concentrated in areas where researchers would not visit (PRBO, unpublished data).

California sea lions at Point Reyes haul out at only a couple locations, but will occur on human structures such as boat ramps. The annual population averages around 300 - 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data).

Steller Sea Lion

Steller sea lions breed from the Kuril Islands and Okhotsk Sea through the Aleutian Islands and the Gulf of Alaska, and south to central California (Merrick *et al.*, 1987). Two separate stocks are recognized within U.S. waters: an eastern U.S. stock that includes animals east of Cape Suckling, Alaska (144° W), and a western U.S. stock that includes animals' west of Cape Suckling. In 1990, the Steller sea lion was listed as a threatened species under the Endangered Species Act (ESA), and the western stock was listed as endangered in 1997.

The eastern stock of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California (including the proposed research area). Steller sea lions give birth in May through July and breeding occurs a couple of weeks after birth. Non-reproductive animals congregate at a few haul out sites, including at Ano Nuevo and Point Reyes Headland. Pups are weaned during the winter and spring of the following year. On the Farallon and Ano Nuevo Islands, Steller sea lion breeding colonies are located in closed areas where researchers never visited, eliminating any risk of disturbing breeding animals.

Count of pups on rookeries conducted near the end of the birthing season are nearly complete counts of pup production. Using the most recent 2005 pup counts available by region from aerial surveys across the range of the eastern stock, the total population of the eastern stock of Steller sea lions is estimated to be 47,885. This is based on multiplying the total number of pups counted in southeast Alaska (5,519), British Columbia (3,281), Oregon (1,128), and California (713) by 4.5 (Angliss and Outlaw, 2007). Because the eastern stock of Steller sea lions is increasing within most of its range, using the 4.5 multiplier is a reasonable approach to estimating abundance from pup counts (Angliss and Outlaw, 2007).

Steller sea lion numbers in California, especially in southern and central California, have declined from historic

numbers. Counts in California between 1927 and 1947 ranged between 5,000 and 7,000 non-pups with no apparent trend, but have subsequently declined by over 50 percent, remaining between 1,500 and 2,000 non-pups during 1980–2001. Limited information suggests that counts in northern California appear to be stable (NMFS, 1995). At Ano Nuevo Island, a steady decline in ground counts started around 1970, resulting in an 85 percent reduction in the breeding population by 1987 (LeBoeuf *et al.*, 1991). In vertical aerial photographic counts conducted at Ano Nuevo, pups declined at a rate of 9.9 percent from 1990 to 1993, while non-pups declined at a rate of 31.5 percent over the same time period (Westlake *et al.*, 1997). Pup counts at Ano Nuevo have been steadily declining at about 5 percent annually since 1990 (W. Perryman, NMFS-SWFSC, pers. comm.). On Southeast Farallon Island, the abundance of Steller sea lion females declined an average of 3.6 percent per year from 1974 to 1997 (Sydeman and Allen, 1999). Pup counts on the Farallon Islands have generally varied from 5 - 15 (Hastings and Sydeman, 2002; PRBO unpublished data). The most recent pup counts at Ano Nuevo Island and the Farallones are 349 in 2000 and 287 in 2001 (M. Lowry, NMFS-SWFSC, pers. comm.). Pups have not been born at Point Reyes Headland since the 1970s and Steller sea lions are seen in very low numbers there currently (S. Allen, unpubl. data).

Potential Effects on Marine Mammals and Their Habitat

The only anticipated impacts would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 minutes (Allen *et al.*, 1985). Long term effects of this disturbance are unlikely, as very few breeding animals will be present in the vicinity of the proposed seabird research areas. The proposed seabird research would not result in the physical altering of marine mammal habitat. No marine mammal habitat is expected to be affected by the proposed action. No marine mammal critical habitat is found within the proposed research area.

There is no subsistence harvest of marine mammals in the proposed research area, therefore, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses.

Number of Marine Mammals Expected to Be Taken

It is expected that approximately 2,422 California sea lions, 500 harbor seals, 273 northern elephant seals, and 14 Steller sea lions could be potentially affected by Level B harassment. This estimate is based on previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas. These incidental harassment take numbers represent approximately 1 percent of the U.S. stock of California sea lion, 1.5 percent of the California stock of Pacific harbor seal, 0.3 percent of the California breeding stock of northern elephant seal, and 0.03 percent of the eastern U.S. stock of Steller sea lion. All of the potential takes are expected to be Level B behavioral harassment only. No injury or mortality to pinnipeds is expected or requested.

Mitigation, Monitoring, and Reporting

The researchers would take all possible measures to reduce marine mammal disturbance for the activities described above. Researchers would keep their voices hushed and bodies low in the visual presence of pinnipeds. Seabird observations at North Landing on Southeast Farallon Island would be conducted in an observation blind where researchers are shielded from the view of hauled out pinnipeds. Beach landings on Ano Nuevo Island would only occur after any pinnipeds that might be present on the landing beach have entered the water. Ano Nuevo Island researchers accessing seabird nest boxes would crawl slowly if pinnipeds are within view.

Visits to intertidal areas of Southeast Farallon Island during research activities would be coordinated to reduce potential take. All research goals on Ano Nuevo Island would be coordinated to minimize the necessary number of trips to the island. Once on Ano Nuevo Island, researchers would coordinate monitoring schedules so areas near any pinnipeds would be accessed only once per visit. The lead biologist would always serve as an observer to evaluate incidental take and halt any research activities should the potential for incidental take be too great.

Researchers would take notes of sea lions and seals observed within the proposed research area during studies. The notes would provide dates, time, tidal height, species, numbers of sea lions and seals present, and any disturbances. PRBO would submit a final report, including these notes, to

NMFS within 90 days after the expiration of the IHA, if it is issued.

National Environmental Policy Act (NEPA)

NMFS has prepared a draft EA for public review and comment (see **ADDRESSES**), that describes the impact on the human environment that would result from implementation of this action. NMFS has concluded, preliminarily, that no significant impact on the human environment would result.

ESA

NMFS is conducting a Section 7 consultation under the ESA to make a determination whether the proposed research project would be likely to jeopardize the continued existence of the eastern U.S. stock of Steller sea lions.

Preliminary Determinations

For the reasons discussed in this document and in the identified supporting documents, NMFS has preliminarily determined that the impact of seabird research on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes NS would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions hauled out in the vicinity of the proposed research area. While behavioral modifications, including temporarily vacating the area during the survey period, may be made by these species to avoid the resultant visual disturbance, the availability of alternate areas within these areas and haul-out sites has led NMFS to preliminarily determine that this action will have a negligible impact on California sea lions, Pacific harbor seals, northern elephant seals, and Steller sea lions.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue an IHA to PRBO for the potential harassment of small numbers of California sea lions, harbor seals, northern elephant seals, and Steller sea lions incidental to conducting of seabird research on Southeast Farallon Island, Ano Nuevo Island, and Point Reyes NS, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: July 23, 2007.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. E7-14584 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-22-S

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent and Trademark Financial Transactions.

Form Number(s): PTO-2038, PTO-2231, PTO-2232, PTO-2233, PTO-2234, PTO-2236.

Agency Approval Number: 0651-0043.

Type of Request: Revision of a currently approved collection.

Burden: 58,166 hours annually, including 50 hours per year for Financial Profiles.

Number of Respondents: 1,929,205 responses per year, including 500 responses per year for Financial Profiles.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately two to four minutes (0.03 to 0.07 hours) to prepare and submit the existing items in this collection. The USPTO estimates that it will take the public approximately six minutes (0.10 hours) to complete and submit a Financial Profile.

Needs and Uses: Under 35 U.S.C. 41 and 15 U.S.C. 1113, as implemented in 37 CFR 1.16-1.28, 2.6-2.7, and 2.206-2.209, the USPTO charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The public uses this collection to pay patent and trademark fees by credit card, to establish and manage USPTO deposit accounts, to set up a user profile for EFT transactions, and to request refunds. The USPTO is developing a pilot program that will allow customers to

access and manage their financial activity online by creating a Financial Profile through the USPTO Web site. The Financial Profiles are being added to this collection.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail:* Susan.Fawcett@uspto.gov.

Include "0651-0043 copy request" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 27, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: July 20, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7-14542 Filed 7-26-07; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Funding Availability for Special Assistance to Local Educational Agencies (LEAs) in the Vicinity of a United States Service Academy

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the availability of \$5 million in assistance of Local Educational Agencies (LEAs). The Office of Economic Adjustment (OEA) is authorized by section 3310 of Pub. L. 110-28, to provide up to \$5 million in assistance to LEAs. Awards of up to \$1.5 million per Applicant may be provided under this Notice to assist LEAs in the vicinity of a United States Service

Academy (Service Academy), primarily where the loss of local revenue base, due to Federal property not being taxable, constrains an applicant's operating expenses and the ability to maintain educational programs.

Assistance may be provided to a LEA, or a State or local government on behalf of one or more LEAs, depending on the scope of the proposal. Funds provided under this Notice may not be used to replace or supplant Impact Aid assistance available from the Department of Defense (DoD) or the U.S. Department of Education (ED).

DATES: Proposals will be accepted through the close of business on August 31, 2007, or the date funds are no longer available for these purposes, whichever comes first.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

OEA, a DOD Field Activity, is authorized by section 3310 of Pub. L. 110-28 to provide special assistance to LEAs. These funds are intended to assist LEAs in the vicinity of a Service Academy, primarily where the loss of local revenue base, due to Federal property not being taxable, constrains an applicant's operating expenses and the ability to maintain educational programs. Five million dollars is made available under this Notice.

II. Award Information

OEA is accepting proposals for grant awards, not to exceed \$1.5 million per applicant. Proposals will be rated on content, responsiveness to this Notice, and budget. OEA will notify respondents within fifteen (15) days of receipt of a proposal whether their proposal qualifies to invite a grant application.

III. Eligibility Information

A LEA is defined as:

- A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and
- any State agency that directly operates and maintains facilities for providing free public education.

Eligible applicants are LEAs, or a State or local government on behalf of one or more LEAs, in the vicinity of one of the following Service Academies:

- United States Military Academy at West Point (West Point, NY); United States Naval Academy (Annapolis, MD); United States Coast Guard Academy (New London, CT); United States Merchant Marine Academy (Kings

Point, NY); or the United States Air Force Academy (Colorado Springs, CO).

For the purpose of this Notice, "LEAs in the vicinity of a United States Service Academy" means:

- A LEA where the total student enrollment includes school age dependants of Military, DOD civilian, and/or DOD contractor personnel employed on the Service Academy. Priority consideration will be given to LEAs where the school age dependants of Military, DOD civilian, and/or DOD contractor personnel employed on the Service Academy comprise at least three percent (3%) or 400, whichever is less, of the LEA's total student enrollment.

Eligible activities are limited to non-construction activities—for example, operational expenses (including salaries), conduct of planning studies and site assessments, and the development of financial plans.

IV. Proposal and Submission Information

Respondents are advised that proposals received in conformance with this Notice will be accepted and processed on a continuous basis to the extent funds remain available.

Each proposal submitted should include a cover or transmittal letter signed by the Authorizing Official on behalf of the Applicant. Text of the proposal shall consist of no more than 10 pages (single-sided) which must include:

- A summary of the problem or need the project will address;
- A profile of the LEA's student population that demonstrates compliance with the eligibility requirements of this Notice;
- A summary of Impact Aid assistance received from DOD and ED, and an explanation of how the requested assistance will neither replace nor supplant Impact Aid assistance;
- A description of how the respondent intends to carry out the work required to:
 1. Resolve the problem or address the need; and
 2. Benefit school age dependants of Military, DOD civilian, and/or DOD contractor personnel employed on the Service Academy;
- A proposed budget and accompanying explanation, demonstrating that not more than 50% of the proposed project funding will be from funds awarded under this Notice;
- Documentation that the Authorizing Official is authorized by the respondent to submit a proposal and subsequently apply for assistance under this Notice;
- A project schedule for completion of the work; and,

- A local point of contact.

Proposals may be provided to: Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202-4704, or submitted electronically to: gary.willis@wso.whs.mil.

V. Application Review Information

1. Selection Criteria—Upon validating the eligibility of the respondent to apply for assistance, OEA considers each of the following factors as a basis for inviting formal grant applications: content, overall conformance with this Notice and overall reasonableness of budget.

2. Review and Selection Process—All proposals will be reviewed on their individual merit by a panel of OEA staff, which may be augmented by other Federal or non-Federal technical experts (e.g. ED), as necessary. OEA will notify the respondent within fifteen (15) days of receipt of a proposal whether their proposal:

- Was successful and invite the successful respondent to submit a grant application. OEA will assign a Project Manager to advise and assist successful respondents in the completion of the grant application;
- Was unsuccessful and state the reasons why; or
- Remains under consideration pending the receipt of specific additional information.

VI. Award Administration Information

1. Award Notices—A successful applicant (Grantee) will receive a notice of award in the form of a grant agreement, signed by the Director, OEA (Grantor), on behalf of the Department of Defense. The grant agreement will be transmitted electronically, or if necessary, by U.S. Mail.

2. Administrative and National Policy Requirements—Awards under this Notice are subject to compliance with all applicable Federal, State, and local laws including the following: 32 CFR Part 33, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"; OMB Circulars A-87, "Cost Principles for State and Local Governments" and the revised A-133, "Audits of States, Local Governments and Non-Profit Organizations"; 32 CFR Part 25, "Government-wide Debarment and Suspension (Non-procurement)"; 32 CFR Part 26, "Drug-free Workplace"; and 32 CFR Part 28, "New Restrictions on Lobbying (Grants)."

3. Reporting—OEA requires interim performance reports and one final performance report for any grant. The

performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the period;
- Reasons for slippage if established objectives were not met;
- Additional pertinent information when appropriate;
- A comparison of actual and projected grant expenditures; and,
- The amount of Federal cash on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activities for the entire grant period. All required deliverables should be submitted with the final performance report. The final SF 269A, "Financial Status Report," must be submitted to OEA within 90 days after the end date of the grant. Any grant funds actually advanced and not needed for grant purposes shall be returned immediately to OEA.

OEA will provide a schedule for reporting periods and report due dates in the grant agreement.

VII. Agency Contact

For further information, contact: Gary Willis, Project Manager, Office of Economic Adjustment, telephone: (703) 604-5164, e-mail: gary.willis@wso.whs.mil or regular mail at 400 Army Navy Drive, Suite 200, Arlington, VA 22202-4704.

Dated: July 23, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7-14520 Filed 7-26-07; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DOD.

ACTION: Notice; correction.

SUMMARY: The notice of an intent to grant an exclusive license for U.S. Patent application 11/229,425, filed September 16, 2005 entitled "Artillery Rocket Trajectory Correction Kit" was originally published in the **Federal Register** on July 20, 2007 (72 FR 39801). The following information was published in error: "In accordance with 35 U.S.C. 209 and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license within the geographic area of the United States of America and

its territories and possessions to U.S. Patent application * * *." The following information is the correction; In accordance with 35 U.S.C. 209 and 37 CFR 404.7(b)(12)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license for all the geographic area excluding the United States of America and its territories and possessions for any patents or patent applications claiming priority to U.S. Patent application.

FOR FURTHER INFORMATION CONTACT: Dr. Russ Alexander, Office of Research & Technology Applications, (256) 876-8743.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07-3673 Filed 7-26-07; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Draft Supplemental Environmental Impact Statement for the Rueter-Hess Reservoir Expansion Project, Parker, CO

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Omaha District has prepared a Draft Supplemental Environmental Impact Statement (SEIS) to analyze the direct, indirect and cumulative effects of enlarging the currently permitted Rueter-Hess Reservoir in Parker, CO. The current project was authorized in February 2004 with Department of the Army Permit No. 199980472 (Section 404 Permit). The basic purpose of the Proposed Action would allow the reservoir to serve as a regional water management facility for multiple water providers in northern Douglas County; enable them to meet peak demands; greatly enhance water management in the region; and help extend the yield of the Denver Basin aquifers, a non-renewable water source and the primary source of water for the South Metro area. Expansion of the reservoir would result in direct impacts to an additional 0.21 acres of wetlands and 4 miles of intermittent stream channel (in addition to the 6.7 acres of wetlands and 5 miles of other waters of the U.S. permitted as part of the 16,200-acre-foot [AF] reservoir). This action requires authorization from the Corps under Section 404 of the

Clean Water Act. The Permittee and Applicant is the Parker Water and Sanitation District (PWSD).

The Draft SEIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Corps' regulations for NEPA implementation (33 Code of Federal Regulations [CFR] Parts 230 and 325, Appendices B and C). The Corps, Omaha District, Regulatory Branch is the lead federal agency responsible for the Draft SEIS and information contained in the SEIS serves as the basis for a decision regarding issuance of a Section 404 Permit modification. It also provides information for local and state agencies having jurisdictional responsibility for affected resources.

DATES: Written comments on the Draft SEIS will be accepted on or before August 27, 2007. Oral and/or written comments may also be presented at the Public Hearings to be held at 7 p.m. on Tuesday, August 21, 2007 at the Douglas County Office Building (Philip S. Miller Bldg.), Hearing Room (100 Third Street), Castle Rock, CO and on Wednesday, August 22, 2007 at the North Water Reclamation Plant (18100 East Woodman Drive), Parker, CO.

ADDRESSES: Send written comments regarding the Proposed Action and Draft SEIS to Rodney Schwartz, Senior Project Manager, U.S. Army Corps of Engineers, Omaha District—Regulatory Branch, 12565 West Center Road, Omaha, NE 68144-3869 or via e-mail: rodney.j.schwartz@usace.army.mil. Requests to be placed on or removed from the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Rodney Schwartz, Senior Project Manager, U.S. Army Corps of Engineers at 402-221-4143; Fax 402-221-4939.

SUPPLEMENTARY INFORMATION: The purpose of the Draft SEIS is to provide decision-makers and the public with information pertaining to the Proposed Action and alternatives, and to disclose environmental impacts and identify mitigation measures to reduce impacts. PWSD proposes to enlarge the Rueter-Hess Reservoir from the currently permitted design of 16,200 AF by 55,800 AF for a total storage capacity of approximately 72,000 AF. This is considered the site's maximum storage capacity based on the site's topography. The proposed expanded reservoir pool would inundate approximately 1,140 acres (an additional 672 acres). PWSD would maintain a 5,000-AF emergency reserve pool in the reservoir (elevation 6,110 feet) to be used as needed to provide a reliable water supply for its

customers. The proposed design involves raising the currently permitted dam (embankment) by 61 feet, to a crest elevation of 6,220 feet, using a downstream raise concept. The final dam is proposed to be a 196-foot-high and 7,675-foot-long zoned earth embankment.

The purpose for the enlarged reservoir is to provide sufficient storage of Denver Basin groundwater, and the associated reuse water from initial Denver Basin use, for selected South Metro Denver area water providers, and to assist in sustaining the Denver Basin aquifers. The additional water to be stored in a proposed expanded Rueter-Hess Reservoir would come from existing sources (i.e., Denver Basin groundwater and associated reusable return flows). The reservoir would be used to manage supplies during off-peak times and use this water during peak times to reduce the need for instantaneous production from Denver Basin wells. In addition to the proposal to expand the reservoir, new pipelines would be installed to deliver the water to and from the new Project Participants (Town of Castle Rock, Castle Pines North Metropolitan District and Stonegate Metropolitan District).

In addition to the Proposed Action, the Draft SEIS analyzes two alternatives: (1) The Reduced-Capacity Reservoir (47,000 AF) Alternative, and (2) the No Action Alternative. The Reduced-Capacity Reservoir Alternative dam would be located along the same axis as the Proposed Action, but would be smaller in length (7,160 feet) and height (179 feet). The reservoir would have a surface area of 934 acres at normal pool. The No Action Alternative assumes that PWSD and the other Project Participants would continue their current operations of primarily providing water to their customers with Denver Basin groundwater by drilling additional wells to meet peak summertime demands. PWSD would construct the currently permitted Rueter-Hess Reservoir (16,200 AF) to obtain firm annual yield for the PWSD, focusing on meeting peak summertime demands. Stonegate would have some storage capacity (1,200 AF) in the currently permitted reservoir. Castle Rock and Castle Pines North would not have surface water storage available to meet their needs; therefore, their ability to capture and reuse their reusable return flows would be limited. Castle Rock and Castle Pines North would extract and use their reuse water only as it is being generated from their advanced wastewater treatment plants and lawn irrigation.

Copies of the Draft SEIS will be available for review at:

1. Parker Library, 10851 South Crossroads Drive, Parker, CO 80134.
 2. Philip S. Miller Library, 100 S. Wilcox, Castle Rock, CO 80104.
 3. Parker Water and Sanitation District, 19801 East Mainstreet, Parker, CO 80138.
 4. U.S. Army Corps of Engineers, Denver Regulatory Office, 9307 S. Wadsworth Boulevard, Littleton, CO 80128.
- Copies may also be obtained from the Corps' third-party contractor, URS Corporation, Attn: Paula Daukas, 8181 East Tufts Avenue, Denver, CO 80237; 303-740-3896; Fax 303-694-3946; paula_daukas@urscorp.com.

Timothy T. Carey,

Chief, Denver Regulatory Office, Operations Division, Omaha District.

[FR Doc. E7-14524 Filed 7-26-07; 8:45 am]

BILLING CODE 3710-62-P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Ready for College: Adult Education Transitions Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.191A.

Dates:

Applications Available: July 27, 2007.

Deadline for Notice of Intent to Apply: August 6, 2007.

Deadline for Transmittal of Applications: August 27, 2007.

Deadline for Intergovernmental Review: August 27, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of the Program: Section 243 of the Adult Education and Family Literacy Act (Act), 20 U.S.C. 9253, authorizes the Secretary to establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide. Under the authority of that section of the Act, the Secretary plans to support State and local efforts to increase the rate at which adults, aged 18 to 24, successfully complete adult secondary education (ASE) and transition to postsecondary education.

Background Information

The President's American Competitiveness Initiative (ACI) recognizes that a high school diploma or equivalency diploma is no longer adequate for 21st century workforce

demands and that the bedrock of America's competitiveness is a well-educated and skilled workforce. Some form of postsecondary education and training is now critical for workers to succeed in the new global economy. Yet, in 2004, one in five 18- to 24-year-olds had not yet completed high school. While about half of the students who leave school early eventually obtain a credential, millions never receive one. Further, an estimated 3.8 million youth between the ages of 18 and 24 are neither employed nor in school. Young adults with low levels of literacy and educational attainment also have a lower chance of escaping unemployment. And those who do become employed are often limited to low-wage jobs. For America to continue to prosper economically, educators and others need to focus on ways to help more out-of-school youth obtain high school-level equivalency diplomas and transition successfully to postsecondary education.

Many State and local agencies have developed a variety of interventions designed to re-engage out-of-school youth and help them obtain both a high school equivalency credential and a postsecondary certificate or degree. While the Department is generally aware of these efforts, there is little documentation of either their specific composition or their effectiveness. More importantly, little investigation has been conducted on why a particular practice has positive results with out-of-school youth. We are, therefore, using this competition to support projects that will identify and, when necessary, further develop, strengthen, enhance, or expand educational strategies (e.g., program design elements such as scheduling, educational counseling, supportive services for students, and professional development for staff; enhanced curricula; or linkages with postsecondary education programs) already utilized in local ASE programs. Because we want to begin documenting the specific composition of the educational strategies, the projects funded under this competition will also help local programs to establish procedures for demonstrating, documenting, and gathering data on the effectiveness of their educational strategies. This data will also help us better understand why the educational strategies facilitate the transition of out-of-school youth to postsecondary education. Further, descriptions of the educational practices demonstrated to be effective by the projects will be packaged for national dissemination.

This competition is the first of several activities the Department anticipates

supporting to assist States in improving the quality of ASE and building capacity to increase the rate of out-of-school youth successfully transitioning to postsecondary education. By identifying and documenting existing effective educational practices of State and local agencies, we will be better able to (1) Disseminate effective models for other States to adopt, and (2) plan next steps for assisting States to improve the quality of adult education services so that more adults become "college ready" and actually transition to postsecondary education.

Application Requirements and Required Project Activities

An application under this competition must propose a project that identifies, demonstrates, and documents practices that improve ASE and that facilitate the successful transition of out-of-school youth to postsecondary education. The project must—

(a) Identify, demonstrate, and document, in at least four existing local ASE programs funded under the Act, educational strategies (e.g., program design elements such as scheduling, educational counseling, supportive services for students, and professional development for staff; enhanced curricula; or linkages with postsecondary education programs) designed to improve the ability of out-of-school youth to transition to postsecondary education. The educational strategies must be authorized under the Act and must currently be utilized in the local ASE programs participating in a project under this competition. An applicant must describe in its application the criteria and process it proposes to use to identify and select educational strategies to be demonstrated;

(b) Assist the local ASE programs identified under paragraph (a) of this section to—

(1) Further develop, strengthen, enhance, or expand educational strategies in order to improve the capacity of the programs to increase the percentage of out-of-school youth who are ready for, and actually transition to, postsecondary education;

(2) Establish procedures that help the local ASE programs demonstrate, document, and gather data on educational strategies that improve ASE and facilitate the transition of out-of-school youth to postsecondary education; and

(3) Offer opportunities for out-of-school youth to participate in course work and other activities that are coordinated with, and make it easier for

out-of-school youth to transition to, postsecondary institutions;

(c) Periodically communicate with the eligible agency, as defined under section 203(4) of the Act (20 U.S.C. 9202(4)), in the State in which the project will operate, regarding the planning, development, and implementation of the project;

(d) Use an independent evaluator to gather data validating whether the educational strategies demonstrated by the local ASE programs actually—

(1) Enhance learning for participating out-of-school youth;

(2) Improve ASE instruction in participating local programs;

(3) Increase the percentage of participating out-of-school youth who transition to postsecondary education; and

(4) Result in measurable college readiness of out-of-school youth, including by providing a description of the standard the project used to define college readiness;

(e) Package, for dissemination, a description of the educational practices demonstrated to be effective by the project, including by documenting, to the extent possible, the effectiveness of the educational practices in improving ASE and facilitating the transition of out-of-school youth to postsecondary education;

(f) Be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources in order to increase the likelihood that the project will result in system change or improvement; and

(g) At the conclusion of the project, propose the next steps that educators and researchers should undertake to further validate the effectiveness of the educational strategies demonstrated in the project.

Priority: We are establishing this priority for the FY 2006 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 20 points to an application, depending on how well the application meets the priority. The points awarded under this priority are in addition to any points the application earns under the selection criteria for this competition, provided elsewhere in this notice.

The priority is:

Involvement of an Eligible Agency

Projects for which the eligible agency, as defined under section 203(4) of the Act (20 U.S.C. 9202(4)), in the State in which the project will operate is actively involved in the project (i.e., has a clearly defined leadership role in planning, developing, and implementing the proposed demonstration project) as evidenced by clearly delineated responsibilities that are described in the application and by a letter from the eligible agency committing to carry out the agreed upon responsibilities.

Note: The definitions in section 203 of the Act apply to this competition. (20 U.S.C. 9202).

Waiver of Proposed Rulemaking:

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed non-statutory requirements, priorities, and selection criteria. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements non-statutory requirements, priorities, and selection criteria governing the first grant competition under a new or substantially revised program authority. This is the first grant competition under section 243 of the Act and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the non-statutory requirements, priority, and selection criteria under the authority of section 437(d)(1) of GEPA. The non-statutory requirements, priority, and selection criteria set forth in this notice will apply to the FY 2006 competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: 20 U.S.C. 9253.

Applicable Regulations: The Education Department General.

Administrative Regulations: (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to the institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$2,000,000.

Estimated Range of Awards: \$500,000 to \$1,000,000.

Estimated Average Size of Awards: \$750,000.

Estimated Number of Awards: 2 to 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* The following entities are eligible for a grant:

- (a) A State educational agency.
- (b) A local educational agency.
- (c) A postsecondary educational institution.

(d) Other public or private agencies, organizations, and institutions.

(e) A consortium of eligible applicants. Eligible applicants seeking to apply as a consortium must comply with the regulations in 34 CFR 75.127–75.129, which address group applications.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Karen Lee, U.S. Department of Education, 400 Maryland Avenue, SW., room 11047, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7720 or by e-mail: karen.lee@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail should include only the applicant's intent to submit an application; it does not need to include information regarding the content of the proposed application. This e-mail notification should be sent 10 days after the publication of this notice to Diane DeMaio at: diane.demaio@ed.gov.

We will consider an application submitted by the deadline date for transmittal of applications even if the applicant did not provide notice of its intent to apply.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. *You must limit Part III to the equivalent of no more than 25 pages, using the following standards:*

- A “page” is 8.5 x 11, on one side only, with 1” margins at the top, bottom, and both sides.

- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is 12 point, double-spaced.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one page abstract, the resumes, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 27, 2007.

Deadline for Notice of Intent to Apply: August 6, 2007.

Deadline for Transmittal of Applications: August 27, 2007.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site ([Grants.gov](http://www.Grants.gov)), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with disability in connection with the application process, the individual's application remains subject

to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 27, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the **APPLICABLE REGULATIONS** section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. *Ready for College:* Adult Education Transitions, CFDA Number 84.191A, is included in this project. We request your participation in Grants.gov. If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Ready for College: Adult Education Transitions Program at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.191, not 84.191A).

Please note the following:

- Your participation in Grants.gov is voluntary.

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later

than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve an application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update the CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you, if you submit your application in paper format.

- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the

Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph, or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting the application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in

section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.191A),
400 Maryland Avenue, SW.,
Washington, DC 20202-4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop
4260, Attention: (CFDA Number
84.191A), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.191A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. **Selection Criteria:** The Secretary uses the following program criteria to evaluate an application. The maximum score for each criterion is indicated in parentheses. The maximum score for all of these criteria is 110 points.

(a) **Significance.** (20 points) In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The extent to which—

(i) The proposed project will identify, demonstrate, and document, in at least four existing local ASE programs funded under the Act, educational strategies (e.g., program design elements such as scheduling, educational counseling, supportive services for students, and professional development for staff; enhanced curricula; or linkages with postsecondary education programs) designed to improve the ability of out-of-school youth to transition to postsecondary education. The educational strategies must be authorized under the Act and must currently be utilized in the local ASE

programs participating in a project under this competition;

(ii) The applicant describes the criteria and process it proposes to use to identify and select educational strategies to be demonstrated; and

(iii) The proposed project will assist the local ASE programs to—

(A) Further develop, strengthen, enhance, or expand educational strategies in order to improve the capacity of the programs to increase the percentage of out-of-school youth who are ready for, and actually transition to, postsecondary education;

(B) Establish procedures that help the local ASE programs demonstrate, document, and gather data on educational strategies that improve ASE and facilitate the transition of out-of-school youth to postsecondary education; and

(C) Offer opportunities for out-of-school youth to participate in course work and other activities that are coordinated with, and make it easier for out-of-school youth to transition to, postsecondary institutions.

(2) The extent to which specific gaps or weaknesses in ASE curricula or program designs have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) **Quality of the project design.** (45 points) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which clearly specified and measurable goals, objectives, and outcomes to be achieved by the proposed project are aligned with the activities described in the

APPLICATION REQUIREMENTS AND REQUIRED PROJECT ACTIVITIES section in this notice.

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practices.

(3) The extent to which the applicant describes effective strategies to—

(i) Improve program completion rates;

(ii) Increase the percentage of out-of-school youth who obtain a General Educational Development or high school equivalency credential;

(iii) Increase the percentage of out-of-school youth who demonstrate college readiness; and

(iv) Increase the percentage of out-of-school youth who successfully transition to postsecondary education.

(4) The extent to which the proposed project will periodically communicate with the eligible agency, as defined under section 203(4) of the Act (20 U.S.C. 9202(4)), in the State in which the project will operate, regarding the

planning, development, and implementation the project.

(5) The extent to which the design will result in replicable educational strategies that can be packaged for dissemination nationally.

(6) The extent to which the proposed project will package, for dissemination, a description of the educational practices demonstrated to be effective by the project, including by documenting, to the extent possible, the effectiveness of the educational practices in improving ASE and facilitating the transition of out-of-school youth to postsecondary education.

(7) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources in order to increase the likelihood that the project will result in system change or improvement.

(8) The extent to which, at the conclusion of the proposed project, the project will propose the next steps that educators and researchers should undertake to further validate the effectiveness of the educational strategies demonstrated in the project.

(c) **Quality of project personnel.** (5 Points) In determining the quality of project personnel, the Secretary considers the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that traditionally have been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The extent to which the qualifications, including relevant training and experience, of the project director, key personnel, and subcontractors match the requirements of the project.

(d) **Quality of the management plan.** (20 points) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The extent to which the management plan is designed to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(e) *Quality of the project evaluation.* (20 points) In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and to the performance measures discussed in Section VI. 4. Performance Measures in this notice and the extent to which the methods of evaluation will produce valid and reliable quantitative and qualitative data.

(3) The extent to which the methods of evaluation provide a coordinated strategy for examining the effectiveness of project implementation strategies across multiple programs within a State.

(4) The extent to which the methods of evaluation will provide performance feedback.

(5) The extent to which the proposed project will use an independent evaluator to gather data validating whether the educational strategies demonstrated by the local ASE programs actually—

(i) Enhance learning for participating out-of-school youth;

(ii) Improve ASE instruction in participating local programs;

(iii) Increase the percentage of participating out-of-school youth who transition to postsecondary education; and

(iv) Result in measurable college readiness of out-of-school youth, including by providing a description of the standard the project used to define college readiness.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section in this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved

application as part of the binding commitments under the grant.

3. *Reporting.* (a) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

(b) In addition, grantees under this competition must submit—

(1) An interim report six months after the grant is awarded;

(2) An evaluation report that—

(i) Reports on the effectiveness of the project;

(ii) Reports on the effectiveness of practices demonstrated during the project, including whether educational strategies actually—

(A) Enhanced learning for out-of-school youth;

(B) Improved ASE programs;

(C) Improved States' capacity to increase the percentage of out-of-school youth who transition to postsecondary education; and

(D) Resulted in, or contributed to, measurable college readiness of out-of-school youth, including by providing a description of the standard the project used to define college readiness;

(iii) Contains recommendations on how to further evaluate the effectiveness of practices demonstrated during the project; and

(iv) Reports on the percentage of out-of-school youth enrolled in the project who were retained during the project period and who demonstrated measurable college readiness; and

(3) An annual report on the GPRA measures identified in the Performance Measures section of this notice.

4. *Performance Measures:* Under the Government Performance Results Act of 1993, Federal departments and agencies must clearly describe the goals and objectives of programs, identify resources and actions needed to accomplish goals and objectives, develop a means of measuring progress made, and regularly report on achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants. In evaluating the overall effectiveness of projects funded under this competition, grantees must also be prepared to

measure and report on the following measures of effectiveness:

a. The percentage of out-of-school youth served by the project whose goal is to complete high school, and who earn a high school diploma or recognized equivalent.

b. The percentage of out-of-school youth served by the project whose goal is to enter postsecondary education and who enroll in a postsecondary education program.

c. The percentage of out-of-school youth served by the project who demonstrate measurable college readiness.

d. The percentage of out-of-school youth served by the project who demonstrate improved literacy and mathematics skills using pre- and post-tests that are approved for use in the National Reporting System for Adult Education and that are identified in the assessment policy of the State in which the project will operate.

VII. Agency Contacts

For Further Information Contact: Diane DeMaio or Ursula Lord, U.S. Department of Education, 400 Maryland Avenue, SW., room 11002, Potomac Center Plaza, Washington, DC 20202–6121. Telephone: (202) 245–7841 or (202) 245–7734, respectively, or by e-mail: diane.demaio@ed.gov or ursula.lord@ed.gov.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: July 24, 2007.

Troy R. Justesen,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. E7-14539 Filed 7-26-07; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Long-Term Regional Dialogue Policy

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of a National Environmental Policy Act (NEPA) Record of Decision (ROD).

SUMMARY: This notice announces the availability of the NEPA ROD for BPA's adoption of a policy for its power supply role after fiscal year 2011. This policy is intended to provide BPA's customers with greater clarity about their Federal power supply so they can effectively plan for the future and, if they choose, make capital investments in long-term electricity infrastructure. Each of the issues in this Long-Term Regional Dialogue Policy that were found to have any environmental effects were determined to be within the scope of the Market-Driven Alternative adopted in the Business Plan ROD. Thus, this NEPA ROD is consistent with and tiered to the Business Plan Environmental Impact Statement (DOE/EIS-0183, June 1995) and the Business Plan ROD (August 15, 1995). The Policy, which is the result of a Regional Dialogue process that began in 2002, is described more fully in a separately issued Administrator's ROD that addresses the legal and policy rationale supporting the administrative decisions in the Regional Dialogue.

ADDRESSES: Copies of the following documents may be obtained by calling BPA's toll-free document request line, 1-800-622-4520, or by visiting the Web site at: <http://www.efw.bpa.gov>; the NEPA ROD for the Long-Term Regional Dialogue Policy; the Administrator's ROD on the policy; and the Business Plan EIS and ROD.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce, Bonneville Power Administration KEC-4, P.O. Box 3621, Portland, Oregon, 97208-3621; toll-free telephone number 1-800-282-3713; fax number 503-230-5699; or e-mail kpierce@bpa.gov.

SUPPLEMENTARY INFORMATION: The Business Plan EIS and ROD to which this NEPA ROD is tiered were prepared to support a number of decisions including the products and services BPA will market, rates for BPA's products and services, policy direction for BPA's sale of power products to customers, contract terms BPA will offer for power sales, and plans for BPA's resource acquisitions and power purchase contracts. Each of the issues in this Long-Term Regional Dialogue Policy has been evaluated for environmental effects. Some of the policy issues do not have the potential to result in environmental effects; others are a continuation of the status quo. For the remaining issues, any environmental effects have already been addressed in the Business Plan EIS.

Issued in Portland, Oregon, on July 19, 2007.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E7-14529 Filed 7-26-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Construction and Operation of the Proposed NextGen Energy Facility, South Dakota

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: The Western Area Power Administration (Western), an agency of the U.S. Department of Energy (DOE) intends to prepare an environmental impact statement (EIS) for the construction and operation of the proposed NextGen Energy Facility (Project) in South Dakota. Basin Electric Power Cooperative (Basin Electric) has applied to interconnect the proposed Project to Western's electric power transmission system. The EIS will address the construction and operation of the proposed Project, which includes a 500 to 700 megawatt (MW) (net) coal-fired generation facility and ancillary equipment and facilities east of the Missouri River in South Dakota. Portions of the proposed Project may affect floodplains and wetlands in the area. Western will hold public scoping meetings near the Project area during the public scoping period to share information and receive comments and suggestions on the scope of the EIS.

DATES: Open house public scoping meetings will be held August 21, 22, and 23, 2007, from 5 p.m. to 8 p.m. The public scoping period starts with publication of this notice in the **Federal Register** and will continue through August 31, 2007. To be assured consideration, all comments or suggestions regarding the appropriate scope of the EIS must be received by the close of the scoping period.

ADDRESSES: Open-house public scoping meetings will be held at the following locations:

1. August 21, 2007, Selby Opera House, 3409 Main Street, Selby, SD 57472.

2. August 22, 2007, Phoenix Center, 117 South Main Street, Onida, SD 57564.

3. August 23, 2007, Woonsocket Community Center, Dumont Avenue, Woonsocket, SD 57385.

Written comments on the scope of the EIS should be addressed to:

Ms. Catherine Cunningham, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, fax (720) 962-7269, e-mail: NextGenEIS@wapa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Cunningham, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962-7000, fax (720) 962-7269, e-mail: NextGenEIS@wapa.gov. For general information on DOE's National Environmental Policy Act (NEPA) review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydro-electric power to preference customers, as specified by law.

These customers include municipalities, cooperatives, public utilities, irrigation districts, Federal and State agencies, and Native American tribes in 15 western states, including South Dakota. Western owns and operates about 17,000 miles of transmission line.

Basin Electric is a regional wholesale electric generation and transmission cooperative owned and controlled by its member cooperatives. Basin Electric serves approximately 2.5 million customers covering 430,000 square miles in portions of Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming.

Project Description

Basin Electric has applied to Western for interconnection with Western's electric transmission system. Basin Electric proposes to construct and operate a 500 to 700 MW base-load coal-fired generation facility, water pipeline, transmission lines, transmission interconnection(s), and other associated facilities in central/north-central South Dakota. The purpose of the Project is to help serve increased base load demand for electric power in the eastern portion of Basin Electric's service area. Basin Electric's eastern service area is comprised of western Nebraska, northwestern and central Iowa, portions of southern Minnesota, all of South Dakota, portions of eastern Montana, and western and central North Dakota. The need for additional generating capacity is driven by the increasing electrical power usage of Basin Electric membership consumers. In 2007, Basin Electric prepared a forecast showing load and capability surpluses/deficits through the year 2021. The forecast predicts that by 2014, there will be a deficit of 800 to 900 MW for the eastern portion of its service area. Addition of 500 to 700 MW of base load generation to the east side of Basin Electric's service area by 2014 is one component toward meeting Basin Electric's future capacity and energy requirements.

Western intends to prepare an EIS for the proposed Project. Four preliminary alternative generation sites have been identified. During the scoping process, Western expects to refine this list of alternative generation sites and each of its associated facilities to determine which of them, along with the No Action Alternative, will be evaluated in detail in the EIS. The four preliminary alternative generation facility sites include the following:

- The Selby Site (about 2.75 miles southwest of Selby, South Dakota).
- The Selby East Site (about 2.5 miles northeast of Java, South Dakota).
- The Blunt Site (about 1.7 miles east of Blunt, South Dakota).
- The Onida Site (about 2.5 miles south of Onida, South Dakota).

These four alternative locations are in close proximity to coal fuel delivery service, water sources, and existing transmission system for the delivery of power to its members. The proposed generation facility would require new infrastructure, including a water intake structure along Lake Oahe on the mainstem of the Missouri River; a water pumping system; approximately 15 to 30 miles of water pipeline; approximately 40 to 110 miles of 115/230/345-kilovolt (kV) transmission line;

a 230/345-kV substation and possibly a 345/500-kV substation; road access to generation, water pipeline, and transmission line facilities; and solid waste disposal facilities. No changes are expected for existing railroad infrastructure. Included in the infrastructure estimates noted above is a transmission line of approximately 40 miles in length from the Broadland Substation, about 3 miles west of Huron, South Dakota, to the Storla Substation, about 10 miles southwest of Woonsocket, South Dakota. Power system studies indicate this transmission system addition would be needed for the Selby and Selby East generation site alternatives. The transmission addition between Broadland and Storla is not necessary for the Blunt or Onida generation site alternatives. All other proposed water pipeline and transmission line facilities would be located in the vicinity of their respective proposed generation facility sites.

For the proposed 500 to 700 MW generation facility, Basin Electric proposes to use a single pulverized coal-fired steam boiler and a single reheat steam turbine. It would meet or exceed all applicable environmental requirements. The plant would burn sub-bituminous coal, known for its relatively high-moisture, low-sulfur content with excellent combustion qualities. The generation facility would occupy approximately 2,400 acres, including a turbine generator building, coal bunkers, boiler, baghouse, stack, wastewater treatment building, water treatment building, switchyard, raw water pond, cooling tower, landfill, evaporation pond, coal unloading facility, coal storage silos, coal storage pile, stormwater runoff pond, and coal yard runoff pond. During normal operations, the generation facility would operate at its maximum continuous rating output.

Basin submitted two generator interconnection requests and two transmission service requests to Western for the proposed Project. Since the proposed Project requires interconnection with Western's system, Western must comply with NEPA (42 U.S.C. 4321–4347, as amended), Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA Implementing Procedures (10 CFR part 1021). Because the proposed Project may involve action in floodplains or wetlands, the EIS will include, as applicable, a floodplain/wetland assessment and floodplain/wetland statement of findings following DOE regulations for compliance with

floodplain and wetlands environmental review (10 CFR part 1022).

Agency Responsibilities

Western is the lead Federal agency, as defined at 40 CFR 1501.5, for preparation of the NEPA analysis. The U.S. Army Corps of Engineers will likely be a cooperating agency because of their jurisdiction over proposed water intake activities involving the Missouri River. With this notice, Tribes and agencies with jurisdiction or special expertise are invited to be cooperating agencies. Such Tribes or agencies may make a request to Western to be a cooperating agency by contacting Ms. Cunningham. Designated cooperating agencies have certain responsibilities to support the NEPA process, as specified at 40 CFR 1501.6(b).

Environmental Issues

This notice is to inform agencies and the public of the proposed Project and solicit comments and suggestions for consideration in preparing the EIS. To help the public frame its comments, this notice contains a list of potential environmental issues Western has tentatively identified for analysis. These issues include:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants or their critical habitats;
2. Impacts on other biological resources;
3. Impacts on land use, recreation, and transportation;
4. Impacts on floodplains and wetlands;
5. Impacts on cultural or historic resources and tribal values;
6. Impacts on human health and safety;
7. Impacts on air, soil, and water resources;
8. Visual impacts; and
9. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations.

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western invites interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS.

Public Participation

Public participation and full disclosure are planned for the entire EIS process. The EIS process will include public scoping open houses and a scoping comment period to solicit comments from interested parties; consultation and involvement with

appropriate Federal, State, local, and Tribal governmental agencies; public review and hearings on the draft EIS; publication of a final EIS; and publication of a record of decision expected in Spring 2009. Additional informal public meetings may be held in the proposed Project area if public interest and issues indicate a need.

The public scoping period begins with publication of this notice in the **Federal Register** and closes August 31, 2007. Western will hold open house public scoping meetings (see **DATES** and **ADDRESSES**). All meeting locations are handicapped-accessible. Anyone needing special accommodations should contact Western to make arrangements. The purpose of the scoping meetings is to provide information about the proposed Project, display maps, answer questions, and take written comments from interested parties. Attendees are welcome to come and go at their convenience and to speak one-on-one with Western and Project representatives. The public will have the opportunity to provide written comments at the meeting. In addition, attendees may provide written comments by fax, e-mail, or U.S. Postal Service mail. To help define the scope of the EIS, comments should be received by Western no later than August 31, 2007. Anonymous comments will not be accepted.

Dated: July 11, 2007.

Timothy J. Meeks,
Administrator.

[FR Doc. E7-14532 Filed 7-26-07; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Western Area Power Administration

Load in the California Independent System Operator Corporation's Balancing Authority Area

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Final Resource Adequacy Plan.

SUMMARY: The Western Area Power Administration (Western) announces its Final Resource Adequacy (RA) Plan for load in the California Independent System Operator Corporation's (CAISO) Balancing Authority Area. This notice responds to the comments received on the proposed Final Resource Adequacy Plan (Final RA Plan) and sets forth the Final RA Plan. Western developed the Final RA Plan as a Local Regulatory Authority (LRA). The Final RA Plan will be submitted to the CAISO and will be

utilized by Western when Western, in the CAISO Balancing Authority Area, is acting as a Load Serving Entity (LSE) as defined under the CAISO's Conformed Simplified and Reorganized Tariff incorporating the Interim Reliability Requirements Program (CAISO Tariff) and under the CAISO's proposed Market Redesign and Technology Upgrade (MRTU) Tariff.

DATES: The Final RA Plan becomes effective on August 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Haas, Contracts and Energy Services Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630-4710, telephone (916) 353-4438, e-mail: haas@wapa.gov.

SUPPLEMENTARY INFORMATION:

Authorities

Western is developing this Final RA Plan in accordance with its power marketing authorities, which include the Act of June 17, 1902 (32 Stat. 388), the Act of August 26, 1937 (50 Stat. 844), the Act of August 4, 1939 (53 Stat. 1187), and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 565), including all acts amendatory and/or supplementary to the above listed.

Background

On February 9, 2006, the CAISO filed its comprehensive MRTU Tariff with the Federal Energy Regulatory Commission (Commission).¹ Under the MRTU Tariff, the CAISO proposed to end the current "must offer" structure and transition to a capacity-based system. In this capacity-based system, the California Public Utilities Commission (CPUC) and other LRAs establish procurement requirements for all LSEs within their jurisdiction to obtain sufficient resources to meet their load with an adequate reserve margin and to ensure appropriate resources will be made available to the CAISO in the day-ahead market, the hour-ahead scheduling process, and the real-time market.²

On March 13, 2006, the CAISO filed its Interim Reliability Requirements Program (IRRP) as an amendment to the CAISO Tariff. On May 12, 2006, the Commission issued an order accepting certain modifications under the IRRP in Docket No. ER06-723-000.³ The modifications established under the IRRP are intended to implement RA programs developed by the CPUC and

other LRAs for LSEs under their respective jurisdictions. The IRRP adjusts the CAISO's existing operations to incorporate RA programs implemented by the CPUC and other LRAs for the period between June 2006 and the implementation of MRTU.⁴ Section 40 of the CAISO Tariff, as amended to incorporate the IRRP and the MRTU Tariff, provides the guidelines for RA.

In the Commission's September 21, 2006, Order in Docket No. ER-06-615-000, which in part accepted and affirmed the CAISO's proposed MRTU Tariff, the Commission summarized the CAISO's RA program as follows:

Resource adequacy is the availability of an adequate supply of generation or demand responsive resources to support safe and reliable operation of the transmission grid. Until June 2006, the CAISO market did not require load-serving entities to procure sufficient generation capacity to serve their customers. The lack of this requirement jeopardized reliability and made it difficult to ensure that wholesale prices would remain just and reasonable. Under MRTU, load serving entities under the authority of the California Public Utilities Commission will be required to obey its requirement to maintain a level of capacity above load-serving entities' forecasted customer needs (currently 15-17 percent). They will also have to demonstrate a year in advance that they have procured resources to cover 90 percent of their summer (May through September) peak period needs. Other load serving entities that are CAISO members and serve customers in the CAISO control area are required to comply with the planning reserve margin for capacity that is set by their Local Regulatory Authority. If the Local Regulatory Authority does not establish such a margin, the default margin will be 15 percent. These resource adequacy requirements will help ensure sufficient supply, enhance reliability, protect against price volatility, and reduce the opportunities to game the market that exist when electricity supplies are insufficient to meet customers' needs.⁵

In Paragraph 1116 of the same decision, the Commission concluded that meeting the MRTU RA requirements is a reasonable condition of participation in the CAISO markets and required that each LSE serving load within the CAISO-controlled grid maintains adequate resources and does not "lean on" others to the detriment of its customers and grid reliability as a whole. Under the current schedule, the MRTU Tariff is not expected to be implemented before February 2008.

Under the MRTU Tariff Western is an LRA. To ensure non-discriminatory treatment for load in the CAISO Balancing Authority Area, Western, as

¹ FERC Docket ER06-615-000 (2006).

² See Article V, Section 40 of the CAISO's MRTU Tariff.

³ 115 FERC ¶ 61,172 (2006).

⁴ *Id.* at paragraph 6.

⁵ 116 FERC ¶ 61,274 (2006) at paragraph 10.

an LRA, established interim RA Plans comprised of an Initial RA Plan and its Current RA Plan. However, due to the short time frame between the acceptance of the CAISO's IRRP and its effective date, Western was unable to conduct a public process before implementing its interim RA Plans.⁶

Western conducted a public process to develop its Final RA Plan. As part of the process, Western solicited input from the public, including its customers and interested parties.

Acronyms and Definitions

See Final RA Plan below for Acronyms and Definitions.

Public Notice and Comment

Western conducted a public process to develop its Final RA Plan. The steps Western took to involve interested parties in the public process were:

1. On April 19, 2007, Western sent an e-mail to all interested parties notifying them of the expected publication date of the **Federal Register** notice announcing the Proposed Final RA Plan.

2. The **Federal Register** notice was published on April 25, 2007 (72 FR 20528) which announced the proposed Final RA Plan, began the public consultation and comment period, and announced the public information forum and public comment forum.

3. On May 25, 2007, Western mailed letters to all interested parties transmitting the **Federal Register** notice (72 FR 20528) and reiterating the dates and locations of the public information forum and the public comment forum.

4. On May 2, 2007, Western held a public information forum at the Marriott Hotel in Rancho Cordova, California. Western provided informational slides as handouts.

5. On May 9, 2007, Western held a public comment forum at the Marriott Hotel in Rancho Cordova, California, to give the public an opportunity to comment for the record. One individual commented at this forum. In addition, two customers asked questions regarding the Proposed RA Plan.

6. As a result of the public information forum, the CAISO requested a meeting with Western to ask clarifying questions on the proposed Final RA Plan. All interested parties were invited to attend this meeting. Western met with the CAISO on May 16, 2007. In addition to the CAISO, six interested parties attended the meeting in person, and four interested parties participated via conference call. Notes from the meeting are included in the record.

7. In addition to the above meetings, Western communicated clarifying information on the proposed Final RA Plan to the following customers. This information is included in the record.

California Public Utilities
Commission
California State University,
Sacramento
Tuolumne Public Power Agency
City of Redding
Sacramento Municipal Utilities
District
Trinity Public Utilities District

Responses to Comments Received on the Notice of Proposed Final RA Plan for Transactions in the CAISO's Balancing Authority Area

During the public consultation and comment period, Western received 11 letters containing written comments from the following organizations:

Calaveras Public Power Agency
California Independent System
Operator Corporation
California Public Utilities
Commission
Lassen Municipal Utility District
Modesto Irrigation District
Pacific Gas and Electric Company
City of Redding
Southern California Edison
Trinity Public Utilities District
United States Department of Energy,
Berkeley Site Office
United States Department of the
Interior, Bureau of Reclamation

In addition to providing written comments, the Trinity Public Utilities District (TPUD) commented during the May 9, 2007, public comment forum. Western reviewed and considered all comments received by the end of the public consultation and comment period, May 25, 2007, in preparing the Final RA Plan.

The following is a summary of the comments received during the consultation and comment period and Western's responses to those comments. Comments are grouped by subject and paraphrased for brevity. Specific comments are used for clarification where necessary.

Allocation of Costs for RA

Comment: A commenter questions why it should pay for RA when it has a congressional right to power that is significantly higher than its peak demand. The commenter states that the Commission made it very clear that it should not have to buy RA from the market. The commenter states that the operation of the regulating reservoirs could be changed to meet RA (the Planning Reserves portion) for the use of

Project Use and First Preference Customers without affecting water deliveries. The commenter states that since all the Central Valley Project (CVP) customers are benefiting from Western's proposal not to use the CVP regulating reservoirs to provide RA for First Preference Customers and Project Use load, all CVP customers should be responsible for paying the RA costs. The commenter provides three alternatives to Western's proposal for allocating RA costs: (1) Include the cost of RA purchases in the Power Revenue Requirement which, in the commenter's opinion, is analogous to purchases made to supplement the Base Resource (BR) that maximize the value of CVP generation for all CVP customers; (2) spread the cost of the RA purchases to Western customers based on the amount of supplemental power they need to meet their load above what is served by Western (this alternative is based on the commenter's opinion that there is a difference between those customers who have their loads met by the BR and those that do not); or (3) allow for the commenter to determine its own RA amount acting as its own LRA, and have Western factor this RA amount information into the amount of RA that Western is planning to purchase for those CVP customers that Western is responsible to purchase RA for and then pass on the cost based on how much RA is being purchased for each CVP customer. Of the three alternatives the commenter has proposed, the commenter notes that the first alternative would be the most costly for the commenter. While the commenter does not believe that the first alternative is the fairest for the commenter, the commenter realizes that it is the fairest for the group of all CVP customers as a whole.

Another commenter states that the CVP generation/transmission resources and their costs have been fairly allocated and sub-allocated to project beneficiaries. Whether a CVP water user or a CVP power user is a part of the CAISO Balancing Authority Area, the Western Sub Balancing Authority Area (SBA), or the Sacramento Municipal Utility District (SMUD) Balancing Authority Area has not typically mattered. The cost for CVP energy does not change based on the Balancing Authority Area in which the customer is located. In other words, all CVP water users pay the same amount for the energy they receive from the CVP. Similarly, all CVP Preference Customers and First Preference Customers generally pay on the same basis for the CVP energy they receive. The

⁶ The Commission accepted the CAISO's IRRP filing on May 12, 2006, with an effective date of May 12, 2006.

commenter strongly suggests that Western maintain this equitable process in its RA Plan. As such, all CVP water and power customers should be assessed the cost of the RA resource acquired by Western and not just those that are located in the CAISO Balancing Authority Area.

Another commenter believes that Western's current methodology of spreading the costs to implement Western's RA Plan to those customers that are situated in the CAISO Balancing Authority Area is consistent with sound cost causation principles. As such, Western's proposal to include Liquidated Damages Contracts (LD Contracts) that are backed up by reserves in the originating balancing authority area should also be treated in this fair manner so if there is a requirement for Western or any other balancing authority to provide reserves or firming services to satisfy the obligations to meet the RA requirements for those customers, these costs not be spread to all Western customers.

Another commenter feels that commenter's public agency members should not have to pay for RA in light of the fact that it is only using 55 percent of its share of the New Melones entitlement. The remaining 45 percent of its entitlement will provide for its load growth well into the future. The commenter is also concerned that control of the generating units by the CAISO could possibly reduce the amount of energy generation at New Melones and, therefore, potentially impact the commenter's entitlement. The New Melones entitlement was granted to public agencies within Calaveras and Tuolumne Counties to mitigate, in part, the adverse impacts the New Melones Project has on the local counties. Every effort should be made by Western to preserve the intent of this entitlement and not burden these customers with additional costs.

Response: The United States' CVP hydroelectric facilities are operated by the Bureau of Reclamation (Reclamation) and are operated primarily to meet authorized project purposes that have a higher priority than power generation, such as irrigation and flood control. These purposes are determined by Federal law.⁷ Western's flexibility to modify generation schedules and ancillary service availability is limited by these and other related constraints. Once the above obligations are met, the power remaining must next be used to meet the Project Use needs of the CVP.⁸ After the

Project Use needs are met, under Federal law and the 2004 Power Marketing Plan (Marketing Plan), the next priority for the use of the CVP generation is to meet the First Preference Customer loads.⁹ The New Melones Project provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192) and the Trinity River Division (TRD) Act (69 Stat. 719) (together, First Preference Acts) specify that First Preference Customers are entitled up to 25 percent of the power generated as a result of the construction of the New Melones Project and the TRD Project. Under Western's Marketing Plan, Western serves First Preference Customers with power prior to making power available to other Preference Customers.¹⁰ Western recognizes that costs associated with the Planning Reserve Margin (PRM) are incurred based on loads in the CAISO Balancing Authority Area. Western has analyzed the allocation of the PRM from a cost/causation standpoint. Western recognizes it markets power in excess of Project Use loads, and that First Preference Customers are entitled to receive up to 25 percent of the extra generation, which the TRD and New Melones Projects add to the integrated CVP system. Western agrees that the First Preference Customers in Trinity, Tuolumne, and Calaveras Counties currently do not utilize their entire allocations. Western agrees that both the Project Use loads and the First Preference Customers receive the generation of the CVP hydroelectric units under the Marketing Plan before it is marketed as BR power to other Western customers, and all Western customers are benefiting from Western's proposal not to use the CVP regulating reservoirs to provide the required PRM for the Project Use loads and First Preference Customers. By not utilizing the CVP regulating reservoirs to supply PRM for Project Use loads and First Preference Customers, Western is able to provide more preference power to other CVP power users. Western has the discretion to weigh the benefits and burdens of utilizing the CVP regulating reservoirs to provide PRM versus making purchases for PRM from the market. Based on the statutory entitlements to Project Use loads and First Preference Customers and the benefits to the preference customers of not utilizing the CVP for PRM for Project Use loads and First Preference Customers, Western has decided to include a portion of the costs associated with Western's obligations to meet the

PRM for the Project Use loads and First Preference Customers in the CAISO Balancing Authority Area in the Power Revenue Requirement.

Western has determined that it will first allocate the costs associated with its acquisition of PRM on a load ratio share basis to the loads in the CAISO Balancing Authority Area for which the PRM was procured. Then adjustments will be made to these costs in recognition of the statutory requirements for Project Use loads and First Preference Customers. The PRM costs to be allocated to Project Use load will be limited to a percentage determined as a ratio of forecasted annual Project Use load to annual CVP generation similar to those used in Reclamation's cost sub-allocation of annual operation and maintenance costs. The remaining portion of the PRM costs for the Project Use load will be allocated to the Power Revenue Requirement. The PRM costs to be allocated to First Preference Customers will be limited to their First Preference Customer percentage calculated at the beginning of each fiscal year, as it is identified under Western's Schedule of Rates for BR and First Preference Power, currently rate schedule CV-F12, as it may be superseded from time-to-time. This percentage, when utilized for allocating PRM costs, will be subject to revision in October only and will not be revised in March of each year as provided for in rate schedule CV-F12. The remaining portion of the PRM costs for the First Preference Customers will be allocated to the Power Revenue Requirement.

The remaining Preference Customers on whose behalf Western is procuring PRM do not have an allocation of power based on similar statutory requirements. Their allocation is discretionary in accordance with Western's Marketing Plan. Under the Marketing Plan, such Preference Customers receive an allocation of BR, which is an allocation of power remaining after serving Project Use loads and First Preference Customers. Therefore, Western will continue to allocate the costs associated with its acquisition of PRM for these customers on a load ratio share basis based on their loads in the CAISO Balancing Authority Area, and such PRM costs will not be included in the Power Revenue Requirement.

Types of Resources for RA Capacity and Qualifying Capacity

A. Availability of Resources

Comment: A commenter states that Western's proposed RA Plan is based on making only the reserve portion of

⁷ See, e.g., 50 Stat. 844, 850 (1937).

⁸ See *id.*

⁹ See 64 FR 34417 (1999).

¹⁰ See 64 FR 34417 (1999).

Western's capacity available to the CAISO. The commenter further states that it understands the CAISO is expecting the entire resource portfolio (capacity serving load and used for reserves) to be available for CAISO use. Western should reconcile this apparent difference.

Response: Due to Federal policies in support of the Marketing Plan in Western's marketing and operations processes, Western cannot make CVP hydroelectric units available to the CAISO for PRM. Western will use the CVP hydroelectric units as Qualifying Capacity to meet Western's load in the CAISO Balancing Authority Area. Western has made this clarification in its Final RA Plan. Section 40.5.1 of the CAISO Tariff and Section 40.2.2.2 of the CAISO's proposed MRTU Tariff require the Scheduling Coordinator (SC) for a CPUC non-jurisdictional LSE to provide the CAISO with a description of the criteria adopted by the LRA or Federal agency for determining qualifying resource types and the Qualifying Capacity for such resources. Western has followed the requirements in Section 40.2.2.2 and has included its criteria in its Final RA Plan.

B. Customer Purchases of RA

Comment: A commenter requests that Western's Final RA Plan explicitly provide for a load serving customer that has a separate SC identifier (ID) with the option to "self provide" the required RA rather than being required to subscribe to the capacity provided by Western. The commenter routinely provides its own resources to serve load and may, in the future, also wish to meet its RA requirements through a similar procurement process. The commenter recognizes that any resource being self provided for RA purposes would have to meet comparable criteria that are used by Western to qualify as RA or otherwise as provided by the IRRP and/or MRTU Tariff. The commenter also recognizes that the option to self provide would need to be exercised in a timely manner such that Western has sufficient notice to act appropriately. The commenter recognizes that such self provision may not include Western's BR.

Response: Western understands that certain customers may want to explore other options for meeting their individual RA requirements. Western will consider a modification to its Final RA Plan at any time in the future if a customer presents an option to Western for self providing its own RA requirements that meets the requirements of Western's Final RA Plan, can be implemented by Western,

is acceptable to the CAISO, and is consistent with the requirements of Section 40 of the CAISO Tariff and the proposed MRTU Tariff.

C. LD Contracts

Comment: A commenter supports Western's determination that the use of LD Contracts with firm transmission qualify as capacity for the purpose of meeting applicable reserve requirements.

Several commenters are concerned that Western's proposal to use LD Contracts to meet its RA Plan requirements does not explain what, if any, limits Western will set on the use of LD Contracts. The commenters state that under the CPUC program, which is applicable only to LSEs under the CPUC's jurisdiction, firm imports and unit specific LD Contracts may be counted as RA Capacity, while non-unit specific contracts are limited as RA Resources. The commenters believe that Western should adopt these limitations for the RA requirements that Western intends to meet through its LD Contracts unless Western is relying, for RA purposes, solely on LD Contracts with firm transmission to a tie point; i.e., import LD Contracts. In the case of such import LD Contracts, the limitations set forth in the CAISO Tariff and the proposed MRTU Tariff will not be necessary, but Western should clarify, for avoidance of doubt, the nature of the LD Contract at issue. A commenter states that Western has a duty to ensure the resources it contributes to the CAISO Balancing Authority Area to promote reliability actually do contribute to that goal.

Response: In its May 12, 2006, Order in Docket No. ER06-723-000, the Commission states, "WAPA, as an LRA, can determine the extent to which liquidated damages contracts count toward its resource adequacy requirements."¹¹ The Commission recognized that Western has the latitude to determine the extent to which it can use LD Contracts to meet its RA requirement. To address the concerns regarding the use of LD Contracts in the future, Western has determined at this time that it will begin to phase out its procurement of LD Contracts that originate within the CAISO Balancing Authority Area. However, Western reserves the right to revisit this decision and may opt to use LD Contracts procured in the CAISO Balancing Authority Area in the future to meet its RA requirements if the CAISO's scheduling and accounting protocols are

modified so that the CAISO's concerns about deliverability and double-counting can be properly addressed. If, in the future Western is able to use LD Contracts procured in the CAISO Balancing Authority Area to meet its RA requirements, Western may purchase LD Contracts within the CAISO Balancing Authority Area under its Final RA Plan. In contrast to LD contracts that originate within the CAISO Balancing Authority Area, imports into the CAISO Balancing Authority Area are backed by reserves in the balancing authority area where the generation originates including imports from the SMUD Balancing Authority Area; whereby, Western meets both the North American Electric Reliability Council (NERC) and the Western Electricity Coordination Council (WECC) standards for operating reserves. In addition to the operating reserves that are already supporting the imports, Western will be providing an additional 5 or 10 percent of PRM, thereby, bringing the total amount of reserves that Western is making available to the CAISO for imports 10 to 15 percent or more depending on the SMUD Balancing Authority Area reserve requirements under NERC and WECC. Western has established amounts of PRM in its Final RA Plan that it considers sufficient to meet its responsibilities as an LSE meeting its loads in the CAISO Balancing Authority Area, which prevents Western from leaning on other entities, avoids cost shifting, and is consistent with the terms and conditions of Section 40 of the CAISO Tariff and the proposed MRTU Tariff.

D. Counting Methodologies

Comment: A commenter notes that Western has developed counting methodologies that diverge from those in use for the majority of resources in the CAISO-controlled grid and has not provided sufficient justification for this approach. In particular, Western and the CPUC's methodology differ when it comes to the counting of hydro resources. If Western believes that the use of its own metrics merit the increased cost and burden, are a better representation of the capacity it will have to offer to the CAISO on a monthly basis, and are worth the potential detriment to reliability, Western has an equitable obligation to explain its conclusions and to help minimize any resulting difficulty in assessing relative RA contributions of entities subject to the IRRP and/or MRTU Tariff requirements.

Response: Section 40.5.1 of the CAISO Tariff and Section 40.2.2.2 of the MRTU Tariff require the SC for a CPUC

¹¹ California Independent System Operator Corp., 115 FERC ¶ 61,172, slip op at p. 27 (2006).

non-jurisdictional LSE to provide the CAISO with a description of the criteria adopted by the LRA or Federal agency for determining qualifying resource types and the Qualifying Capacity for such resources. Western has followed the requirements in Section 40.5.1 of the CAISO Tariff and Section 40.2.2.2 of the MRTU Tariff and has included its criteria in its Final RA Plan. Western believes that using the 50 percent rolling 12-month forecast to determine the Qualifying Capacity and Net Qualifying Capacity for the CVP hydroelectric units is reasonable because this method takes into account the current water year conditions. Western looks at this information every year as part of its process to provide annual information to its First Preference Customers and Preference Customers under the BR contracts. In addition, although the CVP is a hydroelectric resource, the generation that can reasonably be expected is significantly less variable than typical hydroelectric projects. The CVP is not a run-of-the-river-system; it consists of a dozen, integrated, large, multi-use, Federal water and power projects with many dams and reservoirs throughout northern California.¹² The considerable storage in the CVP reservoirs enables Reclamation to meet water demands through dry and critical years at reduced, but reasonably predictable, levels. Another factor which reduces variability is the fact that the CVP is an integrated multi-reservoir project. The firmness and predictability of the CVP power resource is, therefore, significantly greater than most other hydroelectric projects in California.

E. Separation of Resources

Comment: A commenter states that Western, through the RA Plan, intends to meet RA requirements for Western customers residing in the CAISO Balancing Authority Area. Such an approach appears to provide adequate separation of resources that are to provide: (1) BR and ancillary services to all Western customers and (2) resources that are procured for RA requirements for those Western customers residing in the CAISO Balancing Authority Area. It is the commenter's expectation that future purchases by Western to meet RA requirements for certain Western customers within the CAISO Balancing Authority Area will be given the same treatment. The commenter further states that it does not view capacity purchases for PRM requirements to be the same as

purchases made for CAISO RA requirements. PRM provides supply coverage to all Western customers regardless of whether that customer resides in the CAISO Balancing Authority Area or the SMUD/Western Balancing Authority Area.

Response: Western's Final RA Plan does provide a separation of the resources that will be used to meet BR and ancillary services to all Western customers from the resources that will be procured for RA requirements for Western customers residing in the CAISO Balancing Authority Area.

Amount of PRM To Be Procured

Comment: A commenter states that Western's application of the reserve percentage and the CAISO's application of the reserve percentage differ. The commenter states that Western needs to clarify how it will apply its reserve percentage and explain how it compares to the method employed by the CAISO.

Another commenter is concerned that the 5 to 10 percent reserve margin proposed by Western may prove inadequate. The commenter suggests that Western adopt a higher reserve margin and assure that this reserve margin is uniform throughout the year.

Another commenter believes that the reserve margin percentage for the RA Capacity procured by Western should not vary on a monthly basis or from season-to-season.

Another commenter recommends that Western consider procuring from the market only the RA needed to meet what used to be called planning reserves. The commenter suggests that Western add this procurement to what used to be called operating reserves (those reserves that Western is already obligated to provide) and present the sum total as Western's RA level. If so, while Western's total RA level may be more than 5 or 10 percent, the amount of RA Western purchases for planning reserves should arguably be less.

Another commenter wants to commend Western's staff for arranging to meet its customers' needs regarding the CAISO's MRTU RA requirements. While the commenter does not believe the RA requirements are truly fair or necessary, the commenter acknowledges the CAISO's ability to demand such reserves within its Balancing Authority Area. In addition, the commenter states that it believes Western's RA reserve acquisition plan for its Full Load Service (FLS) Customers fully meets reserve margins that could occur as a result of the commenter's operations. The commenter believes that the power purchased by Western for the FLS Customers comes with reserve margins

that meet WECC and NERC requirements. The commenter states that the RA reserves that Western will purchase under its RA Plan will supplement and fully meet any reserve levels required under the CAISO's MRTU regulations.

Another commenter states that it supports Western's acquisition of generation capacity resources to be committed to the CAISO in order to meet the RA requirement.

Another commenter is concerned that Western's proposed PRM does not adequately address the variety of concerns necessary to assure reliable grid operations. The commenter states that the CPUC has adopted a PRM of 15 to 17 percent and has proposals before it to raise that percentage. The commenter states that the CAISO suggests maintenance of 7 percent operating reserves in order to meet WECC requirements. This 7 percent does not include accounting for a variety of additional concerns, including forced generator outages, forecast error, and uncertainties in resource counting conventions.

Another commenter states that Western's currently proposed RA Plan calls for a seasonal PRM ranging from 5 to 10 percent. The description of this PRM and Western's Proposed RA Plan and the discussion held with the CAISO on May 16, 2007, make it clear that Western's RA Plan confuses the PRM element by misapplying capacity and energy issues, collapsing operational and planning reserve concepts, avoiding obligations to make resources available to the CAISO and to contribute to local RA needs, misunderstanding RA import allocations, and providing for load forecasting methodologies that are not permissible under the IRRP and/or MRTU Tariff. The commenter states that although Western does have some flexibility to determine its own PRM and is not bound by the CAISO default level, Western has the burden to show that any level proposed below the default will be sufficient to prevent leaning and consequent cost shifting. Given the level of load served by Western in California, a PRM at least on par with the minimum adopted for CPUC jurisdictional LSEs, currently 15 percent, should be expected to prevent Western from leaning on other entities.

A commenter states that Western's RA Plans propose to establish a peak seasonal PRM of 10 percent and an off-peak seasonal PRM of 5 percent. At a May 16, 2007, meeting with the CAISO, the CAISO claimed that Western misunderstood the underpinnings of the PRM because the stated values did not incorporate the expected provision of

¹² See, e.g., 50 Stat. 844, 850 (1937); 63 Stat. 852 (1949); 64 Stat. 1036 (1950); 69 Stat. 719 (1955); 76 Stat. 1191-2 (1962).

required operating reserves. For instance, the CPUC derived its 15 to 17 percent PRM to account for: (1) The LSE's demand; (2) the LSE's proportionate share of operating reserves; (3) generator forced outages; and (4) intrinsic forecast error. Western, or the LRA it serves, has the authority to determine its PRM. The commenter requests that Western consider PRMs that fully incorporate, at a minimum, for the above-described factors and that it fully explain the development of the revised PRMs.

Response: While Western is not required to submit an RA Plan, Western has voluntarily done so to comply with the spirit of the Commission's order and to assist the CAISO to meet its CPUC obligations. The CAISO Tariff and the MRTU Tariff acknowledge that Western, as an LRA, may establish its own RA Plan and its own level of PRM.

For imports, Western has chosen to provide more reserves to the CAISO during the summer peak months when reserves are more critical to the CAISO. In addition to the operating reserves that are already supporting imports, Western will be providing an additional 5 or 10 percent of PRM, thereby, bringing the total amount of reserves that Western is providing for imports to 10 to 15 percent or more depending on the SMUD Balancing Authority Area reserve requirements. Because imports into the CAISO Balancing Authority Area are backed by reserves in the balancing authority area where the generation originates, including imports from the SMUD Balancing Authority Area whereby Western meets both NERC and WECC standards for operating reserves, Western is already meeting its requirements for operating reserves and will not be modifying the amount of PRM it will procure for imports into the CAISO Balancing Authority Area. As part of its Final RA Plan for imports, Western is adopting the 5 to 10 percent PRM outlined in its proposed Final RA Plan; however, Western will make it clear that such resources must be backed by appropriate NERC and WECC reserves. Because Western will require its imports to carry NERC and WECC reserves, during the critical summer months, imports under Western's Final RA Plan will have the equivalent of up to 15 percent PRM or more depending on the SMUD Balancing Authority Area operating reserve requirement to meet NERC and WECC standards.

Also factoring into Western's decision is information that Western received at a May 16, 2007, public meeting with the CAISO in which the CAISO explained that the 15 to 17 percent PRM that CPUC jurisdictional entities are required

to provide to the CAISO includes the WECC operating reserves. Western modified the amounts of PRM that it will provide to the CAISO for resources, including LD Contracts, procured in the CAISO Balancing Authority Area until such time as the procurement of LD Contracts is phased out by Western. For these resources, Western is adopting a 15 percent PRM for all months, which includes capacity to cover operating reserves for those resources within the CAISO Balancing Authority Area, which the CAISO states does not include operating reserves.

Western has established amounts of additional capacity in its Final RA Plan that it considers sufficient to meet its responsibilities as an LSE meeting its loads in the CAISO Balancing Authority Area, which prevents Western from leaning on other entities, avoids cost shifting, and is consistent with the terms and conditions of Section 40 of the CAISO Tariff and the MRTU Tariff.

As for the commenter's concerns about Western avoiding its contribution to local RA needs, please see response in section entitled "Local Capacity Area Resource Commitments."

As for the commenter's concerns about Western using load forecasting methodologies that are not permissible under the CAISO Tariff and/or MRTU Tariff, although Western is not required to do so, Western has submitted and intends to continue to submit relevant load data to the California Energy Commission (CEC) so that the CEC can provide coincident peak information to the CAISO.

Local Capacity Area Resource Commitments

Comment: Several commenters state that Western has not addressed how it will meet the locational aspects of the CAISO's capacity planning requirements and that Western's Final RA Plan should address its obligations to contribute to local RA needs.

Response: Based on the information presented during the consultation and comment period, Western has revised its RA Plan to address locational aspects of the CAISO's capacity planning requirements. Specifically, beginning with calendar year 2008, Western plans to follow the terms and conditions of Section 43 of the CAISO Tariff as it relates to the procurement of LRA and Section 40 of the MRTU Tariff as it relates to the procurement of Local Capacity Area Resources to the extent there are resources available to purchase.

Election of LSE Status

A. Reserve Sharing LSE versus Modified Reserve Sharing LSE

Comment: A commenter notes that Western's proposed RA Plan does not provide for the provision of reserves pursuant to Sections 40.1.1, 40.2.3, and 40.5 of the MRTU Tariff. These MRTU Tariff sections provide for reserves to be made available pursuant to a "Modified Reserve Sharing LSE" option. The commenter believes there are potential benefits to be derived from this option and strongly recommends and encourages Western to make the Modified Reserve Sharing LSE option available to its customers under its proposed RA Plan. The option would allow for the provision of RA based on a percentage of hourly loads rather than Western's proposal to provide RA based on a percentage of the monthly peak load. The Modified Reserve Sharing LSE option could greatly reduce the overall level of capacity a customer is required to provide to the CAISO.

Another commenter states that Western's Final RA Plan must make it clear how Western will meet its obligations as a reserve sharing entity under the MRTU Tariff and how it plans to stay within its share of RA import capacity.

Another commenter states that the SC for the LSE must communicate the election of either Reserve Sharing LSE or Modified Reserve Sharing LSE to the CAISO on behalf of the LSE. The commenter further states that Western must determine whether it is the SC, the LSE, and/or the LRA on behalf of its customers.

Response: Western's proposed RA Plan was prepared in response to the terms and conditions of Section 40 of the CAISO Tariff and the proposed MRTU Tariff. Western's Final RA Plan clarifies how Western will meet its obligations as a reserve sharing entity. In accordance with Section 40 of the MRTU Tariff, each year Western has the ability to change its designation as to whether it elects to be a Reserve Sharing LSE or a Modified Reserve Sharing LSE. Since this election can change from year-to-year, this is not information that Western would include in its Final RA Plan, which is a document that Western does not expect to modify regularly. Under Western's current business operations and its current contracts, Western is unable to meet the necessary requirements contained in Section 40 of the MRTU Tariff to qualify for the Modified Reserve Sharing LSE option. Specifically, Western is not the SC for the resources it schedules to meet its loads in the CAISO Balancing Authority

Area. In addition, Western understands from the CAISO that all of the loads, for which Western is the LSE and the SC, must fall into the same category, either Reserve Sharing LSE or Modified Reserve Sharing LSE. If, in the future, the CAISO changes the requirements in Section 40 of the MRTU Tariff for a Modified Reserve Sharing LSE so that Western could meet the requirements, Western would have the option of changing its designation to a Modified Reserve Sharing LSE. Western would not consider such a change a significant modification of the Final RA Plan. Western has revised its Final RA Plan so that determination of Net Qualifying Capacity for deliverability within the CAISO Balancing Authority Area and deliverability of imports is consistent with the terms and conditions of Section 40 of the MRTU Tariff. Western is not able to address how Western plans to stay within its share of RA import capacity at this time as Western's share of the RA import capacity has not been determined. At this time, Western is an LRA and considers itself to be the SC and the LSE on behalf of its customers in the CAISO Balancing Authority Area for which Western is responsible for meeting their load. If, in the future, a Western customer desires to become its own LRA and LSE, Western is committed to working with that customer and the CAISO to accommodate the customer's request to the extent possible and allowed by Federal law.

B. Coordination With CEC

Comment: A commenter states that the election status of an LSE/LRA affects the applicable Demand Forecast methodologies that can be employed. The commenter understands that Western intends to base its RA program on a coincident peak demand. The commenter urges Western to contact the CEC and submit the necessary load data to permit compliance with the MRTU Tariff.

Another commenter encourages Western to fully cooperate with the efforts of the CEC to address the RA contributions of all LSEs within the State of California and the efforts of the CAISO to ensure base, consistent, and critical contributions of all LSEs toward an effective and reliable grid.

Response: Although Western is not required to do so, Western has submitted, and intends to continue to submit, relevant load data to the CEC so that the CEC can provide coincident peak information to the CAISO.

Transmission and Intertie Capacity

Comment: A commenter states that it expects that current and future use of the California Oregon Transmission Project (COTP) and/or the Pacific Northwest-Southwest Alternating Current Intertie (PACI) will first be applied to meeting Western's obligations under the Marketing Plan before utilization for RA requirements for those customers located in the CAISO Balancing Authority Area.

Response: Western will determine the use of its transmission resources to meet its obligations under the Marketing Plan and its RA requirements to best meet the needs of Western and its customers.

Comment: A commenter would be interested in understanding Western's process for allocating its intertie capacity to other Western customers that may have future RA issues that are not necessarily tied to the CAISO RA process.

Response: This comment is outside of the scope of this proceeding.

Deliverability

Comment: A commenter states that Western should carefully review the import deliverability section of the MRTU Tariff in formulating its revised RA Plans.

Response: Western has revised its Final RA Plan so that determination of Net Qualifying Capacity for deliverability within the CAISO Balancing Authority Area and deliverability of imports will be subject to the terms and conditions of Section 40 of the MRTU Tariff. Under Section 40 of the MRTU Tariff, Net Qualifying Capacity is determined under the criteria provided by an LRA and consistent with testing and verification by the CAISO and deliverability restrictions. Under Western's Final RA Plan, Western has designated 100 percent of the forecasted capacity of all of its CVP hydroelectric generation facilities as Qualifying Capacity. In addition, Western has designated the contracted capacity from firm imports into the CAISO Balancing Authority Area as Qualifying Capacity and the contracted capacity from existing LD Contracts in the CAISO Balancing Authority Area as Qualifying Capacity. To address the concerns regarding the use of LD Contracts in the future, Western has determined at this time that it will begin to phase out its procurement of LD Contracts that originate within the CAISO Balancing Authority Area until such time the CAISO's concerns about deliverability and double-counting can be properly addressed. Western reserves the right to

revisit this decision and may opt to use LD Contracts procured in the CAISO Balancing Authority Area in the future to meet its RA requirements if the CAISO's scheduling and accounting protocols are modified so that the CAISO's concerns about deliverability and double-counting can be properly addressed. If, in the future, Western is able to use LD Contracts procured in the CAISO Balancing Authority Area to meet its RA requirements, Western may purchase LD Contracts within the CAISO Balancing Authority Area under its Final RA Plan.

Future Drafts of the RA Plan

Comment: A commenter states that they look forward to the next draft of Western's RA Plan.

Response: In the **Federal Register** notice announcing Western's Proposed Final RA Plan for transactions in the CAISO's Balancing Authority Area (72 FR 20528), Western stated that it would evaluate all comments received and prepare its Final RA Plan. After reviewing the comments received, Western does not feel the changes it has made to its proposed Final RA Plan are significant enough to solicit additional public comments. Western's Final RA Plan is included in this **Federal Register** notice.

Development of the Final RA Plan

Western revised the Final RA Plan as a result of the comments received during the comment period. Western thanks all the commenters for providing additional information that Western used as part of its decision-making process.

The Final RA Plan will be: (1) Published in the **Federal Register**; (2) submitted to the CAISO; and (3) used by Western when Western is acting as an LSE in the CAISO Balancing Authority Area. The CAISO has established guidelines for RA and RA Capacity, which LSEs must meet for transactions in the CAISO Balancing Authority Area. Both the IRRP and MRTU Tariff acknowledge that Western, as an LRA, may establish its own RA Plan.¹³

Western understands that the California State Legislature enacted Assembly Bill (AB) 380 to require the CPUC, in consultation with the CAISO, to establish RA requirements for all LSEs under the CPUC's jurisdiction.¹⁴ AB 380 requires LSEs subject to the CPUC's jurisdiction to procure adequate resources to meet their peak demands,

¹³ See, e.g., Section 40.4 of MRTU Tariff, Section 40.5 of IRRP Tariff.

¹⁴ 115 FERC ¶ 61,172 at paragraph 4.

planning, and operating reserves.¹⁵ The state requires LSEs subject to the CPUC's jurisdiction to demonstrate that they have acquired sufficient capacity to serve their forecasted retail customer load and a 15- to 17-percent margin. As a Federal agency, Western is not subject to the state's jurisdiction.

In developing its final RA Plan, Western analyzed and weighed many different factors, including the Commission's orders related to the CAISO's RA requirements, the CAISO Tariff that incorporates the IRRP, the MRTU Tariff, the CPUC's requirements and default margins, the impacts on preference customers, similar treatment among the users of the CAISO grid, the limitations imposed on Western as a result of Federal law, and Federal and industry standards and guidelines related to reliable operations of power systems. The comments reflect a broad range of interests associated with the development of Western's Final RA Plan.

There are several distinct factors related specifically to the way that Western conducts its business that influenced Western's preparation of its Final RA Plan. The Final RA Plan contains detailed information on the factors that went into Western's development of the Final RA Plan. Western documents, as part of this **Federal Register** notice, the pertinent factors that influenced Western's preparation of its Final RA Plan.

The United States' CVP hydroelectric facilities are operated by Reclamation. The CVP Act, as amended, integrates the various CVP facilities.¹⁶ The CVP is operated primarily to meet authorized project purposes that have a higher priority than power generation, such as irrigation and flood control.¹⁷ These purposes are determined by Federal law. Western's flexibility to modify generation schedules and ancillary service availability is limited by these and other related constraints. Congress authorized the PACI to firm the CVP and authorized the COTP to support the Department of Energy (DOE) Laboratories and other Federal uses in the State of California.¹⁸ Western imports power into its SBA over the PACI, COTP, and other Federal transmission facilities. In northern California, Western markets power from a dozen Federal dams, primarily those

in the Federal CVP, under its Marketing Plan.¹⁹ Under the Marketing Plan, Western executed the majority of its power sales contracts with its statutory Preference and First Preference Customers in late 1999 and early 2000. In northern California, Western has established a contract-based SBA within the SMUD Balancing Authority Area. Unlike other LSEs, Western sells power to a diverse group of customers in northern California, including large municipal utilities such as SMUD, the City of Redding, and the City of Santa Clara, as well as smaller irrigation districts, Native American Tribes, and Federal and state agencies. These customers are located within the CAISO Balancing Authority Area, the Turlock Irrigation District Balancing Authority Area, the SMUD Balancing Authority Area, and Western's own SBA. Many of Western's customers are wholesale customers who are LSEs for their own customers. Other Western customers receive power from both Western and another utility, such as the Pacific Gas and Electric Company (PG&E). Under Western's Marketing Plan, and from a contractual standpoint, Western sells CVP generation to loads in the CAISO Balancing Authority Area from its SBA. Western is unable to use the CVP hydroelectric facilities in the SMUD Balancing Authority Area to meet PRM requirements because, in contrast to other utilities and non-jurisdictional LSEs in California, Western must follow Federal directives in its marketing and operations. The CVP hydroelectric facilities are owned by Reclamation and operated primarily to meet authorized project purposes that have a higher priority than power generation. Western's flexibility to modify generation schedules and ancillary service availability is limited by these and other related constraints.

Western's Final RA Plan addresses how the RA requirements will be met for those customers for which Western serves their loads and who are located in the CAISO Balancing Authority Area. These customers are Western's FLS Customers, Western's four First Preference Customers, the National Aeronautics and Space Administration, Ames Research Center (NASA-Ames), and a subset of Reclamation's Project Use loads.

Final RA Plan

Acronyms and Definitions

As used herein, the following acronyms and definitions when used with initial capitalization, whether

singular or plural, will have the following meanings:

Administrator: The Administrator of the Western Area Power Administration.

BR: Base Resource—CVP and Washoe Project power output, determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Balancing Authority: As defined by NERC: The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.

Balancing Authority Area: The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

CAISO/ISO: The California Independent System Operator Corporation.

CVP: The Central Valley Project—The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield, California.

Capacity: The electrical capability of a generator, transformer, transmission circuit, or other equipment.

Commission: The Federal Energy Regulatory Commission.

Current RA Plan: That plan submitted by Western, acting as its own LRA, to the CAISO in September 2006.

Custom Product: A combination of products and services, excluding provisions for load growth, which may be made available by Western per customer request, using the customer's Base Resource and supplemental purchases made by Western.

DOE: United States Department of Energy.

Demand Forecast: As defined by the CAISO Tariff: ²⁰ An estimate of demand over a designated period of time.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

²⁰ References to the "CAISO Tariff" refer to the current CAISO Tariff as that document may be amended and modified, including as modified by the MRTU Tariff. As indicated below, Western, however, reserves the right to make changes to its Final RA Plan as needed as a result of changes to the CAISO Tariff. Where terms only appear in the proposed MRTU Tariff, Western has specifically referenced the MRTU Tariff.

¹⁵ Id.

¹⁶ See, e.g., 50 Stat. 844, 850 (1937); 63 Stat. 852 (1949); 64 Stat. 1036 (1950); 69 Stat. 719 (1955); 76 Stat. 1191–2 (1962).

¹⁷ See id.

¹⁸ Pub. L. No. 88–552, 78 Stat. 756 (1964), as amended; Pub. L. No. 98–360, 98 Stat. 403 (1984), as amended, 50 Stat. 844 (1937), as amended.

¹⁹ 64 FR 34417 (1999).

FLS Customers: Full Load Service Customers—The subset of Western's Preference customers that has contracted with Western to provide portfolio management services and meet their total projected loads.

Final RA Plan: This plan that Western, acting as its own LRA, has adopted in this **Federal Register** notice and will submit to the CAISO.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or Tuolumne Counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Initial RA Plan: That plan submitted by Western, acting as its own LRA, to the CAISO on May 19, 2006.

LD Contract: Liquidated Damages Contract—Firm Liquidated Damages Contracts are those transactions utilizing or consistent with Service Schedule C of the Western Systems Power Pool (WSPP) Agreement or the Firm Liquidated Damages product of the Edison Electric Institute pro forma agreement, or any other similar firm energy contract that does not require the seller to source the energy from a particular unit and specifies a delivery point internal to the CAISO Balancing Authority Area.

LRA: Local Regulatory Authority—The Federal, state, or local governmental authority responsible for the regulation or oversight of a utility.

LSE: Load Serving Entity—Any entity (or the duly designated agent of such an entity, including; e.g., a Scheduling Coordinator), including a load aggregator or power marketer; that (a)(i) serves End Users within the CAISO Control Area and (ii) has been granted authority or has an obligation pursuant to California State or local law, regulation, or franchise to sell electric energy to End Users located within the CAISO Control Area; or (b) is a Federal Power Marketing Administration that serves End Users.

Local Capacity Area: As defined by the MRTU Tariff: Transmission constrained area as defined in the study referenced in Section 40.3.1 of the CAISO Tariff.

Local Capacity Area Resources: As defined by the MRTU Tariff: Resource Adequacy Capacity from a Generating Unit listed in the technical study or Participating Load that is located within a Local Capacity Area capable of contributing toward the amount of capacity required in a particular Local Capacity Area.

Local Resource Adequacy: As used herein, Local Resource Adequacy encompasses all defined terms related to

the Local Resource Adequacy requirements as set forth in Appendix A of, and as used in, Section 43 of the CAISO Tariff incorporating IRRP.

Modified Reserve Sharing LSE: As defined by the MRTU Tariff: A Load Serving Entity whose Scheduling Coordinator has informed the CAISO in accordance with Section 40.1 of its election to be a Modified Reserve Sharing LSE.

Net Qualifying Capacity: Qualifying Capacity reduced, as applicable, based on: (1) Testing and verification; (2) application of performance criteria; and (3) deliverability restrictions. The Net Qualifying Capacity determination shall be made by the CAISO pursuant to the provisions of the CAISO Tariff and any applicable manual or procedure.

PRM: Planning Reserve Margin—Western's Planning Reserve Margin shall be that amount of capacity in megawatts (MW) that exceeds the Demand Forecast for SNR's loads as determined under Section 40 of the MRTU Tariff.

Power Revenue Requirement: The annual revenue that must be collected from CVP power customers to recover annual expenses, such as operation and maintenance, purchase power, transmission service expenses, interest, and deferred expenses, and to repay Federal investments and other assigned costs.

Preference: The requirements of Reclamation Law which provide that preference in the sale of Federal power be given to certain entities, such as municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (Reclamation Project Act of 1939, Section 9(c), 43 U.S.C. 485h(c)).

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation Law.

Qualifying Capacity: Resources used to meet load requirements. SNR has established the criteria for calculating Qualifying Capacity in its Final RA Plan.

RA Capacity: Resource Adequacy Capacity—As defined by the CAISO Tariff: The generation capacity of an RA Resource listed on an RA Plan and a Supply Plan.

RA Plan: Resource Adequacy Plan—As defined by the CAISO Tariff: A submission by a Scheduling Coordinator for a Load Serving Entity serving Load in the CAISO Control Area in order to satisfy the requirements of Section 40 of the CAISO Tariff.

RA Resource: Resource Adequacy Resource—As defined by the CAISO Tariff: A resource that is required to offer Resource Adequacy Capacity. The criteria for determining the types of resources that are eligible to provide Qualifying Capacity may be established by the CPUC, other applicable Local Regulatory Authority and provided to the CAISO, or the default provision in Section 40.13 of the CAISO Tariff.

Reclamation: United States Department of the Interior, the Bureau of Reclamation.

Reserve Sharing LSE: As defined by the MRTU Tariff: A Load Serving Entity whose Scheduling Coordinator has informed the CAISO in accordance with Section 40.1 of its election to be a Reserve Sharing LSE.

SBA: Sub Balancing Authority Area—An electric system operating within a Balancing Authority Area that is bounded by meters and is responsible for the performance of generation, load, and transmission connected to the Sub Balancing Authority Area's electric system.

SC: Scheduling Coordinator—As defined by the CAISO Tariff: An entity certified by the CAISO for the purposes of undertaking the functions specified in Section 4.5.3.

TPP Contracts: Third-Party Power Contracts—An agreement that a Full Load Service Customer has to purchase energy from an entity other than Western.

Western: United States Department of Energy, the Western Area Power Administration.

Western's Final RA Plan follows:

Western Area Power Administration, Sierra Nevada Region—Acting as an LRA Establishes the Following RA Plan

Western, Sierra Nevada Region (SNR), is a certified SC and an LSE for certain loads and resources within the CAISO Balancing Authority Area. Acting as its own LRA, SNR establishes the following RA Plan. SNR is submitting this plan voluntarily to comply with the spirit of the Commission's order to assist the CAISO to meet its CPUC obligations in the development of its requirements. This RA Plan has been developed in accordance with sections of the current CAISO Tariff incorporating the IRRP and Section 40 of the CAISO's proposed MRTU Tariff and addresses: (1) Current load obligations; (2) qualifying capacity criteria; (3) deliverability considerations; (4) demand forecasts and protocols; (5) PRMs; (6) types of resources for RA requirements; and (7) local resource requirements for SNR's obligation as an LSE and SC in the CAISO Balancing Authority Area. As an

SC, SNR will apply these criteria to its monthly and annual resource plans.

This RA Plan applies to the following classes of loads served by SNR in the CAISO Balancing Authority Area: (1) Reclamation's Project Use loads; (2) SNR's First Preference and FLS Customers; and (3) NASA-Ames. These customer classes are defined later in this RA Plan. With this submission, Western does not alter its position nor does it waive any legal rights or defenses it may have regarding the applicability of the MRTU Tariff to Western including, but not limited to, any rights and defenses raised by Western in ER06-723-000, et al. and ER06-615-000, et al. and any related dockets.

Background

SNR markets power in accordance with specific Federal statutes,²¹ regulations, and policies. In contrast to other utilities and non-jurisdictional LSEs in California, SNR must follow Federal policies in its marketing and operations.²² The following background information is included in light of this unique requirement. The information presented below is not meant to be exhaustive but may be helpful to better understand this RA Plan.

Western's SNR Office located in Folsom, California, markets power from the CVP and the Washoe Project. The body of laws applicable to CVP facilities is known collectively as Reclamation Law, including specific authorizing legislation for each CVP facility.²³ The CVP was reauthorized in the Rivers and Harbors Act of 1937 (Act of 1937).²⁴ The Act of 1937 defined the priorities for the purposes of the CVP as: (1) Navigation and flood control; (2) irrigation and municipal and industrial water supplies; and (3) power supply.²⁵ The Central Valley Project Improvement Act (CVPIA) in 1992 modified the authorizations of the CVP to include fish and wildlife as a new authorized purpose.²⁶ Along with managing several threatened and endangered species in the CVP service area, the net effect of CVPIA was to establish specific mitigation objectives and to establish a CVPIA Restoration Fund, which requires payments from CVP water and power customers to fund activities to mitigate damages caused by the construction and operation of the CVP

upon the native fish and wildlife resources.²⁷

CVP hydroelectric power is delivered to loads throughout central and northern California. Under Reclamation Law, the first priority for CVP power is to meet the authorized loads of the project including irrigation pumping, municipal and industrial needs, authorized fish and wildlife purposes, and station service at CVP facilities.²⁸ Approximately 25 to 30 percent of the CVP's power generation is typically used to support Project Use loads. Under existing laws, SNR markets the remaining power to First Preference customers and preference customers, which include Indian Tribes, Federal agencies, military bases, municipalities, public utilities districts, irrigation and water districts, and state agencies.²⁹

Western provides service to its customers under federally authorized marketing plans. Under SNR's Marketing Plan, which became effective on January 1, 2005, customers receive the net power output of the CVP and Washoe Projects after all project needs are met.³⁰ Project needs include Project Use loads, SBA operational requirements, and First Preference loads. The remaining power is provided to Preference Customers and is referred to as the "BR."

Preference customers that receive BR are generally divided in three groups under the Marketing Plan: BR customers, Variable Resource (VR) customers and FLS Customers. BR customers are those customers that have opted to only receive BR power from SNR. VR Customers are customers that have requested supplemental power from SNR in addition to their BR. The third category of customers, FLS Customers, are customers that have their total load at specified delivery points met by SNR through a combination of their BR and supplemental Custom Product (CP) power purchases by SNR on their behalf. FLS Customers also can bring their own contracts to SNR for SNR to manage. These contracts are called TPP Contracts.

Under the Marketing Plan, SNR has four First Preference customers. First Preference customers are a special class of customers who are statutorily entitled to up to 25 percent of the generation added to the CVP as a result of the hydroelectric facilities built in their

counties.³¹ The two projects whose enabling legislation provided for First Preference power are the New Melones Project, which is located in Tuolumne and Calaveras Counties, and the Trinity Project, which is located in Trinity County. As explained above, First Preference power has priority over other types of preference power in the Marketing Plan.

Current Load Obligations

SNR serves several types of loads. Appendix A lists the SC IDs that SNR schedules and the specific customers included under each SC ID. These loads are served from CVP and Washoe generation, market purchases, and customer energy exchange accounts. The following describes SNR's load obligations:

1. Project Use Loads

Project Use loads have the highest priority to CVP generation. SNR has approximately 180 delivery points for the Project Use loads, the majority of which are located in the CAISO's Balancing Authority Area. These loads are first met with CVP and Washoe generation, and in hours when the loads exceed such generation, the shortfall is met either through a customer energy exchange account or from market purchases. Several of these loads, including the San Luis Pump/Generation Station (San Luis) and Dos Amigos Pumping Plant, are operated by the California Department of Water Resources (CDWR) as joint Federal/state facilities. CDWR serves as the SC. Occasionally, CVP project water is pumped at the State of California's Banks Pumping Plant which also is scheduled as Project Use load. A significant portion of these loads are served under an Existing Transmission Contract (ETC) on the PG&E system for which PG&E served as the SC. Under Settlement Agreement 06-SNR-00944, SNR and PG&E agreed to transfer the SC responsibility for a number of Project Use loads from PG&E to SNR. SNR began scheduling these loads under the SC ID WSLW in December 2006.

2. First Preference Loads

SNR has four First Preference customers all of which are located in the CAISO Balancing Authority Area. Under the authorizing legislation for the New Melones and Trinity Projects, customers in Trinity, Tuolumne, and Calaveras Counties are entitled to have their entire load met from CVP generation, up to an amount not to exceed 25 percent of the

²¹ See, e.g., 43 U.S.C. 485h; 50 Stat. 844, 850 (1937); 63 Stat. 852 (1949); 64 Stat. 1036 (1950); 69 Stat. 719 (1955); 76 Stat. 1191-2 (1962).

²² See, e.g., id.

²³ See, e.g., 43 U.S.C. 371, et seq.

²⁴ See 50 Stat. 844, 850 (1937).

²⁵ See id.

²⁶ See Public Law No. 102-575 (1992).

²⁷ See id.

²⁸ See, e.g., 43 U.S.C. 485h; 50 Stat. 844, 850 (1937).

²⁹ See, e.g., 50 Stat. 844, 850 (1937); 43 U.S.C. 485h.

³⁰ 64 FR 34417 (1999).

³¹ 69 Stat. 719 (1955); 76 Stat. 1173, 1191-2 (1962).

additional energy generated by the CVP as a result of the project facilities constructed in those counties.³² In Trinity County, TPUD has an allocation of First Preference power which currently meets its entire load. In Tuolumne and Calaveras Counties, the Tuolumne Public Power Agency, the Calaveras Public Power Agency, and the Sierra Conservation Center have allocations of First Preference power that meet their entire loads.

3. Base Resource Loads

BR power is served to BR Customers, VR Customers, and FLS Customers. SNR has preference customers in all three categories located both in SNR's SBA and the CAISO Balancing Authority Area. This RA Plan is only applicable to those customers located in the CAISO Balancing Authority Area. In accordance with Federal law and SNR's Marketing Plan, the BR power must be made available to these customers before it is sold to any other entity, and it cannot be resold by these customers.³³ If a preference customer has load in any hour, it must first use the BR power it receives to meet that load before using other resources. Under the scheduling protocols developed for the Marketing Plan, BR energy schedules for all preference customers are firmed 2 days ahead, and, on those days that CVP generation is modified after the final schedules are published, the SBA is balanced through day-ahead and active-day transactions in the energy markets.

4. FLS Customer Loads

SNR has several FLS Customers, and the majority of these customers are located in the CAISO Balancing Authority Area. SNR has entered into contracts with these FLS Customers under which SNR has agreed to meet the total loads of these customers at specified delivery points. The load not met by BR energy or TPP Contracts for these customers is served from the market under long-term contracts for CP, and the portfolio is balanced on an hourly basis by day-ahead purchases or sales.

5. DOE Laboratories Loads

SNR serves four DOE Laboratory loads, three of which are located in the CAISO Balancing Authority Area. DOE has contracted with SNR for Portfolio Management service, which means SNR is responsible for balancing DOE's loads and resources. The portion of these loads not met by BR energy is served

from the market under long-term TPP Contracts, and the portfolio is balanced on an hourly basis by day-ahead purchases or sales.

6. NASA-Ames Loads

NASA-Ames is a VR Customer that is located in the CAISO Balancing Authority Area. In addition to receiving its BR power, NASA-Ames has contracted with SNR to have SNR make supplemental power purchases on behalf of NASA-Ames.

7. VR Customer Loads

SNR sells supplemental power to two preference customers located in the SBA that is currently delivered over PACI. Since the loads are located in the SBA, and the only CAISO transactions are the schedules on the PACI, which result in an import into the SBA, the CAISO-established RA requirements do not apply to these schedules.

Qualifying Capacity Criteria

The criteria for calculating Qualifying Capacity may be established by the CPUC or other applicable LRA and provided to the CAISO. For purposes of this RA Plan, Qualifying Capacity is defined as resources used to meet load requirements. In this RA Plan, SNR has established the criteria for calculating the Qualifying Capacity. Net Qualifying Capacity is Qualifying Capacity reduced by the CAISO based on (1) testing and verification; (2) application of performance criteria; and (3) deliverability restrictions.

A few facts about the availability of CVP generation are relevant to the determination of Qualifying Capacity. The CVP consists of a dozen integrated, large, multi-purpose, Federal water and power projects with many dams and reservoirs in northern California.³⁴ Although the CVP is a hydroelectric resource, the generation that can reasonably be expected is significantly less variable than typical hydroelectric projects. The CVP is not a run-of-the-river-system. The considerable storage in CVP reservoirs enables Reclamation to meet water demands through dry and critical years at reduced, but reasonably predictable, levels. The generation from the CVP is, therefore, considerably less variable on an annual and seasonal basis than most other hydroelectric projects. Another factor which reduces variability is the fact that the CVP is an integrated multi-reservoir project. Reclamation can, thus, frequently meet its water demands from several different

reservoirs. As an example, if there is a pumping requirement in the Delta for agricultural demands in the San Joaquin Valley, these water export demands may be met from releases at Shasta, Folsom, San Luis, or New Melones. Finally, all major CVP dams have reregulation reservoirs, which provide considerable flexibility to shape generation from the major power plants during the day without affecting downstream releases. A reregulation reservoir is a secondary smaller reservoir located adjacent to and downstream from the primary reservoir, with sufficient storage to allow a peaking operation out of the primary reservoir while maintaining a constant release down the river. This increased flexibility enhances the predictability to meet power demands. The firmness and predictability of the CVP power resource is, therefore, significantly greater than most other hydroelectric projects in California and elsewhere.

Forecasts of CVP generation are posted every month on SNR's Web site. SNR, in coordination with Reclamation, prepares an estimate of a rolling 12-month forecast of generation for the CVP on a monthly basis. Two forecasts are normally provided, one at 50 percent and one at 90 percent inflow exceedance levels. The 50-percent forecast assumes average inflows into CVP reservoirs for the upcoming water year, while the 90-percent forecast assumes critically dry year inflows. The 50- and 90-percent forecasts are very similar for the summer and fall periods when water releases from the CVP are provided primarily from reservoir storage. This is also true for the first few months of the winter season before rainfall starts to influence release schedules. The biggest difference between the two forecasts occurs in the January through April period when weather is a direct factor in determining water release schedules. The difference in energy generation from the CVP available for delivery to preference customers is about 20 percent between an average year and a dry year based on long-term studies of CVP operations. In contrast, the difference in energy generation between the 50 and 90 percent rolling 12-month forecasts that are published for preference customers every month is usually about 10 percent. This relatively small difference is explained by the fact that the rolling 12-month forecasts take current reservoir storage levels into account as the starting point, whereas long-term studies calculate reservoir storage levels based on sequential historical years. As a result, for purposes of Qualifying Capacity for the CVP, SNR has

³² 69 Stat. 719 (1955); 76 Stat. 1173, 1191-2 (1962).

³³ See, e.g., 50 Stat. 844, 850 (1937); 43 U.S.C. § 485h; 64 FR 34417 (1999).

³⁴ See, e.g., 50 Stat. 844, 850 (1937); 63 Stat. 852 (1949); 64 Stat. 1036 (1950); 69 Stat. 719 (1955); 76 Stat. 1191-2 (1962).

determined that it will utilize the 50 percent rolling 12-month forecast as the basis for forecasting Qualifying Capacity and Net Qualifying Capacity from the CVP for its monthly and annual forecasts.

SNR has several generation projects in the SMUD's Balancing Authority Area, which comprise the bulk of the CVP generation facilities. With the exceptions of the New Melones Power Plant and the San Luis and O'Neill Pump/Generation Plants (O'Neill), which are addressed separately below, all CVP generation plants reside in the SMUD Balancing Authority Area. SNR operates its SBA, which includes the Modesto Irrigation District's facilities and the COTP, within SMUD's Balancing Authority Area. In addition to being adjacent to the CAISO Balancing Authority Area, SNR's SBA is adjacent to the Turlock Irrigation District's Balancing Authority Area. SNR also has a direct tie to the Bonneville Power Administration's Balancing Authority Area through its firm transmission rights on the COTP and additional access to the Pacific Northwest through its firm transmission rights on the PACI.

Under Reclamation Law and the Marketing Plan, SNR's resources must first be utilized to serve Project Use, First Preference, and Federal preference loads. To the extent there is surplus energy, SNR markets such surplus at its discretion.

CVP Hydroelectric Facilities in the SMUD Balancing Authority Area—Designation of Qualifying Capacity

SNR designates its hydroelectric facilities in the SMUD Balancing Authority Area as a system resource with 100 percent of its forecasted capacity as Qualifying Capacity. SNR will determine its forecasted capacity by utilizing SNR's 50 percent rolling 12-month forecast for the appropriate month. The rolling 12-month forecast is discussed in detail above. This import into the CAISO Balancing Authority Area is backed with reserves as required under WECC standards from SNR's CVP resources in SMUD's Balancing Authority Area.

In designating the CVP facilities as a system resource, SNR notes that these facilities appear to be consistent with the definition of a system resource set forth in the MRTU Tariff filed on February 9, 2006, in FERC Docket ER06-615:

A group of resources, single resource, or a portion of a resource located outside of the CAISO Control Area, or an allocated portion of a Control Area's portfolio of generating resources that are directly responsive to that Control Area's Automatic Generation Control

(AGC) capable of providing Energy and/or Ancillary Services to the ISO.

1. New Melones Power Plant—Designation of Qualifying Capacity

The New Melones Power Plant physically resides in the CAISO Balancing Authority Area. SNR and the CAISO have agreed to pseudo-tie the generation from New Melones into the SMUD Balancing Authority Area. For all intents and purposes, this allows New Melones to be electronically and operationally included as part of the SMUD Balancing Authority Area. For purposes of Qualifying Capacity, SNR is designating the New Melones Power Plant as part of the CVP resource in the SMUD Balancing Authority Area. The ETC for delivery of New Melones generation into SNR's SBA is noted below.

2. San Luis and O'Neill Pump/Generating Plants—Designation of Qualifying Capacity

San Luis is operated by CDWR, and O'Neill is owned and operated by Reclamation. Both plants are operated to meet both Federal Project Use loads and to comply with Federal/state guidelines for the coordination of the Federal and state water projects. By contract and operation of law, project operations for the CVP and State Water Project are coordinated in order to assure that water quality standards in the San Francisco Bay/Sacramento-San Joaquin Delta and Estuary, as well as other applicable environmental operating criteria, are achieved.³⁵

For San Luis, SNR is deferring designation of Qualifying Capacity pending CDWR's submittal on how its capacity in this facility will be determined. Once that submittal is made, SNR, in consultation with Reclamation, will determine if the methodology is consistent with Reclamation's contractual framework with CDWR and also if the designation is consistent with Federal laws and SNR's policies. If CDWR's RA determinations are acceptable to SNR, the capacity associated with the Federal share of this facility will be treated in the same manner as the state's share. If CDWR's LRA determinations are not consistent with Federal law or the contractual framework, SNR will submit alternate criteria in an addendum to this document to address Qualifying Capacity at San Luis. Prior to SNR's determination as to whether CDWR's RA designation criteria is consistent with Federal law, SNR designates the

forecasted capacity of the Federal share of San Luis as Qualifying Capacity. For O'Neill, SNR designates 100 percent of the forecasted capacity as Qualifying Capacity.

Under Reclamation Law, the capacity, as well as the energy generated from these plants, must be made available to meet Project Use loads and Federal preference loads.³⁶ The ETC for delivery of generation from these plants is noted below.

3. Existing SNR Contracts—Designation of Qualifying Capacity

As noted above, SNR has several classes of customers on the CAISO-controlled grid. These customers include FLS Customers comprised primarily of municipal utility districts and Federal end-use preference customers and Project Use loads. Many of these customers and loads receive their power at transmission and distribution levels via the PG&E transmission and distribution facilities. Transmission level delivery to these loads is over the CAISO-controlled grid.

To meet its statutory and contractual obligations to serve the above customers and loads, SNR has entered into a number of long-term contracts, both import contracts into the CAISO Balancing Authority Area and LD Contracts within the CAISO Balancing Authority Area. These are firm energy contracts as generally reflected in Service Schedule C of the WSPP Agreement. The terms of current SNR contracts range from 1 month to 5 years. The contract with the longest term was entered into in late 2004 on behalf of the DOE Laboratories and extends through 2009. In total, for the period from January 2006 through 2009, to meet FLS Customer obligations, SNR has entered into 40 contracts with varying terms. In addition, SNR has entered into four contracts to meet Project Use obligations. To the extent that these contracts are used to serve loads in the CAISO Balancing Authority Area, the designation in this section shall be applicable. The energy schedules from these contracts that meet SBA loads are not addressed here.

Imports—The contracts that SNR has entered into that are imported into the CAISO Balancing Authority Area are considered firm under current industry standards and are backed by reserves in the balancing authority area where the generation originates. SNR will require that such contracts must have the appropriate operating reserves as required by NERC and WECC. SNR has

³⁵ See the Coordinated Operations Agreement Amendments Act, Act of October 27, 1986, Public Law 99-546, 100 Stat. 3050.

³⁶ See e.g., 50 Stat. 844, 850 (1937); 43 U.S.C. 485h; 64 FR 34417 (1999).

existing firm transmission rights on the COTP and PACI for the contracts originating in the Pacific Northwest. Consistent with the Commission's Order in Docket ER06-615, for purposes of this RA Plan, SNR designates the contracted capacity from these existing contracts as Qualifying Capacity. Unless otherwise specified in a subsequent RA Plan filing by SNR, SNR also designates as Qualifying Capacity the contracted capacity from any future firm power contracts that are imported into the CAISO Balancing Authority Area.

LD Contracts—SNR has entered into several LD Contracts with varying terms in the CAISO Balancing Authority Area and will continue to use these existing LD Contracts to meet SNR's Qualifying Capacity obligations in the CAISO Balancing Authority Area. However, to address the CAISO's concern regarding the use of LD Contracts in the future, SNR has determined at this time that it will begin to phase out its procurement of LD Contracts in the CAISO Balancing Authority Area. SNR does reserve the right to revisit this decision and may opt to use LD Contracts procured in the CAISO Balancing Authority Area in the future to meet its RA requirements if the CAISO's scheduling and accounting protocols are modified so that the CAISO's concerns about deliverability and double-counting can be properly addressed. If, in the future, SNR is able to use LD Contracts procured in the CAISO Balancing Authority Area to meet its RA requirements, SNR will modify this RA Plan accordingly and such modification will not be considered significant. Consistent with the Commission's Order in Docket ER06-615, for purposes of this RA Plan, SNR designates the contracted capacity from these existing LD Contracts as Qualifying Capacity.

Deliverability Considerations

Net Qualifying Capacity is Qualifying Capacity determined under the criteria provided by an LRA and subject to testing and verification by the CAISO and deliverability restrictions.

For imports into the CAISO Balancing Authority Area, which include both CVP generation and contract imports, SNR notes that it has sufficient ETC and/or transmission ownership rights reserved on its and others systems to deliver imports to the CAISO Balancing Authority Area. Specifically, SNR has the following rights:

1. SNR has a priority scheduling right on the PACI of 400 MW, which is not curtailable under the terms of Contract No. 04-SNR-00788-A unless the California-Oregon Intertie is derated below 3,000 of its 4,800 MW of capacity.

2. SNR is the operator and is also a participant in the COTP and has 177 MW of firm transmission rights into its SBA from the northwest (north to south) and 136 MW from its SBA to the northwest (south to north) over this 500-kilovolt line. The COTP is interconnected to the CAISO grid near the Tesla Substation.

3. SNR's ETC with PG&E for delivery of New Melones generation to its SBA is Contract No. 8-07-200-P0004. It provides firm transmission capacity for the delivery of New Melones power until 2032.

4. SNR's ETC for delivery of San Luis and O'Neill generation to its loads or SBA is Contract No. 14-06-200-2207A. It provides firm transmission and delivery service from PG&E for the San Luis Unit generation and loads until 2016.

5. SNR owns the Path 15 Transmission Line upgrade and has 150 MW of transmission system rights on Path 15 pursuant to Contract No. 03-SNR-00605. SNR has turned over the operational control of Path 15 to the CAISO.

The determination of Net Qualifying Capacity for deliverability within the CAISO Balancing Authority Area and for deliverability of imports will be subject to the terms and conditions in Section 40 of the CAISO Tariff and the proposed MRTU Tariff.

Demand Forecasts and Protocols

1. Loads in the SBA

The loads in SNR's SBA are not within the scope of this RA Plan. This RA Plan deals with SNR's loads in the CAISO Balancing Authority Area.

2. Loads in the CAISO Balancing Authority Area

1. For its loads under the SC IDs WPUL, WSLW, WFLS, WDOE, and WTRN in the CAISO Balancing Authority Area, SNR will determine its demand forecasts based on the criteria set forth in Section 40 of the CAISO Tariff and the proposed MRTU Tariff.

2. NASA-Ames will determine the average demand for a month consistent with current arrangements with the CAISO for forecasting this very unique load. As the SC for NASA-Ames, SNR will submit this data in accordance with the CAISO Tariff and the proposed MRTU Tariff.

3. Eastside Power Authority will determine its demand forecast based upon the criteria set forth in Section 40 of the CAISO Tariff and the proposed MRTU Tariff. As the SC for Eastside Power Authority, SNR will submit this data in accordance with the CAISO Tariff and the proposed MRTU Tariff.

Planning Reserve Margins

SNR will prepare its annual RA Plan and its monthly RA Plans and will include as part of those plans the PRM adopted by SNR. SNR's PRM shall be that amount of capacity in MW that exceeds the Demand Forecast for SNR's loads as determined under Section 40 of the CAISO Tariff and the proposed MRTU Tariff.

SNR has determined that, for the purposes of this RA Plan, it will provide a PRM to the CAISO consistent with Section 40 of the CAISO Tariff, as amended and modified, including any modifications set forth in the MRTU Tariff as follows:

For June through September, SNR will make a year-ahead showing that it will carry a PRM of 10 percent for all imports into the CAISO Balancing Authority Area and a PRM of 15 percent for all LD Contracts procured in the CAISO Balancing Authority Area.

For January through May and October through December, SNR will make a year-ahead showing that it will carry a PRM of 5 percent for all imports into the CAISO Balancing Authority Area and a PRM of 15 percent for all LD Contracts procured in the CAISO Balancing Authority Area.

For its month-ahead showing, SNR will demonstrate that it is prepared to meet 100 percent of its forecasted monthly peak load consistent with the terms of Section 40 of the MRTU Tariff.

Types of Resources for RA Requirements

1. Resources Used To Meet Load Obligations

The resources that SNR currently uses are generation from CVP and Washoe hydroelectric facilities, long-term contracts, day-ahead transactions and real-time transactions to meet its load obligations.

Under the Marketing Plan, SNR markets generation from the CVP and Washoe Projects to First Preference customers and any remaining power is then marketed as BR to preference customers on an as-available basis. The term "as-available" reflects the fact that CVP and Washoe energy generation is dependent on weather and water release criteria as determined by Reclamation and, during flood control events, the Corps of Engineers.

SNR will not use the CVP and Washoe Projects to meet its PRM obligations for its RA requirements.

2. Resources Used To Meet PRM Obligations

SNR will use capacity procured from qualifying resources either inside or

outside the CAISO Balancing Authority Area to meet its PRM obligations to the extent there are resources available to purchase. In order to qualify, a resource must meet the requirements set forth in Section 40 of the CAISO Tariff and proposed in the MRTU Tariff. For imports, SNR will follow the requirements of Section 40 of the CAISO Tariff and proposed in the MRTU Tariff.

Local Resource Requirements

Section 43 of the CAISO Tariff and Section 40 of the MRTU Tariff require that a certain amount of Local Capacity Area Resources be available to the CAISO within each Local Capacity Area identified in a technical study performed by the CAISO. The CAISO will allocate responsibility for Local Capacity Area Resources to SCs for LSEs using the methodology set forth in Section 43 of the CAISO Tariff while the CAISO Tariff is in effect and in Section 40 of the MRTU Tariff when it becomes effective. When notified by the CAISO of its share of the Local Capacity Area Resource obligation, SNR plans to comply with its requirement to procure such Local Capacity Area Resources to the extent there are resources available to purchase.

Future Modifications to This RA Plan

SNR reserves the right to make changes to this RA Plan, as needed, as a result of: (1) Changes to the CAISO Tariff including any changes to incorporate MRTU; (2) changes to SNR's RA Program; (3) changes required to comply with the applicable electricity reliability organization standards; or (4) as otherwise determined by Western at its discretion. In the event SNR modifies this RA plan, SNR shall submit the modified RA Plan to the CAISO.

Appendix A

SNR Customers Included Under This RA Plan

SCID—WFLS

City of Avenal.
 Calaveras Public Power Agency.
 City and County of San Francisco, Hetch Hetchy Water and Power.
 State of California, Department of Corrections and Rehabilitation, California Medical Facility.
 State of California, Department of Corrections and Rehabilitation, Deuel Vocational Institution.
 State of California, Department of Corrections and Rehabilitation, Sierra Conservation Center.
 East Bay Municipal Utility District.
 East Contra Costa Irrigation District.
 Lassen Municipal Utility District.
 National Aeronautics and Space Administration, Eastside Airfield.

Northern California Youth Correctional Center.
 Pittsburg Power Company.
 Reclamation District 2035.
 Shelter Cove Resort, Improvement District No. 1.
 Tuolumne Public Power Agency.
 University of California, Davis.
 U.S. Defense Logistics Agency, Sharpe and Tracy Facilities.
 U.S. Department of the Air Force, Beale Air Force Base.
 U.S. Department of the Air Force, Onizuka Air Force Base.
 U.S. Department of the Air Force, Travis Air Force Base.
 U.S. Department of the Navy, Naval Air Station, Lemoore.
 U.S. Department of the Navy, Naval Radio Station, Dixon.

SCID—WDOE

U.S. Department of Energy, Stanford Linear Accelerator Center.
 U.S. Department of Energy, Lawrence Berkeley National Laboratory.
 U.S. Department of Energy, Site 300.

SCIDs—WPUL and WSLW

U.S. Department of the Interior, Bureau of Reclamation, Mid Pacific Region.

SCID—WEPA

Eastside Power Authority.

SCID—WNAS

National Aeronautics and Space Administration, Ames Research Center.

SCID—WTRN

Trinity Public Utilities District.
 Normally, the final plan would be effective 30 days after Administrator approval. For the reasons identified below, in this instance, the effective date of the Final RA Plan will be August 1, 2007. Western's Final RA Plan must be in place by this date to align Western's procurement process with the CAISO's required annual showing for calendar year 2008 by September 30, 2007. This allows Western to be competitive in the RA market. An effective date after August 1, 2007, would impact Western's ability to procure competitively priced RA.

On the effective date, the Final RA Plan will replace the Current RA Plan. As discussed in the body of this notice, the Final RA Plan may differ from the CPUC's or other LRA's RA Plans. Western's Final RA Plan is being developed by Western as an LRA and is intended to only apply to Western, acting as an LSE in the CAISO Balancing Authority Area. It is not meant to apply to other LSEs in the CAISO Balancing Authority Area. Those LSEs are subject to the authority of the CPUC or other LRAs and, as such, are outside of Western's jurisdiction.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final plan, will be made available for inspection and copying at Western's Sierra Nevada Region Office, located at 114 Parkshore Drive, Folsom, CA 95630-4710.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: July 13, 2007.

Timothy J. Meeks,
Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6689-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070038, ERP No. D-BLM-J65475-WY, Pinedale Resource Management Plan (RMP), Implementation of Public Lands Administered, Sublette and Lincoln Counties, WY.

Summary: EPA expressed environmental concerns about the potential for adverse impacts to air and water quality with full field development, and suggested that the final EIS include additional information and discussion on cumulative impacts analysis, mitigation measures, and adaptive management. Rating EC2.

EIS No. 20070168, ERP No. D-FTA-K59006-CA, Alameda-Contra Transit (AC Transit) East Bay Bus Rapid Transit Project, Improve Transit Serve in cities of Berkeley, Oakland and San

Leandro, San Francisco Bay Area, Alameda County, CA.

Summary: While EPA does not object to the proposed project, but suggested additional mitigation measures to minimize air quality impacts during construction. Rating LO.

EIS No. 20070177, ERP No. D-AFS-L65536-OR, Spears Vegetation Management Project, Proposal to Use Commercial Timber Harvest, Pre-commercial Thinning, Prescribed Fire, Grapple Piling and Hand Piling in the Mark Creek Watershed and Veague Creek Subwatershed, Lookout Mountain Ranger District, Ochoco National Forest, Crook and Wheeler Counties, OR.

Summary: EPA expressed environmental concerns about potential impacts to water quality and if the level of monitoring is sufficient. The final EIS should provide additional information on mitigation related to roads and reducing sedimentation, and on methodology for determining critical shade in riparian areas proposed for harvest. Rating EC1.

EIS No. 20070184, ERP No. D-AFS-J65480-MT, North Bridger Allotment Management Plan Update, Proposal to Update Allotment Management Plan on 11 Livestock Grazing Allotments, Bozeman Ranger District, Gallatin National Forest, Gallatin County, MT.

Summary: EPA supports the proposed grazing improvements and the preferred alternative, but believes additional information should be provided regarding sites degraded by grazing and the management actions that would be taken to address the degradation in each allotment, and the updated riparian grazing guidelines, and recommends that some inconsistencies in information disclosure be corrected. EPA also has concerns about the availability of adequate funds and resources to implement proposed range improvements and the proposed monitoring program. Rating EC2.

EIS No. 20070187, ERP No. D-COE-G39049-TX, Calhoun County Navigation District's (CCND), Proposed Matagorda Ship Channel Improvement Project to Widen and Deepen Berthing Facilities, U.S. Army COE Section 10 and 404 Permits, Calhoun and Matagorda Counties, TX.

Summary: EPA expressed environmental concerns about impacts related to ocean disposal of dredged material and air quality. Rating EC2.

EIS No. 20070190, ERP No. D-AFS-J65481-MT, Lolo National Forest Integrated Weed Management, To Establish Beneficial Vegetation and

Weed Resistant Plant Communities, Missoula, Mineral, Sanders, Granite, Powell, Lewis and Clark, Flathead, Ravalli and Lake Counties, MT.

Summary: EPA supports improvements to the Integrated Weed Management Program, but suggests additional measures to further mitigate potential environmental effects of proposed weed treatments. EPA expressed environmental concerns about herbicide drift into streams and leaching into groundwater; the final EIS should include additional information on monitoring programs that will be used to validate the program's effectiveness. Rating EC2.

EIS No. 20070200, ERP No. D-AFS-F65067-WI, Fishel Vegetation and Transportation Management Project, To Implement Land Management Activities, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, Forest and Vilas Counties, WI.

Summary: EPA expressed environmental concerns about the Preferred Alternative's ability to provide sufficient snags and coarse woody debris, implement measures to promote species health, and treatments within goshawk nest territories to support management objectives. Rating EC2.

EIS No. 20070208, ERP No. D-HUD-K80048-CA, Vista Village Workforce Housing Project, To Provide Professional Managed Affordable Housing, Tahoe Vista, Placer County, CA.

Summary: EPA expressed environmental concerns about air quality and water quality impacts, and suggested that Alternative D-72 Units be selected as this alternative has fewer environmental impacts. EPA also recommended that the project utilize the Leadership in Energy and Environmental Design (LEED) standard for green building. Rating EC1.

EIS No. 20070211, ERP No. D-AFS-L65538-OR, Thorn Fire Salvage Recovery Project, Salvaging Dead and Dying Timber, Shake Table Fire Complex, Malheur National Forest, Grant County, OR.

Summary: EPA supports the mitigation measures such as helicopter logging included for the proposed salvage harvest; however, we have environmental concerns about potential impacts to non-motorized, semi-primitive management areas from salvage activities and long term recreational activities. Rating EC2.

EIS No. 20070241, ERP No. D-NPS-J61023-00, Quarry Visitor Center Treatment Project, To Address the

Structural Deterioration, Dinosaur National Monument, CO and UT.

Summary: EPA recognizes that the proposed action is fostered by the need to protect, preserve and reduce physical hazards and we support the green practices and mitigation measures included in the proposed project. Rating LO.

Final EISs

EIS No. 20070032, ERP No. F-AFS-K61164-CA, Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance, Implementation, Special-Use-Permit to Twelve Pack Station and Two Outfitter/Guides, Inyo National Forest, CA.

Summary: EPA supports the improvements that will result from Amendment #6, which include forage utilization standards for all pack stock grazing; additional water quality mitigation measures; reduced use levels in the GT/SS Wilderness; and a detailed monitoring, enforcement, and adaptive management plan providing greater riparian protection in 6 pastures. However, EPA continues express environmental concerns about water quality impacts and recommends relocating of Truman Camp out of the riparian area, limits on cross-country travel, and alignment of pack stock trail use levels with the level of trail development.

EIS No. 20070036, ERP No. F-AFS-K65309-00, Heavenly Mountain Resort Master Plan Amendment 2005 (MPA 05), Improve and Enhance the Resorts Over Winter and Summer Recreation Opportunities, Special-Use-Permit, Lake Tahoe Basin, El Dorado County, CA and Douglas County, NV.

Summary: EPA continues to have environmental concerns about watershed and habitat impacts, especially to old growth habitat if Alternative 4 is selected.

EIS No. 20070186, ERP No. F-SFW-K64025-AZ, Cabeza Prieta National Wildlife Refuge, Comprehensive Conservation Plan, Wilderness Stewardship Plan, Implementation, Ajo, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070194, ERP No. F-AFS-L65504-ID, Payette National Forest Travel Management Plan, Designate a System of Roads, Trails and Areas Open to Motorized and Non-Motorized Use, Implementation, Adam, Washington, Idaho, Valley Counties, ID.

Summary: EPA continues to have environmental concerns and encourages

the further reduction of designated ATV and OHV trails, and review the decision to retain road and trail miles that would have been eliminated under Alternative B. Also, we recommend giving consideration to the commitment of resources in Alternative E and its consistency with existing planning direction in the 2003 Forest Plan, and interagency agreements such as the Forest Service and Bureau of Land Management Protocol for Addressing Clean Water Act Section 303(d) Listed Waters.

EIS No. 20070199, ERP No. F-FHW-E40771-NC, Wilmington Bypass Transportation Improvements, U.S. 17 to U.S. 421, Funding, COE Section 10 and 404 Permits and U.S. Coast Guard Bridge Permit Issuance, Brunswick and New Hanover Counties, NC.

Summary: EPA continues to have environmental concerns about stream and wetland impacts, indirect and cumulative air quality impacts from Mobile Source Air Toxics and impacts to Significant Natural Heritage Areas. EPA requested additional avoidance and minimization measures be considered to lessen these impacts.

EIS No. 20070220, ERP No. F-BLM-J65468-WY, Casper Field Office Planning Area Resource Management Plan, Implementation, Natrona, Converse, Goshen, and Platte Counties, WY.

Summary: EPA continues to have environmental concerns about air quality impacts and the need to do a quantitative analysis based on dispersion modeling. In addition, there is potential for adverse impacts to wetlands from OHV use.

EIS No. 20070228, ERP No. F-AFS-G65102-NM, Canadian River Tamarisk Control, Proposes to Control the Nonnative Invasive Species Tamarisk (also known as salt cedar) Cibola National Forest, Canadian River, Harding and Mora Counties, New Mexico.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070242, ERP No. F-COE-F36167-OH, Dover Dam Safety Assurance Program Project, Modifications and Upgrades, Funding, Muskingum River Basin, Tuscarawas County, OH.

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070245, ERP No. F-FHW-C40336-NY, Long Island Expressway (LIE) Rest Area Upgrade Project, Upgrading the Existing Rest Area from Route 1-495/Long Island Expressway

between Exits 51 and 52, Funding, Town of Huntington, Suffolk County, NY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070246, ERP No. F-MMS-L02033-AK, Chukchi Sea Planning Area Oil and Gas Lease Sale 193 and Seismic Surveying Activities, Offshore Marine Environment, Chukchi Sea Coastal Plain, and the North Slope Borough of Alaska.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the action as proposed.

EIS No. 20070223, ERP No. FA-AFS-K65283-CA, Empire Vegetation Management Project, Reducing Fire Hazards, Harvesting of Trees Using Group Selection (GS) and Individual Trees Selection (ITS) Methods, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070225, ERP No. FD-AFS-L65155-00, Northern Spotted Owl Management Plan, Removal or the Modification to the Survey and Manage Mitigation Measures, Standards and Guidelines (to the Northwest Forest Plan) New Information to Address Three Deficiencies Final Supplemental EIS (2004), Northwest Forest Plan, OR, WA, and CA.

Summary: The analysis in FEIS supports both the utilization of the Special Status Species Programs and previous determinations made as a part of the Annual Species Review Process. Given the importance of the current network of late successional forests in late-successional species' persistence and viability, EPA continues to encourage the Agencies to consider any reasonably foreseeable reserve network or management changes when predicting habitat outcomes.

EIS No. 20070226, ERP No. FS-AFS-J65417-MT, Frenchtown Face Ecosystem Restoration Project, Additional Information Maintenance and Improvement of Forest Health, Risk Reduction of Damage Insects and Disease, Lolo National Forest, Ninemile Ranger District, Missoula County, MT.

Summary: The final supplement addressed EPA's concerns about the preferred alternative. EPA believes watershed restoration activities included in the project will likely result in overall water quality improvement in the long-term.

Dated: July 24, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-14569 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-6689-3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities; General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 07/16/2007 through 07/20/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070308, Draft EIS, AFS, MT, Marten Creek Project, Proposed Timber Harvest, Prescribed Fire Burning, Watershed Restoration, and Associated Activities Cabinet Ranger District, Kootenai National Forest, Sanders County, MT, Comment Period Ends: 09/10/2007. Contact: Dave Clay, 406-827-0717.

EIS No. 20070309, Final EIS, FRC, 00, Spokane River and Post Falls Hydroelectric Project, Applications for two New Licenses for Existing 14.75 (mw) Post Falls No. 12606 and 122.9 (mw) Spokane River No. 2545, Kootenai and Benewah Counties, ID and Spokane, Lincoln and Stevens Counties WA, Wait Period Ends: 08/27/2007. Contact: Andy Black, 1-866-208-3372.

EIS No. 20070310, Draft EIS, AFS, WA, Old Curlew Ranger Station Facilities Disposal Project, Proposal to Sell 3-Acre Parcel Including Buildings, Republic Ranger District, Colville National Forest, South Side of Curlew, Ferry County, WA, Comment Period Ends: 09/10/2007. Contact: James L. Parker, 509-775-7462.

EIS No. 20070311, Draft Supplement, COE, CO, Rueter-Hess Reservoir Expansion Project, Enlarges Reservoir to Provide Storage of Denver Basin Groundwater for Meeting Peak Municipal Water Supply, U.S. Army COE Section 404 Permit, Town of Parker, Douglas County, CO. Comment Period Ends: 09/10/2007. Contact: Rodney J. Schwartz, 402-221-4939.

EIS No. 20070312, Draft EIS, USN, HI, Hawaii Range Complex (HRC) Project, To Support and Maintain Navy Pacific Fleet Training, and Research, Development, Test, and Evaluation

(RDT&E) Operations, Kauai, Honolulu, Maui and Hawaii Counties, HI. *Comment Period Ends:* 09/10/2007. *Contact:* Tom Clements, 866-767-3347.

EIS No. 20070313, Draft EIS, NOA, 00, Amendment 2 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan, To Implement Management Measures that Prevent Overfishing and Rebuild Overfished Stocks Implementation, Exclusive Economic Zone (EEZ) of the Atlantic Ocean, Gulf of Mexico and Caribbean Sea. Comment Period Ends: 10/10/2007. *Contact:* Margo Schulze-Haugen, 301-713-2347.

EIS No. 20070314, Final EIS, FTA, UT, Mid-Jordan Transit Corridor Project, Proposed Light Rail Transit Service, Funding, Salt Lake County, UT. Wait Period Ends: 08/27/2007. *Contact:* Charmaine Knighton, 720-963-3327.

Amended Notices

EIS No. 20070144, Final EIS, AFS, CA, VOID—REPORT—Brown Project, Proposal to Improve Forest Health by Reducing Overcrowded Forest Stand Conditions, Trinity River Management Unit, Shasta-Trinity National Forest, Weaverville Ranger District, Trinity County, CA, Wait Period Ends: 05/21/2007. *Contact:* Joyce Andersen 530-623-2121. This FEIS was inadvertently refilled and published in 04/20/2007. FR. The Correct FEIS #20060252 was published in 06/16/2006 FR.

Dated: July 23, 2007.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7-14568 Filed 7-26-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-2006-0735; FRL-8446-7]

Draft Risk Assessment Report for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about July 31, 2007, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a draft technical support document in EPA's review of the national ambient air quality standards (NAAQS) for lead, Lead Human Exposure and Health Risk Assessments for Selected Case Studies (Draft Risk

Assessment Report). The purpose of the Draft Risk Assessment Report is to describe the design, methodology and results of the human exposure and health risk assessments for lead.

DATES: Comments on the Draft Risk Assessment Report must be received on or before August 29, 2007.

ADDRESSEES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0735, by one of the following methods:

- *www.regulations.gov:* follow the on-line instructions for submitting comments.

- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA-HQ-OAR-2006-0735.

- *Fax:* Fax your comments to: 202-566-9744, Attention Docket ID. No. EPA-HQ-OAR-2006-0735.

- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR-2006-0735.

- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0735. The 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* 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*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1742; fax (202) 566-9744.

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pekar, Office of Air Quality Planning and Standards (mail code C504-06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *pekar.zachary@epa.gov*; telephone: (919) 541-3704; fax: (919) 541-0237.

General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which “cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as “criteria pollutants.” The air quality criteria are to “accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.” Under section 109 of the CAA, EPA establishes NAAQS for each

listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six criteria pollutants for which EPA has established air quality criteria and NAAQS. Presently, EPA is reviewing the air quality criteria and NAAQS for lead. The EPA completed its Air Quality Criteria for Lead (“Criteria Document”) in October, 2006 (71 FR 57508; September 29, 2006).

As part of its review of the NAAQS, EPA is preparing a human exposure and health risk assessment.

In December 2006, a first draft of a technical support document, Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas (Pilot Phase) was released by EPA for public review and comment and for review by the Clean Air Scientific Advisory Committee (CASAC) of EPA’s Science Advisory Board (71 FR 69117; November 29, 2006) at a public meeting held in February 2007. An analysis plan for the risk assessment was previously reviewed by CASAC and the public. Comments received from review of the draft plan and draft pilot phase risk assessment technical support document have been considered in developing the Draft Risk Assessment Report being released at this time.

The draft report, Lead Human Exposure and Health Risk Assessment for Selected Case Studies, describes the

design, methodology and results of the human exposure and health risk assessments for lead. It describes and presents the results from a lead exposure analysis and health risk assessment involving several case studies. The draft document will be available online at: http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_cr_td.html.

The EPA is soliciting advice and recommendations from the CASAC by means of a review on the draft Risk Assessment Report at an upcoming public meeting of the CASAC. A **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a final Risk Assessment Report.

Dated: July 19, 2007.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–14601 Filed 7–26–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC to Hold Open Commission Meeting Tuesday, July 31, 2007

July 24, 2007.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, July 31, 2007, which is scheduled to commence at 10 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Telecommunications and Public Safety & Homeland Security.	Title: Service Rules for the 698–746, 747–762 and 777–792 MHz Bands (WT Docket No. 06–150); Revision of Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102); Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01–309); Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services (WT Docket No. 03–264); Former Nextel Communications, Inc., Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules (WT Docket No. 06–169); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band (PS Docket No. 06–229); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010 (WT Docket No. 96–86). Summary: The Commission will consider a Second Report and Order concerning rules governing wireless licenses in the 698–806 MHz Band, which is spectrum currently occupied by television broadcasters in TV Channels 52–69 and is being made available for wireless services, including public safety and commercial services.
2	Wireless Telecommunications	Title: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers (WT Docket No. 05–265); Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services (WT Docket No. 00–193).

Item No.	Bureau	Subject
		<i>Summary:</i> The Commission will consider a Report and Order addressing Roaming obligations of Commercial Mobile Radio Service providers.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events Web page at <http://www.fcc.gov/realaudio>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993-3100 or go to <http://www.capitolconnection.gmu.edu>.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488-5300; Fax (202) 488-5563; TTY (202) 488-5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e-mail at FCC@BCPIWEB.com.

Marlene H. Dortch,
Secretary.

[FR Doc. 07-3704 Filed 7-25-07; 1:31 pm]

BILLING CODE 0712-01-M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

DATE & TIME: Wednesday, August 1, 2007 to be held at the conclusion of the open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Wednesday, August 1, 2007 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 2007-10: The Reyes Committee, Inc., by Ronald E. Pate, Treasurer.

Advisory Opinion 2007-11: California Republican Party and California Democratic Party by counsel, Charles H. Bell, Jr., and Lance H. Olson.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Robert Biersack, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07-3707 Filed 7-25-07; 3:36 pm]

BILLING CODE 6715-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Department of Health and Human Services

The National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) is soliciting nominations for possible membership on the Board of Scientific Counselors. This Board provides advice and guidance to the Secretary, HHS; the Director, CDC; and the Director, NCEH/ATSDR, regarding

program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The Board provides advice and guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected from experts having experience in preventing human diseases and disabilities caused by environmental conditions. Experts in the disciplines of toxicology, epidemiology, environmental or occupational medicine, behavioral science, risk assessment, exposure assessment, and experts in public health and other related disciplines will be considered. Consideration is given to representation from diverse geographic areas, gender, ethnic and minority groups, and the disabled. Members may be invited to serve up to four-year terms. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: name, affiliation, address, telephone number, and current curriculum vitae. E-mail addresses are requested if available.

Nominations should be sent, in writing, and postmarked by September 17, 2007 to: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., (MS-E28), Atlanta, Georgia 30333. Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7-14537 Filed 7-26-07; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–249, CMS–10238, CMS–102, 105, CMS–10243 and CMS–10244]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Hospice Cost and Data Report and supporting regulations 42 CFR 413.20 and 42 CFR 413.24; **Use:** In accordance with sections 1815(a), 1833(e), 1861(v)(A)(ii) and 1881(b)(2)(B) of the Social Security Act, providers of services in the Medicare program are required to submit annual information to receive reimbursement for health care services provided to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports be filed with the provider's fiscal intermediary/Medicare Administrative Contractor (FI/MAC). The functions of the FI/MAC are described in section 1816 of the Social Security Act. The Center for Medicare and Medicaid Services will use the information from providers for rate evaluations for the Prospective Payment System. **Form Number:** CMS–R–249 (OMB#: 0938–0758); **Frequency:** Reporting: Yearly; **Affected Public:** Business or other for-profit; **Number of Respondents:** 1938; **Total Annual Responses:** 1938; **Total Annual Hours:** 341,088.

2. Type of Information Collection Request: New collection; **Title of Information Collection:** Testing of Revised OASIS Instrument for Home Health Quality Measures & Data Analysis; **Use:** Medicare-certified home health agencies (HHAs) must meet the Conditions of Participation (COPs) as set forth at 42 CFR part 484 and 488. Since 1999, the COPs have mandated that HHAs use the "Outcome and Assessment Information Set" (OASIS) data set when evaluating adult, non-maternity patients receiving skilled services. The OASIS is a patient-specific, comprehensive assessment that identifies each patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs.

Since OASIS data collection was mandated in 1999, CMS has been systematically collecting input on ways to improve the OASIS instrument and reduce the burden of the collection effort. In 2002, CMS introduced the "reduced-burden" OASIS that was a product of the Secretary's Regulatory Reform Advisory Committee to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care. Since the 2002 revision, CMS has continued to solicit input on potential refinements and enhancements of the OASIS instrument from HHAs, industry associations, consumer representatives, researchers and other stakeholders.

Abt Associates and their subcontractor UCHSC were awarded a contract by CMS in September 2006 to continue the process of refining the OASIS data set, as well as for the testing of the instrument and analysis of the impact of proposed changes. Under this contract, researchers from Abt Associates, University of Colorado Health Sciences Center (UCHSC), and Case Western Reserve University have assisted CMS in carrying out the revisions based on the input described in the previous section. Changes to the OASIS instrument include the following removal and revision of items:

- Elimination of 7 original OASIS items not required for payment, quality or risk adjustment;
- Replacement of 44 original OASIS items with items that are revised and/or simplified to respond to industry concerns by increasing clarity and user-friendliness, and/or reducing complexity and burden (e.g., removal of "prior status" assessment for all Activity of Daily Living (ADL) and Instrumental Activity of Daily Living (IADL) items).

The revised OASIS also includes the addition of the following process items to support evidence-based practices:

- A total of 7 process items to be collected only at Start of Care/Resumption of Care, 4 of which are to be asked seasonally (e.g.; flu vaccine);
- A total of 10 process items to be collected only at Follow-up, Transfer or Discharge, either seasonally or on a small subpopulation;
- A total of 13 process items to be collected at all OASIS time points, 6 of which are to be collected on a small subpopulation.

We estimate the elimination, simplification and revision of existing OASIS items will have a burden impact equivalent to the complete elimination of 19 items. Since many of the process items will be collected only on small subpopulations or during specific months of the year, we estimate the impact of the addition of these items on burden to be equivalent to the addition of 20 items. Therefore, total impact of proposed OASIS revisions, including the elimination, revision and addition of items, changes the estimated burden of the OASIS very little while incorporating process measures needed to support evidence-based practices across the post-acute care spectrum. **Form Number:** CMS–10238 (OMB#: 0938–NEW); **Frequency:** Reporting: One-time; **Affected Public:** Private Sector—Business or other for-profit and Not-for-profit institutions; **Number of Respondents:** 11; **Total Annual Responses:** 11; **Total Annual Hours:** 173.58.

3. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Clinical Laboratory Improvement Amendment (CLIA) Budget Workload Reports and Supporting Regulations Contained in 42 CFR 493.1–.2001; **Use:** Information collected will be used by CMS in determining the amount of Federal Reimbursement for compliance surveys. Use of the information includes program evaluation, audit, budget formulation and budget approval; **Form Number:** CMS–102, 105 (OMB#: 0938–0599); **Frequency:** Reporting: Quarterly; **Affected Public:** State, Local or Tribal Governments; **Number of Respondents:** 50; **Total Annual Responses:** 550; **Total Annual Hours:** 4,500.

4. Type of Information Collection Request: New collection; **Title of Information Collection:** Data Collection for Administering the Medicare Continuity Assessment Record and Evaluation (CARE) Instrument; **Use:** The Medicare Continuity Assessment Record and Evaluation (CARE) is a uniform

patient assessment instrument designed to measure differences in patient severity, resource utilization, and outcomes for patients in acute and post-acute care settings. This tool will be used to (1) Standardize program information on Medicare beneficiaries' acuity at discharge from acute hospitals, (2) document medical severity, functional status and other factors related to outcomes and resource utilization at admission, discharge, and interim times during post acute treatment, and (3) understand the relationship between severity of illness, functional status, social support factors, and resource utilization. The CARE instrument will be used in the Post-Acute Care (PAC) Payment Reform Demonstration program mandated by Section 5008 of the Deficit Reduction Act of 2005 to develop payment groups that reflect patient severity and related cost and resource use across post acute settings. Specifically, the data collected using the CARE instrument during the Post-Acute Care Payment Demonstration will be used by CMS to develop a setting neutral post-acute care payment model as mandated by Congress. The data will be used to characterize patient severity of illness and level of function in order to predict resource use, post-acute care discharge placement, and beneficiary outcomes. CMS will use the data from the CARE instrument to examine the degree to which the items on the instrument can be used to predict beneficiary resource use and outcomes. *Form Number:* CMS-10243 (OMB#: 0938-NEW); *Frequency:* Reporting—Daily; *Affected Public:* Private Sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 388; *Total Annual Responses:* 244,292; *Total Annual Hours:* 179,341.

5. Type of Information Collection
Request: New Collection; *Title of Information Collection:* Medicaid State Program Integrity Assessment (SPIA); *Use:* Under the provisions of the Deficit Reduction Act (DRA) of 2005, Congress directed CMS to establish the Medicaid Integrity Program (MIP), CMS' first national strategy to combat Medicaid fraud, waste, and abuse. CMS has two broad responsibilities under the MIP:

- (1) Reviewing the actions of individuals or entities providing services or furnishing items under Medicaid; conducting audits of claims submitted for payment; identifying overpayments; and educating providers and others on payment integrity and quality of care; and
- (2) Providing effective support and assistance to States to combat Medicaid fraud, waste, and abuse.

In order to fulfill the second of these requirements, CMS plans to develop a Medicaid State Program Integrity Assessment (SPIA) system. CMS is seeking approval from the Office of Management and Budget (OMB) to collect information from the States on an annual basis for input into a national SPIA system. Through the SPIA system, CMS will identify current Medicaid program integrity (PI) information, develop profiles for each State based on these data, determine areas to provide States with technical support and assistance, and use the data to develop performance measures to assess States' performance in an ongoing manner; *Form Number:* CMS-10244 (OMB#: 0938-NEW); *Frequency:* Reporting: Yearly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on September 25, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L. Harkless, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 18, 2007.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 07-3647 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R-312]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection
Request: Extension of a currently approved collection; *Title of Information Collection:* Conflict of Interest and Ownership and Control Information *Use:* The Conflict of Interest and Ownership and Control Information Statement (COI Statement) is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier.

The information gathered in the survey is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contractors are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program. Information is also requested on potential organizational conflicts of interest involving Medicare contractors' ownership of other entities in the health care industry. If a response has indicated that a potential conflict of interest exists, the contractor is contacted and asked to address how the conflict can be avoided or mitigated. *Form Number:* CMS-R-312 (OMB#: 0938-0795); *Frequency:* Reporting—Annually; *Affected Public:* Private Sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 37; *Total Annual Responses:* 37; *Total Annual Hours:* 11,100.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on September 25, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 20, 2007.

Michelle Shortt,

*Director, Regulations Development Group,
Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E7-14481 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Virginia Title XXI State Plan Amendment (SPA) No. 6

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing to be held on September 4, 2007, at 150 S. Independence Mall West, Suite 216, Conference Room #241, Pennsylvania Room, The Public Ledger Building, Philadelphia, PA 19106-3499, to reconsider CMS' decision to disapprove Virginia's title XXI SPA No. 6.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB-23-20, Baltimore, Maryland 21244, *Telephone:* (410) 786-2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Virginia's title XXI SPA No. 6, which was submitted on June 29,

2004. This SPA was disapproved on April 20, 2007.

Under this SPA, the State requested the addition of new school-based health services to the State Children's Health Insurance Program (SCHIP) Family Access to Medical Insurance Security (FAMIS) benefit package.

The amendment was disapproved because CMS found that the amendment violated the statute for reasons set forth in the disapproval letter.

The following issues are to be decided at the hearing:

(1) Whether Virginia provided all information necessary to establish that the proposed SPA, in the context of its State child health plan, conformed to all requirements of the SCHIP statute and implementing regulations, including:

(a) Information on the exact nature of the services to be covered; whether those services are within the definition of child health assistance at section 2110(a) of the Social Security Act (Act);

(b) Information on proposed provider qualifications necessary to ensure the quality and appropriateness of care pursuant to section 2102(a)(7) of the Act and ensure that services are provided in an effective manner pursuant to section 2101(a) of the Act, and;

(c) Information on the budgetary impact necessary to ensure that services are provided in an effective and efficient manner.

(2) In the absence of such information, whether a disapproval was warranted when 950 days had passed after CMS had requested that information.

The Commonwealth of Virginia's title XXI SPA No. 6 was submitted to the CMS on June 29, 2004, with a requested retroactive effective date of August 3, 2003. This amendment requested the addition of new school-based health services to the State's SCHIP FAMIS benefit package.

A request for additional information (RAI) was submitted to the State on August 18, 2004, which stopped the 90-day review period. The RAI included questions concerning the nature of the proposed services, the qualifications of the providers, and the budgetary impact of the amendment.

To date, the State has not responded to the request for additional information.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, Subpart D, and section 457.203 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the

hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice pursuant to 42 CFR 430.74(a).

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). A hearing may be rescheduled by written agreement between CMS and a State pursuant to 42 CFR 430.72(a).

The notice to Virginia announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Brian McCormick,
Department of Medical Assistance Services,
Commonwealth of Virginia, 600 East Broad
Street, Suite 1300, Richmond, VA 23219.

Dear Mr. McCormick: I am responding to your request for reconsideration of the decision to disapprove Virginia's title XXI State plan amendment (SPA) No. 6, which was submitted on June 29, 2004, and was disapproved on April 20, 2007.

Under this SPA, the State requested the addition of new school-based health services to the State Children's Health Insurance Program (SCHIP) Family Access to Medical Insurance Security (FAMIS) benefit package. The amendment was disapproved because the Centers for Medicare & Medicaid Services (CMS) was not certain if the amendment was in compliance with section 2106(c) of the Social Security Act (the Act) because the State did not respond to a request for additional information dated August 18, 2004. In the absence of a response, the SPA was disapproved because there was insufficient information to make the necessary determination.

The following issues are to be decided at the hearing:

(1) Whether Virginia provided all information necessary to establish that the proposed SPA, in the context of its State child health plan, conformed to all requirements of the SCHIP statute and implementing regulations, including:

(a) Information on the exact nature of the services to be covered; whether those services are within the definition of child health assistance at section 2110(a) of the Act;

(b) Information on proposed provider qualifications necessary to ensure the quality and appropriateness of care pursuant to section 2102(a)(7) of the Act and ensure that services are provided in an effective manner pursuant to section 2101(a) of the Act, and;

(c) Information on the budgetary impact necessary to ensure that services are provided in an effective and efficient manner.

(2) In the absence of such information, whether a disapproval was warranted when 950 days had passed after CMS had requested that information.

The Commonwealth of Virginia's title XXI SPA No. 6 was submitted to CMS on June 29, 2004, with a requested retroactive effective date of August 3, 2003. This amendment requested the addition of new school-based health services to the State's SCHIP FAMIS benefit package.

A request for additional information was submitted to the State on August 18, 2004, which stopped the 90-day review period. The request for information included questions concerning the nature of the proposed services, the qualifications of the providers, and the budgetary impact of the amendment.

To date, the State has not responded to this request for information.

I am scheduling a hearing on your request for reconsideration to be held on September 4, 2007, at 150 S. Independence Mall West, Suite 216, Conference Room #241 (Pennsylvania Room), The Public Ledger Building, Philadelphia, PA 19106-3499, to reconsider the decision to disapprove SPA No. 6. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430, Subpart D, and section 457.203.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786-2055. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,
Leslie V. Norwalk, Esq.,
Acting Administrator.

Section 1116 of the Social Security Act
(42 U.S.C. section 1316); 42 CFR
430.18)

(Catalog of Federal Domestic Assistance
program No. 13.714, Medicaid Assistance
Program.)

Dated: July 20, 2007.

Leslie V. Norwalk,

*Acting Administrator, Centers for Medicare
& Medicaid Services.*

[FR Doc. E7-14607 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS-2272-PN]

Medicare and Medicaid Programs; Application by the American Osteopathic Association (AOA) for Continued Deeming Authority for Critical Access Hospitals (CAHs)

AGENCY: Centers for Medicare and
Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of a deeming application from the American Osteopathic Association (AOA) for continued recognition as a national accrediting organization for Critical Access Hospitals (CAH) that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 27, 2007.

ADDRESSES: In commenting, please refer to file code CMS-2272-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2272-PN, P.O. Box 8015, Baltimore, MD 21244-8015.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one

original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2272-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Cindy Melanson, (410) 786-0310. Patricia Chmielewski, (410) 786-6899.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-2272-PN and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a CAH provided certain requirements are met. Sections 1820(c)(2)(B) and 1861(mm) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as a CAH. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 485, subpart F specify the conditions that a CAH must meet in order to participate in the Medicare program; the scope of covered services and the conditions for Medicare payment for CAHs are set out at 42 CFR 413.70.

Generally, in order to enter into a provider agreement with the Medicare program, a CAH must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 485, subpart F of CMS regulations. Thereafter, the CAH is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we shall deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under 42 CFR part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the

accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the reapproval of accrediting organizations are set forth at 42 CFR 488.4 and 488.8(d)(3). The regulations at 42 CFR 488.8(d)(3) require accrediting organizations to reapply for continued authority every six years or sooner as determined by us.

On September 28, 2001, we approved AOA as an accrediting organization for CAHs (66 FR 49677), effective December 27, 2001, for a six-year term. The AOA's term of approval as a recognized accrediting organization for CAHs expires December 27, 2007.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act and our regulations at 42 CFR 488.8(a) require that our findings concerning review and reapproval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: Requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(b)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice that: identifies the national accrediting body making the request; describes the nature of the request; and provides at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish approval or denial of the application.

The purpose of this proposed notice is to inform the public of AOA's request for continued deeming authority for CAHs. This notice also solicits public comment on whether AOA's requirements meet or exceed the Medicare conditions for participation for CAHs.

III. Evaluation of Deeming Authority Request

AOA submitted all the necessary materials to enable us to make a determination concerning its request for reapproval as a deeming organization for CAHs. This application was determined to be complete on May 31, 2007. Under Section 1865(b)(2) of the Act and our regulations at 42 CFR 488.8 (Federal review of accrediting organizations), our review and evaluation of AOA will be conducted in

accordance with, but not necessarily limited to, the following factors:

- The equivalency of AOA standards for a CAH as compared with CMS' CAH conditions of participation.

- AOA's survey process to determine the following:

- The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
- The comparability of AOA processes to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
- AOA's processes and procedures for monitoring CAHs found out of compliance with AOA program requirements. These monitoring procedures are used only when AOA identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at 42 CFR 488.7(d).
- AOA's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
- AOA's capacity to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
- The adequacy of AOA's staff and other resources, and its financial viability.
- AOA's capacity to adequately fund required surveys.
- AOA's policies to assure that surveys are unannounced.
- AOA's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this proposed notice.

In accordance with Executive Order 13132, we have determined that this proposed notice would not have a significant effect on the rights of States, local or tribal governments.

Authority: Section 1865 of the Social Security Act (42 U.S.C. 1395bb).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 12, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7-14100 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1388-N]

Medicare Program; Request for Nominations and Meeting of the Practicing Physicians Advisory Council, August 27, 2007

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice invites all organizations representing physicians to submit nominations for consideration to fill four seats on the Practicing Physicians Advisory Council (the Council) that will be vacated by current Council members in 2008. This notice also announces a quarterly meeting of the Council. The Council will meet to discuss certain proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary of Health and Human Services (the Secretary). This meeting is open to the public.

DATES: *Meeting Date:* Monday, August 27, 2007, from 8:30 a.m. to 5 p.m. e.d.t.

Deadline for Registration without Oral Presentation: Thursday, August 23, 2007, 12 noon, e.d.t.

Deadline for Registration of Oral Presentations: Friday, August 10, 2007, 12 noon, e.d.t.

Deadline for Submission of Oral Remarks and Written Comments: Wednesday, August 15, 2007, 12 noon, e.d.t.

Deadline for Requesting Special Accommodations: Monday, August 20, 2007, 12 noon, e.d.t.

Deadline for Submitting Nominations: Friday, September 14, 2007, 5 p.m. e.d.t.

ADDRESSES: *Meeting Location:* The meeting will be held in the Multi-purpose Room, 1st floor, at the CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244.

Submission of Testimony: Testimonies should be mailed to Kelly Buchanan, DFO, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Mail stop C4-13-07, Baltimore, MD 21244-1850, or contact the DFO via e-mail at PPAC@cms.hhs.gov.

Submission of Nominations: Mail or deliver nominations to the Centers for Medicare and Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Kelly Buchanan, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4-13-07, Baltimore, Maryland 21244-1850.

FOR FURTHER INFORMATION CONTACT: Kelly Buchanan, the Designated Federal Official (DFO), (410) 786-6132, or e-mail PPAC@cms.hhs.gov. News media representatives must contact the CMS Press Office, (202) 690-6145. Please refer to the CMS Advisory Committees' Information Line (1-877-449-5659 toll free), (410) 786-9379 local) or the Internet at <http://www.cms.hhs.gov/home/regsguidance.asp> for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the quarterly meeting of the Practicing Physicians Advisory Council (the Council). The Secretary is mandated by section 1868(a)(1) of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain

proposed changes in regulations and manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the Council's consultation must occur before **Federal Register** publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) not later than December 31 of each year.

The Council consists of 15 physicians, including the Chair. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians as described in section 1861(r)(1) of the Act, that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms.

Section 1868(a)(2) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Section 1868(a)(3) of the Act provides for payment of expenses and per diem for Council members in the same manner as members of other advisory committees appointed by the Secretary. In addition to making these payments, the Department of Health and Human Services and CMS provide management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs in a manner to ensure appropriate balance of the Council's membership.

The Council held its first meeting on May 11, 1992. The current members are: Anthony Senagore, M.D., Chairperson; Jose Azocar, M.D.; M. Leroy Sprang, M.D.; Karen S. Williams, M.D.; Peter Grimm, D.O.; Jonathon E. Siff, M.D., MBA; John E. Arradondo, M.D., MPH; Helena Wachslight Rodbard, M.D.; Vincent J. Bufalino, M.D.; Tye J. Ouzounian, M.D.; Geraldine O'Shea, D.O.; Arthur D. Snow, Jr., M.D.; Gregory J. Przybylski, M.D.; Jeffrey A. Ross, DPM, M.D.; and Roger L. Jordan, O.D.

II. Nomination Requirements

Nominations must be submitted by medical organizations representing physicians. Nominees must have submitted at least 250 claims for

physician services under the Medicare program in the previous year. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. All candidates are advised to consider the time commitment of 1 full-day meeting, quarterly. If a candidate's current responsibilities preclude this level of commitment, we urge the individual to reconsider his or her nomination.

To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Consideration will be given to each nominee with regard to his or her leadership credentials, geographic and demographic factors, and projected PPAC needs. Final selections will incorporate these criteria to maintain a committee membership that is fairly balanced in terms of points of view represented and the committee's function. Selections will be made by February 2008 with new members sworn in during the May 2008 meeting.

Nominations to fill vacancies on the Council will be considered if received at the address listed in the **ADDRESSES** section of the notice, no later than date listed in the **DATES** section of this notice. All nominating organizations will be notified in writing of those candidates selected for committee membership.

III. Meeting Format and Agenda

The meeting will commence with the Council's Executive Director providing a status report, and the CMS responses to the recommendations made by the Council at the May 21, 2007 meeting, as well as prior meeting recommendations. Additionally, an update will be provided on the Physician Regulatory Issues Team. In accordance with the Council charter, we are requesting assistance with the following agenda topics:

- Coverage with Evidence Development.
- Recovery Audit Contract (RAC) Update.
- Medically Unlikely Edits (MUE) Update.
- Physician Fee Schedule Proposed Rule.
- Outpatient Prospective Payment System (OPPS) and Ambulatory Surgical Center (ASC) Proposed Rules.
- Medicare Contractor Provider Satisfaction Survey (MCPSS).
- National Provider Identifier (NPI) Data Dissemination Notice.

For additional information and clarification on these topics, contact the DFO as provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to present a 5-minute oral testimony on agenda issues must register with the DFO by the date listed in the **DATES** section of this notice. Testimony is limited to agenda topics only. The number of oral testimonies may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to the DFO for distribution to Council members for review before the meeting by the date listed in the **DATES** section of this notice. Physicians and medical organizations not scheduled to speak may also submit written comments to the DFO for distribution by the date listed in the **DATES** section of this notice.

IV. Meeting Registration and Security Information

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at (410) 786-6132 by the date specified in the **DATES** section of this notice.

Since this meeting will be held in a Federal Government Building, the CMS Central Office, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. To gain access to the building, participants will be required to show a government-issued photo identification (for example, driver's license, or passport), and must be listed on an approved security list before persons are permitted entrance. Persons not registered in advance will not be permitted into the CMS Central Office and will not be permitted to attend the Council meeting.

All persons entering the building must pass through a metal detector. In addition, all items brought to the CMS Central Office, whether personal or for the purpose of presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for the purpose of presentation.

Individuals requiring sign language interpretation or other special accommodation must contact the DFO via the contact information specified in the **FOR FURTHER INFORMATION CONTACT**

section of this notice by the date listed in the **DATES** section of this notice.

Authority: (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, section 10(a)).)

Dated: June 28, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E7-14072 Filed 7-26-07; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 19, 2007, from 8 a.m. to 6 p.m., and September 20, 2007, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: James Swink, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240-276-4179, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 19, 2007, the committee will discuss, make

recommendations and vote on a premarket approval application, sponsored by SyntheMed, Inc., for the REPEL-CV, which is a surgical adjuvant indicated for reducing the incidence, severity and extent of post-operative adhesion formation in patients undergoing cardiac surgery.

On September 20, 2007, the committee will discuss and make recommendations regarding clinical trial designs for cardiac ablation devices designed to treat patients with medically refractory atrial fibrillation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 5, 2007. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations on each day and for approximately 30 minutes near the end of the deliberations on each day. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time requested to make their presentation on or before August 28, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 29, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240-276-8932, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 23, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7-14600 Filed 7-26-07; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps Loan Repayment Program (OMB No. 0915-0127)—Extension

The National Health Service Corps (NHSC) Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health care professionals to provide services in the neediest Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-designated HPSA approved by the Secretary for LRP participants.

The NHSC LRP forms provide information that is needed for selecting participants and making determinations regarding repayment of qualifying loans for education. The LRP forms include the following: The NHSC LRP Application; the Loan Information and Verification form; the Community Site Information form; the Applicant Checklist; the Payment Information form; and the Authorization to Release Information form.

The estimated annual burden is as follows:

Type of form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
NHSC LRP Application	1920	1	1920	.5	960
Community Site Information form	1920	1	1920	.25	480
Loan Information and Verification form	1920	3	5760	.25	1440
Authorization to Release Information	1920	1	1920	.1	192
Applicant Checklist	1920	1	1920	.2	384
Lenders	80	1	80	.25	20
Total	2000	.....	9680	1.55	3476

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to OIRA_submission@omb.eop.gov

or by fax to 202-395-6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: July 5, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7-14525 Filed 7-26-07; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: August 13, 2007, 1 p.m.-5 p.m., EST.

Place: (Audio Conference Call).

The ACICBL will meet on Monday, August 13, 2007 from 1 p.m. to 5 p.m. (EST). The public can join the meeting via audio conference by dialing 1-888-697-8510 and providing the following information:

Leader's Name: Mr. Lou Coccodrilli.

Passcode: 43495.

Status: The meeting will be open to the public; teleconference access limited only by availability of telephone ports.

Purpose: The Committee will continue to focus on issues related to Health Information Technology/Electronic Medical Records (HIT/EMR) and its potential impact on Title VII Interdisciplinary, Community-Based Training Grant Programs identified under sections 751-756, Part D of the Public Health Service Act. The Committee may invite speakers to highlight various topics related to HIT/EMR including, but not limited to benefits and barriers; consumer privacy and confidentiality; implications on underserved and unserved populations, rural, geriatric and other populations; implementation and use of EMRs across various settings, i.e., hospitals, inpatient settings and ambulatory care sites (Health Centers, Rural Health Clinics); academic settings, i.e., interdisciplinary and community-based education and training of health professionals; health literacy and patient education; as well as the future of HIT/EMR as an interoperable system to enhance health care delivery. The meeting will allow committee members the opportunity to identify and discuss current efforts involving HIT/EMR and formulate appropriate recommendations for the Secretary and the Congress regarding the use of advanced technology to enhance interdisciplinary and community-based training of health professions students and practicing health professionals.

Agenda: The agenda includes an overview of the Committee's general business activities, presentations by experts on HIT/EMR related topics, and discussion sessions for the development of recommendations to be addressed in the Seventh Annual ACICBL Report.

Agenda items are subject to change as dictated by the priorities of the Committee.

FOR FURTHER INFORMATION CONTACT:

Anyone requesting information regarding the Committee should contact

Louis D. Coccodrilli, Designated Federal Official for the ACICBL, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Rm 9-05, 5600 Fishers Lane, Rockville, Maryland 20857; (301) 443-6950 or lcoccodrilli@hrsa.gov. Vanessa Saldanha, Public Health Fellow can also be contacted for inquiries at (301) 443-6529 or vsaldanha@hrsa.gov.

Dated: July 24, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7-14528 Filed 7-26-07; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibodies that Neutralize B. anthracis Protective Antigen (PA), Lethal Factor (LF) and Edema Factor (EF)

Description of Technology: Anthrax, whether resulting from natural or bioterrorist-associated exposure, is a constant threat to human health. The lethality of anthrax is primarily the result of the effects of anthrax toxin, which has 3 components: a receptor-binding protein known as "protective antigen" (PA) and 2 catalytic proteins known as "lethal factor" (LF) and "edema factor" (EF). Although

production of an efficient anthrax vaccine is an ultimate goal, the benefits of vaccination can be expected only if a large proportion of the population at risk is immunized. The low incidence of anthrax suggests that large-scale vaccination may not be the most efficient means of controlling this disease. In contrast, passive administration of neutralizing human or chimpanzee monoclonal antibody to a subject at risk for anthrax or exposed to anthrax could provide immediate efficacy for emergency prophylaxis against or treatment of anthrax.

Four monoclonal antibodies (mAbs) against PA, three mAbs against LF and four mAbs specific for EF of anthrax were isolated from a phage display library generated from immunized chimpanzees. Two mAbs recognizing PA (W1 and W2), two anti-LF mAbs efficiently neutralized the cytotoxicity of lethal toxin in a macrophage lysis assay. One anti-EF mAb efficiently neutralized edema toxin in cell culture. All five neutralizing mAbs protected animals from anthrax toxin challenge.

Application: Prophylactics or therapeutics against *B. anthracis*.

Developmental Status: Preclinical studies have been performed.

Inventors: Zhaochun Chen, Robert Purcell, Suzanne Emerson, Stephen Leppla, Mahtab Moyer (NIAID).

Publication: Z Chen et al. Efficient neutralization of anthrax toxin by chimpanzee monoclonal antibodies against protective antigen. *J Infect Dis*. 2006 Mar 1;193(5):625-633. Epub 2006 Feb 2.

Patent Status: U.S. Provisional Application No. 60/903,022 filed 23 Feb 2007 (HHS Reference No. E-123-2007/0-US-01); U.S. Patent Application filed 22 Jun 2007 (HHS Reference No. E-146-2004/0-US-03).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Chimpanzee/human neutralizing monoclonal antibodies against anthrax toxins. Please contact Dr. Robert Purcell at 301-496-5090 for more information.

Use of Amyloid Proteins as Vaccine Scaffolds

Description of Technology: Amyloid proteins are composed of peptides

whose chemical properties are such that they spontaneously aggregate in vitro or in vivo, assuming parallel or antiparallel beta sheet configurations. Amyloid proteins can arise from peptides which, though differing in primary amino acid sequences, assume the same tertiary and quaternary structures. The amyloid structure presents a regular array of accessible N-termini of the peptide molecules.

Claimed in this application are compositions and methods for use of amyloid proteins as vaccine scaffolds, on which peptide determinants from microorganisms or tumors may be presented to more efficiently generate and produce a sustained neutralizing antibody response to prevent infectious diseases or treat tumors. The inventors have arrayed peptides to be optimally immunogenic on the amyloid protein scaffold by presenting antigen using three different approaches. First, the N-terminal ends of the amyloid forming peptides can be directly modified with the peptide antigen of interest; second, the N-termini of the amyloid forming peptides are modified with a linker to which the peptide antigens of interest are linked; and third, the scaffold amyloid may be modified to create a chimeric molecule.

Aside from stability and enhanced immunogenicity, the major advantages of this approach are the synthetic nature of the vaccine and its low cost. Thus, concerns regarding contamination of vaccines produced from cellular substrates, as are currently employed for some vaccines, are eliminated; the robust stability allows the amyloid based vaccine to be stored at room temperature for prolonged periods of time; and the inexpensive synthetic amino acid starting materials, and their rapid spontaneous aggregation in vitro should provide substantial cost savings over the resource and labor-intensive current vaccine production platforms.

Application: Immunization to prevent infectious diseases or treat chronic conditions or cancer.

Developmental Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: Amy Rosenberg (CDER/FDA), James E. Keller (CBER/FDA), Robert Tycko (NIDDK).

Patent Status: U.S. Provisional Application No. 60/922,131 filed 06 Apr 2007 (HHS Reference No. E-106-2007/0-US-01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435-4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The FDA, Division of Therapeutic Proteins (CDER) and Office of Vaccines, Division of Bacterial Products (CBER) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize amyloid based vaccines for prevention of infectious disease or treatment of malignant states. Please contact Amy Rosenberg at amy.rosenberg@fda.hhs.gov or (301) 827-1794 for more information.

Dated: July 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7-14500 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Transgenic Mouse Model for Lupus and Other Autoimmune Diseases

Description of Technology: The inventors have developed a series of transgenic mice that overexpress Toll-Like Receptor 7 (TLR7) at different levels. Overexpression of TLR7 in these mice results in a lupus-like syndrome, the intensity of which correlates with

the level of overexpression. As the pathology in these mice results from the overexpression of a single gene, it represents a superior model for lupus and other autoimmune diseases compared to other existing mouse models that dysregulate multiple genes to achieve the same pathologic syndrome.

Two strains are currently available. The TLR7.Tg1 strain overexpresses TLR7 at approximately 16 times the wild-type level. The TLR7.Tg6 strain overexpresses TLR7 at approximately 4 times the level of a wild-type mouse; additionally, the transgene for this strain is located on the Y chromosome, which would be advantageous for cross-breeding to other mouse lines.

Inventors: Jonathan Deane *et al.* (NIAID).

Related Publication: P. Pisitkun *et al.* Autoreactive B cell responses to RNA-related antigens due to TLR7 gene duplication. *Science* 2006 Jun 16;312(5780):1669-1672.

Patent Status: HHS Reference No. E-128-2007/0—Research Tool.

Licensing Status: This technology is available for nonexclusive licensing.

Licensing Contact: Tara L. Kirby, Ph.D.; 301/435-4426; tarak@mail.nih.gov.

Dysphagia Rehabilitation (Swallowing Recovery): Vibro-Tactile Stimulation Device and Method for Motor Control Recovery

Description of Technology: Available for licensing and/or commercial development under a scientific collaboration, are device and method patents for volitional swallowing with a substitute sensory system. The inventions are potentially applicable to a wide variety of indications, including recovery post-stroke and post extubation for example, after coronary bypass surgery. The device is being tested in dysphagic patients in two, ongoing clinical trials at the National Institutes of Health. A collaborator or licensee is needed to support further clinical trials, validation studies, and final package development.

Device: For the device patent, upon activation a vibrator moves and vibrates the larynx. Patients can initiate sensory stimulation immediately prior to the patient's own initiation of a swallow. Specifically, the device allows the patient to coordinate muscular movement with a button press to permit volitional swallowing. The device can also include a movement sensor for monitoring pressure on the patient's larynx and a swallowing detector. The swallowing detector includes a piezoelectric stretch receptor and a

stimulator, coupled to the movement sensor, for applying pressure to a patient's larynx prior to swallowing. The device can also be used to automatically trigger and retrain swallowing to prevent aspiration pneumonia post stroke or post extubation.

Method: For the method patent, the instant device has also been claimed in a patent application asserting rights for improving voluntary initiation of swallowing in neurologically impaired patients. Swallowing recovery alleviates the risk of aspiration by augmenting volitional control using a simultaneous motor act (e.g., such as pressing a button to indicate when they are ready to swallow). It is believed that such motor training also initiates sensory stimulation, immediately preceding the motor act, and that such sensory stimulation enhances excitation of a central pattern generator in the brain stem that augments the volitional control of swallowing. This principle is applicable to other neurological impairments; their associated enhancement of voluntary motor act control by the patient initiating immediately concurrent and related sensory stimulations. Neurological impairments that are contemplated include reflex actions involving interactions between afferent and efferent paths (at the spinal cord or in the brain stem) as well as higher order interactions. This invention includes methods for treating neurologically impaired humans using devices such as those that produce vibratory stimulation, pressure stimulation, auditory stimulation, temperature stimulation, visual stimulation, olfactory stimulation, taste stimulation, or a combination of these. Combinations of two or more stimulation types are particularly useful. For example, the combined use of button press training with simultaneous vibratory and pressure stimulation on the neck to augment feedback to the brain stem swallowing centers to facilitate voluntary control of swallowing (thought to be largely an involuntary brain stem function) is particularly useful for treating dysphagic patients. Alternatively automatic cycles of stimulation at intervals during the day can be used for intensive retraining of swallowing post stroke or post-extubation to prevent aspiration.

Inventors: Christy Ludlow (NINDS), Christopher Poletto (NINDS), Janessa Humbert (NINDS), Newlin Morgan (NIMH).

Patent Status: PCT Application No. PCT/US2006/025535 (HHS Reference No. E-251-2005/1-PCT-02).

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435-5019; shmilovm@mail.nih.gov.

Collaborative Research Opportunity: For research and development collaborations with inventors, contact Heather Gunas at 301-435-3944 or e-mail at gunash@mail.nih.gov.

Dated: July 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7-14501 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Patient Oriented Research Career Development Award (K23's).

Date: August 23, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge Center 2, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892-7924, 301-435-0287, roltschm@nhbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 92.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-3668 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of SBIR/STTR Applications; RFA AA-07-009/10.

Date: August 13, 2007.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philippe Marmillot, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, RM 3045, Bethesda, MD 20892, 301-443-2861, marmillotp@mail.nih.gov.

(Catalogue of Federal domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 20, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-3667 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 17, 2007.

Open: 8:30 a.m. to 1:15 p.m.

Agenda: Report from the Institute Director, other Institute staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 1:15 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging and Bioengineering, 6701 Democracy Blvd., Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's Center's home page: <http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm>, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-3669 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Migraine: Neural Mechanisms and Risk Factors for Progression.

Date: August 1, 2007.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892-9529, 301-594-0635, rc218u@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-3670 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute on Aging; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Biochemical Risk Markers.

Date: July 31, 2007.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-401-7704, crucew@nia.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07-3671 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute for Child Health and Human Development; National Children's Study 2007 Research Plan**

ACTION: Notice; opportunity for review and comment.

SUMMARY: Attached is the proposed Research Plan for the National

Children's Study (NCS). The purpose of this notice is to inform scientific reviewers, professional colleagues, contributors, and all who are interested in this ground-breaking initiative, of the opportunity for review and comment. The Research Plan describes the Study's background, design, measures, and the rationale for their selections in sufficient detail so that readers can understand the basis of the Study and how it will be carried out. This plan was developed with input from scientists and other professionals across the country and from multiple federal agencies, especially the National Institute of Child Health and Human Development (NICHD) and the National Institute of Environmental Health Sciences (NIEHS) at the National Institutes of Health (NIH), the Centers for Disease Control and Prevention, and the U.S. Environmental Protection Agency (EPA). We welcome constructive comments and proposals for how the National Children's Study might address the pressing health concerns of our nation's children even more effectively. Procedures for commenting and communicating about the Research Plan are found on the NCS Web site at: http://www.nationalchildrensstudy.gov/research/research_plan/index.cfm.

DATES: Submit responses to the National Children's Study (see below) on or before September 25, 2007.

FOR FURTHER INFORMATION CONTACT: The National Children's Study, NICHD, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892. Telephone: 301-594-9147, Fax: 301-480-1222, e-mail: ncsinfo@mail.nih.gov, Internet at: <http://www.nationalchildrensstudy.gov>.

SUPPLEMENTARY INFORMATION: The National Children's Study is a long-term study of child health conducted in the United States. By following 100,000 children from before birth to age 21, Study researchers hope to better understand how children's genes and their environments interact to affect their health and development. In the Study, "environment" includes factors such as: Air, water, and house dust; what children eat; how they are cared for; the safety of their neighborhoods; and how often they see a doctor.

The goal of the National Children's Study is to provide information that will ultimately lead to improvements in the health, development, and well-being of children. The primary aim of the Study is to investigate the separate and combined effects of environmental exposures (chemical, biological, physical, psychosocial) as well as gene-environment interactions on pregnancy

outcomes, child health and development, and precursors of adult disease.

The Study will examine important health issues, including: birth defects and pregnancy-related problems, injuries, asthma, obesity and diabetes, and behavior, learning, and mental health disorders. By establishing links between children's environments and their health, and charting their development through infancy, childhood, and early adulthood, the Study hopes to determine the root causes of many childhood and adult diseases. Findings from the Study will benefit all Americans by providing researchers, health care providers, and public health officials with information from which to develop prevention strategies, health and safety guidelines, and possibly new treatments and cures for disease.

The Study will employ a national probability sampling approach to select locations for conduct of the study. The sampling design utilizes a multistage clustered approach. In the first stage, 105 locations (generally corresponding to single counties) were randomly selected from all U.S. counties. Seven of the locations will serve as the Vanguard Locations and will participate in the pilot phase of the Study. Because the focus of the study includes assessment of the impact of exposures that occur early in pregnancy, both pregnant women and their partners, and women of childbearing age, comprise the initial target population for enrollment in each of the Study Locations. At the time of enrollment, participants will be asked to provide written informed consent for participation in the study. Three distinct groups will be enrolled and followed: Pregnant women and their partners, couples planning pregnancy, and women not currently planning pregnancy but with some probability of becoming pregnant during the four year enrollment timeframe.

The National Children's Study is in a unique position to answer many questions regarding the effects of environmental exposures on the long-term health of children. The focus on exposures prior to and early in pregnancy is a unique feature of this study, as is the breadth of planned exposure and outcome measurements. As technology continues to evolve, stored data specimens (biologic and environmental) will provide a valuable resource to answer important questions for future generations.

The prospective longitudinal design of the study will permit an in-depth examination of the effects of environmental exposures as they unfold

over the course of development. This will include an unprecedented, process-oriented understanding of how exposures at particular points in development lead to both immediate and long-term consequences for children, and what circumstances, characteristics, or genetic predispositions mediate or moderate the relation between exposure and outcome. The size and representative nature of the sample will permit both valid inferences about the U.S. population as a whole, and exploration of subgroup-specific patterns of adaptation and maladaptation.

Additionally, the data collected for the Study will provide a platform for future research. Data, biological samples, and environmental samples will be available for future studies as science evolves and new questions arise. The Study will serve as an exceptional resource both for science and for society.

Duane Alexander,

Director, National Institutes of Child Health and Human Development, National Institutes of Health.

[FR Doc. E7-14514 Filed 7-26-07; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 15893) on

April 3, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 27, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit.

OMB Number: 1651-0003.

Form Number: Form CBP-7512 and 7512-A.

Abstract: This collection involves the movement of imported merchandise from the port of importation to another CBP port prior to release of the merchandise.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 23 hours.

Estimated Total Annual Burden Hours: 1,162,000 hours.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: July 19, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7-14493 Filed 7-26-07; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Application for Exportation of Articles Under Special Bond

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Exportation of Articles Under Special Bond. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 15892) on April 3, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 27, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Exportation of Articles under Special Bond.

OMB Number: 1651-0004.

Form Number: Form CBP-3495.

Abstract: This collection of information is used by importers for articles entered into the United States temporarily. These articles are free of duty under bond, and are exported within one year from the date of importation.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1500.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs

and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: July 19, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7-14494 Filed 7-26-07; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2007-0070]

Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as "COACH") will meet on August 16, 2007 in Washington, DC. The meeting will be open to the public.

DATE: COAC will meet Thursday, August 16th from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed it business.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Written material and comments should reach the contact person listed below by August 6th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by August 9, 2007. Comments must be identified by USCBP-2007-0070 and may be submitted by one of the following methods:

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

- *E-mail:* traderelations@dhs.gov. Include the docket number in the subject line of the message.

- *Fax:* 202-344-2064.

- *Mail:* Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border

Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; traderelations@dhs.gov; telephone 202-344-1440; facsimile 202-344-2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The third meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. International Container Security Standards.
2. Post-Incident Business Resumption.
3. Advance Data Elements.
4. Secure Freight Initiative/Supply Chain Security.
5. Office of International Trade.
6. Intellectual Property Rights.
7. ACE Program.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a

security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Monday, August 13, 2007, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: July 23, 2007.

Michael C. Mullen,

Assistant Commissioner, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E7-14495 Filed 7-26-07; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5162-01]

Draft Conformity Determination for the Proposed East River Waterfront Esplanade and Piers Project, City of New York, New York County, NY

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability.

SUMMARY: In accordance with the federal Clean Air Act General Conformity rule, the Lower Manhattan Development Corporation (LMDC) has prepared a draft general conformity determination (Draft Conformity Determination) for the proposed East River Waterfront Esplanade and Piers Project (Proposed Action), which has been made available for public review. LMDC is a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York) and is responsible for conducting reviews of projects receiving HUD funds in accordance HUD regulations and federal law. The Proposed Action would improve a two mile portion of the East River waterfront in Manhattan and create a City-owned public open space. The area of the Proposed Action would generally encompass the waterfront, the upland area adjacent to and under the elevated Franklin Delano Roosevelt Drive and South Street extending from the

Whitehall Ferry Terminal and Peter Minuit Plaza on the South to East River Park on the North, as well as Pier 15, the New Market Building pier, Pier 35, Pier 36, and Pier 42. The Proposed Action is fully described in the Final Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project (FEIS).

DATES: *Comments Due Date:* August 27, 2007.

ADDRESSES: The Draft Conformity Determination is available for review at the Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006.

The Draft Conformity Determination is also available on the LMDC Web site at <http://www.renewnyc.com> in the "Planning, Design & Development" section.

All comments must be in writing and received by LMDC within 30 days after publication of this notice or they will not be considered. Written comments should be sent to the Lower Manhattan Development Corporation, Attention: Christina Hynes, East River Waterfront Esplanade and Piers Project, One Liberty Plaza, 20th Floor, New York, NY 10006. LMDC published a notice of this Draft Conformity Determination in a daily newspaper of general circulation on June 2, 2007 and provided 30 days for public comment. LMDC also provided all relevant agencies with this Draft Conformity Determination as required by 40 CFR 93.153(h)(2).

FOR FURTHER INFORMATION CONTACT: Christina Hynes, Lower Manhattan Development Corporation, One Liberty Plaza, 20th Floor, New York, NY 10006; Telephone: (212) 962-2300; Fax: (212) 962-2431.

SUPPLEMENTARY INFORMATION

A. Description of Proposed Action

The Proposed Action is located in Manhattan, New York County, which has been designated by the United States Environmental Protection Agency (EPA) as a moderate non-attainment area for particulate matter less than 10 micrometers in aerodynamic diameter (PM₁₀), a non-attainment area for particulate matter less than 2.5 micrometers in aerodynamic diameter (PM_{2.5}), and a moderate non-attainment area for the 8-hour ozone standard. New York County was previously designated by the EPA as a severe non-attainment area for the 1-hour ozone standard. The area is in attainment for all other criteria pollutants: Nitrogen dioxide (NO₂), lead, sulfur dioxide (SO₂), and carbon monoxide (CO). LMDC's review has been conducted consistent with the requirements of 40 CFR Part 93, Subpart

B: "Determining Conformity of Federal Actions to State or Federal Implementation Plans" issued on November 30, 1993 (as amended on July 17, 2006 to address PM_{2.5} emissions). LMDC has determined that, during the peak construction year of 2008, potential emissions for all the criteria pollutants would be below the *de minimis* thresholds established under federal regulations at 40 CFR 93.153(b) which are currently applicable in New York County. Nonetheless, the construction emissions could exceed the 25 tons per year (tpy) annual nitrogen oxides (NO_x) threshold for severe ozone non-attainment areas, which was applicable to New York County under the previous 1-hour ozone standard designation, and which threshold is currently an issue subject to litigation in federal court. Accordingly, LMDC has prepared its Draft Conformity Determination to demonstrate that the federally-funded portion of the Proposed Action would conform with the 1-hour ozone State Implementation Plan (SIP). Pursuant to the requirements of 40 CFR 93.153(h)(1), this notice lists the proposed activities that are presumed to conform to the New York ozone SIP and the basis for this presumption.

B. Background

The Clean Air Act (CAA), as amended in 1990, defines a non-attainment area (NAA) as a geographic region that has been designated as not meeting one or more of the National Ambient Air Quality Standards (NAAQS). The Proposed Action is located in New York County, which has been designated by the EPA as a moderate NAAQS NAA for PM₁₀, a NAA for PM_{2.5}, and a moderate NAA for ozone. The area is in attainment for all other criteria pollutants: Nitrogen dioxide (NO₂), lead, sulfur dioxide (SO₂), and carbon monoxide (CO). EPA had re-designated New York City as in attainment for CO on April 19, 2002 (67 FR 19337); the CAA requires that a maintenance plan ensure continued compliance with the CO NAAQS for former NAAs.

A State Implementation Plan (SIP) is a state's plan on how it will meet the NAAQS under the deadlines established by the CAA. In November 1998, New York State submitted its Phase II Alternative Attainment Demonstration for Ozone, which addressed attainment of the 1-hour ozone NAAQS by 2007 (New York submitted subsequent filings to EPA in subsequent years). On February 4, 2002, EPA approved New York's 1-hour ozone SIP (67 FR 5170).

The general conformity requirements in 40 CFR Part 93, Subpart B, apply to

those federal actions that are located in a non-attainment or maintenance area, and that are not subject to transportation conformity requirements at 40 CFR Part 51, Subpart T, or Part 93, Subpart A, where the action's direct and indirect emissions have the potential to emit one or more of the criteria pollutants or precursors, in the case of ozone and PM_{2.5}, at emission rates equal to or exceeding the prescribed rates at 40 CFR 93.153(b), or where the action encompasses 10 percent or more of a NAA or maintenance area's total emissions inventory for that pollutant. In the case of New York County, the prescribed annual rates are 50 tons of VOCs and 100 tons of NO_x (ozone precursors in moderate 8-hour ozone NAA and PM_{2.5} precursors in PM_{2.5} NAA), 100 tons of CO (CO maintenance area), 100 tons of PM₁₀ (moderate PM₁₀ NAA), 100 tons of PM_{2.5} (PM_{2.5} NAA), and 100 tons of SO₂ (PM_{2.5} precursor in PM_{2.5} NAA).

LMDC has determined that the total annual direct and indirect emissions of all such criteria pollutants from the Proposed Action are less than the *de minimis* rates prescribed in 40 CFR 93.153(b), as currently in effect, that would trigger the requirement to conduct a general conformity determination. Therefore, a general conformity determination is not necessarily required by current federal regulations. Nonetheless, temporarily, during construction, annual NO_x emissions are predicted to exceed the threshold of 25 tons per year that would apply to a severe ozone non-attainment area under the former 1-hour ozone NAAQS. Accordingly, LMDC has prepared a Draft Conformity Determination to demonstrate the Proposed Action's conformity with the ozone SIP.

C. Requirements of the Conformity Determination

The purpose of the conformity analysis is to establish that the Proposed Action would conform to the New York ozone SIP, thereby demonstrating that total direct and indirect emissions of the ozone precursors, in this case NO_x, from the project, would not:

- Cause or contribute to any new violation of any standard in the area;
- interfere with provisions in the applicable SIP for maintenance of any standard;
- increase the frequency or severity of any existing violation of any standard in any area; or
- delay timely attainment of any standard or any required interim emission reductions or other milestones in the SIP for purposes of—

1. A demonstration of reasonable further progress (RFP),
2. A demonstration of attainment, or
3. A maintenance plan.

For the purposes of a general conformity determination, direct and indirect emissions are defined as follows (40 CFR 93.152):

- **Direct Emissions:** Those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action;
- **Indirect Emissions:** Those emissions of a criteria pollutant or its precursors that—

1. Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and

2. The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

LMDC has determined that the predicted emissions due to the Proposed Action during construction that should be subject to its general conformity review would include direct emissions from (1) Non-road engines operating on-site during construction and (2) marine vessels carrying materials to and from the site and conducting other work along the waterfront, and (3) emissions from construction-related vehicles traveling to and from the site.

D. Presumption of Conformity

The Proposed Action would be located in an area previously designated as a severe ozone non-attainment area under the 1-hour ozone NAAQS. The NO_x emissions during two years of construction were predicted to potentially exceed the prescribed level for severe ozone non-attainment areas (25 tons per year). Therefore, LMDC has determined the following:

- The methods for estimating direct and indirect emissions from the Proposed Action meet the requirements of 40 CFR 93.159.
- The Proposed Action was predicted to result in the emission of up to 70.5 tons and 31.2 tons of NO_x per year in 2008 and 2009, respectively.
- All construction-related NO_x emissions, including those from the Proposed Action, are included in the emissions budget specified in the New York State Implementation Plan for Ozone—Phase II Alternative Attainment Demonstration.
- The Proposed Action does not cause or contribute to any new violation, or increase the frequency or severity of any existing violation, of the

standards for the pollutants addressed in 40 CFR 93.158.

- The Proposed Action does not violate any requirements or milestones in the ozone SIP.
- Based on these determinations, the Proposed Action is presumed to conform to the ozone SIP for the project area. The activities that are presumed to conform include all construction-related activities that will receive federal funding for the East River Waterfront Esplanade and Piers Project.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: July 20, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. E7-14579 Filed 7-26-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5125-N-30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also

published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this

Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army*: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAİM-ZS, Rm 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601-2545; *Coast Guard*: Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St, SW., Rm 6109, Washington, DC 20593-0001; (202) 267-6142; *Energy*: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME-90, 1000 Independence Ave, SW., Washington, DC 20585; (202) 586-0072; *GSA*: Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0084; *Interior*: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 513-0747; *Navy*: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (These are not toll-free numbers).

Dated: July 19, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

**Title V, Federal Surplus Property Program
Federal Register Report for 07/27/2007**

Suitable/Available Properties

Building

California

Bldg. 00574,
Moffett Field,
Santa Clara, CA 94035.
Landholding Agency: Army.
Property Number: 21200720100.
Status: Unutilized.

Comments: 2304 sq. ft., most recent use—storage, off-site use only.
Bldg. 07080,
Moffett Field,
Santa Clara, CA 94035.
Landholding Agency: Army.
Property Number: 21200720101.
Status: Unutilized.
Comments: 5956 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Colorado

Ward Lake Storage Bldg.,
Grand Mesa Natl Forest,
Delta, CO.
Landholding Agency: GSA.
Property Number: 54200730006.
Status: Surplus.
GSA Number: 7-A-CO-0665.
Comments: 241 sq. ft., off-site use only.

Suitable/Available Properties

Building

Maine

Border Patrol Station,
4 Heald Stream Road,
Somerset, ME 04945.
Landholding Agency: GSA.
Property Number: 54200730003.
Status: Excess.
GSA Number: 1-X-ME-0685-2A.
Comments: 1717 sq. ft. office and garage, possible asbestos/lead paint.

Maryland

Bldg. 00255,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720052.
Status: Unutilized.
Comments: 64 sq. ft., most recent use—storage, off-site use only.
Bldg. 00638,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720053.
Status: Unutilized.
Comments: 4295 sq. ft., most recent use—storage, off-site use only.
Bldg. 00721,
Aberdeen Proving Ground,
Harford, MD.
Landholding Agency: Army.
Property Number: 21200720054.
Status: Unutilized.
Comments: 135 sq. ft., most recent use—storage, off-site use only.

Suitable/Available Properties

Building

Maryland

Bldgs. 00936, 00937,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720055.
Status: Unutilized.
Comments: 2000 sq. ft., most recent use—storage, off-site use only.
Bldgs. E1410, E1434,
Aberdeen Proving Ground,
Harford, MD 21005.

Landholding Agency: Army.
Property Number: 21200720056.
Status: Unutilized.
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only.
Bldg. 03240,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720057.
Status: Unutilized.
Comments: 10,049 sq. ft., most recent use—office, off-site use only.
Bldg. E3834,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720058.
Status: Unutilized.
Comments: 72 sq. ft., most recent use—office, off-site use only.

Suitable/Available Properties

Building

Maryland

Bldgs. E4465, E4470, E4480,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720059.
Status: Unutilized.
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only.
Bldgs. E5137, 05219,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720060.
Status: Unutilized.
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only.
Bldg. E5236,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720061.
Status: Unutilized.
Comments: 10,325 sq. ft., most recent use—storage, off-site use only.
Bldg. E5282,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720062.
Status: Unutilized.
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only.

Suitable/Available Properties

Building

Maryland

Bldgs. E5736, E5846, E5926,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.
Property Number: 21200720063.
Status: Unutilized.
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only.
Bldg. E6890,
Aberdeen Proving Ground,
Harford, MD 21005.
Landholding Agency: Army.

Property Number: 21200720064.

Status: Unutilized.

Comments: 1 sq. ft., most recent use—impact area, off-site use only.

New Hampshire

Modular Offices 43006/43007,
271 Mast Road,
Durham, NH 03824.

Landholding Agency: GSA.

Property Number: 54200730004.

Status: Surplus.

GSA Number: 1—A—NH—0497—1A.

Comments: 684 sq. ft. each, most recent use—office space, off-site use only.

Suitable/Available Properties

Building

Texas

Bldgs. 04281, 04283,

Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720085.

Status: Excess.

Comments: 4000/8020 sq. ft., most recent use—storage shed, off-site use only.

Bldg. 04284,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720086.

Status: Excess.

Comments: 800 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only.

Bldg. 04285,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720087.

Status: Excess.

Comments: 8000 sq. ft., most recent use—storage shed, off-site use only.

Bldg. 04286,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720088.

Status: Excess.

Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only.

Suitable/Available Properties

Building

Texas

Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720089.

Status: Excess.

Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only.

Bldg. 4410,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720090.

Status: Excess.

Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only.

Bldgs. 10031, 10032, 10033,

Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720091.

Status: Excess.

Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldgs. 56524, 56532,

Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720092.

Status: Excess.

Comments: 600 sq. ft., presence of asbestos, most recent use—dining, off-site use only.

Suitable/Available Properties

Building

Texas

Bldg. 56435,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720093.

Status: Excess.

Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 05708,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720094.

Status: Excess.

Comments: 1344 sq. ft., most recent use—community center, off-site use only.

Bldg. 90001,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720095.

Status: Excess.

Comments: 3574 sq. ft., presence of asbestos, most recent use—transmitter bldg., off-site use only.

Bldg. 90060,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720096.

Status: Excess.

Comments: 96 sq. ft., presence of asbestos, most recent use—lab, off-site use only.

Suitable/Available Properties

Building

Texas

Bldgs. 90063, 90064, 90065,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720097.

Status: Excess.

Comments: 1519/1798/1800 sq. ft., presence of asbestos, most recent use—lab, off-site use only.

Bldg. 90066,
Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720098.

Status: Excess.

Comments: 8107 sq. ft., presence of asbestos, most recent use—equipment bldg., off-site use only.

Bldg. 93013,

Fort Hood,
Bell, TX 76544.

Landholding Agency: Army.

Property Number: 21200720099.

Status: Excess.

Comments: 800 sq. ft., most recent use—club, off-site use only.

Suitable/Available Properties

Building

Virginia

Fort Story,
Ft. Story, VA 23459.

Landholding Agency: Army.

Property Number: 21200720065.

Status: Unutilized.

Comments: 525 sq. ft., most recent use—power plant, off-site use only.

Bldg. 00942,

Fort Story,
Ft. Story, VA 23459.

Landholding Agency: Army.

Property Number: 21200720066.

Status: Unutilized.

Comments: 84 sq. ft., most recent use—shower, off-site use only.

Bldg. 01025,

Fort Story,
Ft. Story, VA 23459.

Landholding Agency: Army.

Property Number: 21200720070.

Status: Unutilized.

Comments: 4800 sq. ft., most recent use—admin., off-site use only.

Bldg. 01028,

Fort Story,
Ft. Story, VA 23459.

Landholding Agency: Army.

Property Number: 21200720071.

Status: Unutilized.

Comments: 2398 sq. ft., most recent use—admin., off-site use only.

Suitable/Available Properties

Building

Virginia

Bldg. 01633,
Fort Eustis,
Ft. Eustis, VA 23604.

Landholding Agency: Army.

Property Number: 21200720076.

Status: Unutilized.

Comments: 240 sq. ft., most recent use—storage, off-site use only.

Bldg. 02786,

Fort Eustis,
Ft. Eustis, VA 23604.

Landholding Agency: Army

Property Number: 21200720084

Status: Unutilized.

Comments: 1596 sq. ft., most recent use—admin., off-site use only.

Land

Colorado

0.05 acres,
Paonia Project,

Hotchkiss, CO 81419.
Landholding Agency: Interior.
Property Number: 61200730005.
Status: Excess.
Comments: access restriction.

Suitable/Available Properties

Land

Kentucky
 Tract V—Parcel B,
 3301 Leestown Road,
 Lexington, KY 40511.
Landholding Agency: GSA.
Property Number: 54200730002.
Status: Excess.
GSA Number: 4-G-KY-0528-1B.
Comments: 52 acres w/landfill monitored by
 Bureau of Prisons IAW Kentucky Dept. of
 Env. Protection regulations.

Suitable/Unavailable Properties

Building

Virginia
 Bldg. 01014,
 Fort Story,
 Ft. Story, VA 23459.
Landholding Agency: Army.
Property Number: 21200720067.
Status: Unutilized.
Comments: 1014 sq. ft., most recent use—
 admin., off-site use only.
 Bldg. 01022,
 Fort Story,
 Ft. Story, VA 23459.
Landholding Agency: Army.
Property Number: 21200720068.
Status: Unutilized.
Comments: 2398 sq. ft., most recent use—
 dining, off-site use only.

Suitable/Unavailable Properties

Building

Virginia
 4 Bldgs.,
 Fort Story,
 01023, 01029, 01036, 01038,
 Ft. Story, VA 23459.
Landholding Agency: Army.
Property Number: 21200720069.
Status: Unutilized.
Comments: 4800 sq. ft., most recent use—
 barracks, off-site use only.
 Bldg. 01063,
 Fort Story,
 Ft. Story, VA 23459.
Landholding Agency: Army.
Property Number: 21200720072.
Status: Unutilized.
Comments: 2000 sq. ft., most recent use—
 storage, off-site use only.
 Bldg. 00215,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720073.
Status: Unutilized.
Comments: 2540 sq. ft., most recent use—
 admin., off-site use only.
 4 Bldgs.,
 Fort Eustis,
 01514, 01523, 01528, 01529,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.

Property Number: 21200720074.
Status: Unutilized.
Comments: 4720 sq. ft., most recent use—
 admin., off-site use only.

Suitable/Unavailable Properties

Building

Virginia
 4 Bldgs.,
 Fort Eustis,
 01534, 01542, 01549, 01557,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720075.
Status: Unutilized.
Comments: 4720 sq. ft., most recent use—
 admin., off-site use only.
 Bldgs. 01707, 01719,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720077.
Status: Unutilized.
Comments: 4720 sq. ft., most recent use—
 admin., off-site use only.
 Bldg. 01720,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720078.
Status: Unutilized.
Comments: 1984 sq. ft., most recent use—
 admin., off-site use only.
 Bldgs. 01721, 01725,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720079.
Status: Unutilized.
Comments: 4720 sq. ft., most recent use—
 admin., off-site use only.

Suitable/Unavailable Properties

Building

Virginia
 Bldgs. 01726, 01735, 01736,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720080.
Status: Unutilized.
Comments: 1144 sq. ft., most recent use—
 admin., off-site use only.
 Bldgs. 01734, 01745, 01747,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720081.
Status: Unutilized.
Comments: 4720 sq. ft., most recent use—
 admin., off-site use only.
 Bldg. 01741,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.
Property Number: 21200720082.
Status: Unutilized.
Comments: 1984 sq. ft., most recent use—
 admin., off-site use only.
 Bldg. 02720,
 Fort Eustis,
 Ft. Eustis, VA 23604.
Landholding Agency: Army.

Property Number: 21200720083.
Status: Unutilized.
Comments: 400 sq. ft., most recent use—
 storage, off-site use only.

Unsuitable Properties

Building

Alaska
 Bldgs. K07, K15,
 Air Station,
 Sitka, AK 99835.
Landholding Agency: Coast Guard.
Property Number: 88200730001.
Status: Unutilized.
Reasons: Extensive deterioration.
 Arizona
 Mobile Home,
 Walnut Canyon,
 Coconino, AZ 86004.
Landholding Agency: Interior.
Property Number: 61200730002.
Status: Excess.
Reasons: Extensive deterioration.

Unsuitable Properties

Building

Connecticut
 4 Bldgs.,
 Naval Submarine Base,
 35, 37, 119, 124,
 New London, CT 06349.
Landholding Agency: Navy.
Property Number: 77200730001.
Status: Unutilized.
Reasons: Secured Area Within 2000 ft. of
 flammable or explosive material.
 4 Bldgs.,
 Naval Submarine Base,
 149, 161, 165, 172,
 New London, CT 06349.
Landholding Agency: Navy.
Property Number: 77200730002.
Status: Unutilized.
Reasons: Secured Area Within 2000 ft. of
 flammable or explosive material.
 Bldgs. 223, 341,
 Naval Submarine Base,
 New London, CT 06349.
Landholding Agency: Navy.
Property Number: 77200730003.
Status: Unutilized.
Reasons: Secured Area Within 2000 ft. of
 flammable or explosive material.

Unsuitable Properties

Building

Connecticut
 4 Bldgs.,
 Naval Submarine Base,
 353, 379, 385, 397,
 New London, CT 06349.
Landholding Agency: Navy.
Property Number: 77200730004.
Status: Unutilized.
Reasons: Within 2000 ft. of flammable or
 explosive material Secured Area.
 5 Bldgs.,
 Naval Submarine Base,
 400, 405, 408, 409, 411,
 New London, CT 06349.
Landholding Agency: Navy.
Property Number: 77200730005.
Status: Unutilized.

Reasons: Secured Area Within 2000 ft. of flammable or explosive material.

Bldgs. 442, 447,
Naval Submarine Base,
New London, CT 06349.

Landholding Agency: Navy.

Property Number: 77200730006.

Status: Unutilized.

Reasons: Secured Area Within 2000 ft. of flammable or explosive material.

Unsuitable Properties

Building

Connecticut

4 Bldgs.,
Naval Submarine Base,
450, 453, 479, 491,
New London, CT 06349.

Landholding Agency: Navy.

Property Number: 77200730007.

Status: Unutilized.

Reasons: Secured Area Within 2000 ft. of flammable or explosive material.

Bldgs. D, M,
Naval Submarine Base,
New London, CT 06349.

Landholding Agency: Navy.

Property Number: 77200730008.

Status: Unutilized.

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Structures A86, A87,
Naval Submarine Base,
New London, CT 06349.

Landholding Agency: Navy.

Property Number: 77200730009.

Status: Unutilized.

Reasons: Secured Area Within 2000 ft. of flammable or explosive material.

Unsuitable Properties

Building

Connecticut

4 Structures,
Naval Submarine Base,
336, 377, 378, 452,
New London, CT 06349.

Landholding Agency: Navy.

Property Number: 77200730010.

Status: Unutilized.

Reasons: Secured Area Within 2000 ft. of flammable or explosive material.

Idaho

8 Buildings,
Palmer Residence,
Montour, ID.

Landholding Agency:

Interior.

Property Number: 61200730004.

Status: Unutilized.

Reasons: Extensive deterioration.

Illinois

Army Reserve Center, 622 Railroad Street,
Joliet, IL.

Landholding Agency:

GSA.

Property Number: 54200730001.

Status: Excess.

GSA Number: 1-IL-734.

Reasons: Within 2000 ft. of flammable or explosive material.

Unsuitable Properties

Building

New Mexico

Bldgs. 807, 6017 CAMU2 & CAMU3,
Sandia Natl. Laboratories,
Albuquerque, NM 87185.

Landholding Agency:

Energy.

Property Number: 41200730001.

Status: Unutilized.

Reasons: Secured Area.

New York

Bldgs. 13, 14,
Mitchell Field,
Garden City, NY 11530.

Landholding Agency:

Navy.

Property Number: 77200730011.

Status: Unutilized.

Reasons: Extensive deterioration.

Tennessee

Bldg. 142,
Big South Fork,
Oneida, TN 37841.

Landholding Agency:

Interior.

Property Number: 61200730003.

Status: Unutilized.

Reasons: Extensive deterioration.

Unsuitable Properties

Building

Washington

No. 80,
Prosser, Co: Yakima, WA 99350.

Landholding Agency:

Interior.

Property Number: 61200730006.

Status: Unutilized.

Reasons: Extensive deterioration.

Garage,
Browns Point Light Station,
Tacoma, WA 99207.

Landholding Agency:

Coast Guard.

Property Number: 88200730002.

Status: Unutilized.

Reasons: Extensive deterioration.

Land

Indiana

Access Site,
Grandview, Co: Spencer, IN.

Landholding Agency:

GSA.

Property Number: 54200730005.

Status: Excess.

GSA Number: 1-D-IN-599.

Reasons: Floodway.

[FR Doc. E7-14318 Filed 7-26-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5163-N-01]

Notice of Availability of Fleet Alternative Fuel Vehicle Acquisition Report

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of availability of reports.

SUMMARY: Through this notice, HUD is making available on its Web site, a copy of HUD's Alternative Fuel Vehicles Report for Fiscal Year 2006 that was prepared in accordance with the Energy Policy Act of 1992.

FOR FURTHER INFORMATION CONTACT:

Robert E. Byrd, Jr., Deputy Director, Office of Administrative and Management Services, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000, at (202) 402-7363 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service number at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Energy Policy Act (42 U.S.C. 13201 *et seq.*) (the Act) establishes a comprehensive plan to achieve economic, energy and environmental benefits by promoting the use of alternative fuels. A major goal of the Act is to have the federal government exercise leadership in the use of alternative fuel vehicles. To that end, the Act established alternative fuel vehicle purchasing requirements for the federal fleets of government agencies, and requires federal agencies to report on their compliance with the requirements of the Act. A copy of HUD's Alternative Fuel Vehicle Reports can be obtained via the World Wide Web at: <http://www.hud.gov/offices/adm/reports/admreports.cfm>.

Dated: July 24, 2007.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E7-14582 Filed 7-26-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of Three Wildlife Species and Two Plant Species in the Midwest Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), initiate 5-year reviews of eastern prairie fringed orchid (*Platanthera leucophaea*), Hine's emerald dragonfly (*Somatochlora hineana*), Fassett's locoweed (*Oxytropis campestris* var. *chartacea*), Kirtland's warbler (*Dendroica kirtlandii*), and white cat's paw pearly mussel (*Epioblasma obliquata perobliqua*) under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of this review, we will make a finding on whether these species are properly classified under the Act.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than October 25, 2007. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the appropriate U.S. Fish and Wildlife Service Ecological Services Field Supervisor below:

1. *Eastern prairie fringed orchid and Hine's emerald dragonfly*: mail or hand-deliver to 1250 South Grove Avenue, Suite 103, Barrington, IL 60010, or e-mail to fw3easternprairiefringedorchid5year@fws.gov or fw3hinese_meraldldragonfly5year@fws.gov.

2. *Fassett's locoweed*: mail or hand-deliver to 2661 Scott Tower Drive, New Franken, WI 54229, or e-mail to fw3fassettlocoweed5year@fws.gov.

3. *Kirtland's warbler*: mail or hand-deliver to 2651 Coolidge Road, Suite 101, East Lansing, MI 48823-6316, or e-mail to fw3kirtlandswarbler5year@fws.gov.

4. *White cat's paw pearly mussel*: mail or hand-deliver to 6950 Americana Parkway, Suite H, Reynoldsburg, OH 43068-4127, or e-mail to fw3white_catspaw5year@fws.gov.

See **SUPPLEMENTARY INFORMATION** for additional information.

FOR FURTHER INFORMATION CONTACT:

1. *Eastern prairie fringed orchid and Hine's emerald dragonfly*: Mr. Kris Lah, Chicago Ecological Services Field Office (see **ADDRESSES**); telephone (847) 381-2253; facsimile (847) 381-2285.

2. *Fassett's locoweed*: Ms. Leakhena Au, Green Bay Ecological Services Field Office (see **ADDRESSES**); telephone (920) 866-3650; facsimile (920) 866-1710.

3. *Kirtland's warbler*: Mr. Chris Mensing, East Lansing Ecological Services Field Office (see **ADDRESSES**); telephone (517) 351-8316; facsimile (517) 351-1443.

4. *White cat's paw pearly mussel*: Ms. Angela Zimmerman; Reynoldsburg Ecological Services Field Office (see **ADDRESSES**); telephone (614) 469-6923, extension 22; facsimile (614) 469-6919.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: We initiate a 5-year reviews of eastern prairie fringed orchid, Hine's emerald dragonfly, Fassett's locoweed, Kirtland's warbler, and white cat's paw pearly mussel under section 4(c)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*). We request any new information and appropriate data since their original listing or most recent status review that document the need to delist or reclassify these species.

A 5-year review is a periodic process conducted to ensure that the classification of a listed species is appropriate. It is based on the best scientific and commercial data available at the time of the review. Based on the results of these 5-year reviews, we will make a finding of whether these species are properly classified under section 4(c)(2)(B) of the Act.

Under the Act, we maintain the List of Endangered and Threatened Wildlife and Plant Species (List) at 50 CFR 17.11 and 17.12. We amend the List by publishing final rules in the **Federal Register**. The List is available on our Internet site at <http://www.fws.gov/endangered/wildlife.html#species>. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed

species at least once every 5 years. Section 4(c)(2)(B) requires that we determine (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, a species will be considered for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process.

Definitions

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish or wildlife or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range.

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This announces our active review of eastern prairie fringed orchid, Hine's emerald dragonfly, Fassett's locoweed, Kirtland's warbler, and white cat's paw pearly mussel.

SPECIES SUMMARY

Common name	Scientific name	Status	Listed entity	When listed
Kirtland's (wood) warbler	<i>Dendroica kirtlandii</i>	Endangered	U.S.A. (principally MI), Canada, West Indies-Bahama Islands.	Mar 11, 1967 (32 FR 4001).
White cat's paw pearly mussel	<i>Epioblasma obliquata perobliqua</i> .	Endangered	U.S.A. (IN, MI, OH)	June 14, 1976 (41 FR 24064).
Hine's emerald dragonfly	<i>Somatochlora hineana</i>	Endangered	U.S.A. (IL, IN, OH, WI)	Jan 26, 1995 (60 FR 5273).

SPECIES SUMMARY—Continued

Common name	Scientific name	Status	Listed entity	When listed
Eastern prairie fringed orchid ..	<i>Platanthera leucophaea</i>	Threatened	U.S.A. (AR, IA, IL, IN, ME, MI, MO, NE, NJ, NY, OH, OK, PA, VA, WI), Canada (Ont., N.B.)..	Sept 28, 1989 (54 FR 39863).
Fassett's locoweed	<i>Oxytropis campestris</i> var. <i>chartacea</i> .	Threatened	U.S.A. (WI)	Sept 28, 1988 (53 FR 37972).

Public Solicitation of New Information

To ensure that the 5-year reviews are complete and based on the best scientific and commercial data available, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of eastern prairie fringed orchid, Hine's emerald dragonfly, Fassett's locoweed, Kirtland's warbler, and white cat's paw pearly mussel. A 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include (A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to taxonomic or nomenclature changes, identification of erroneous information contained in the List, and improved analytical methods.

Electronic Access and Filing

You must submit electronic information (see **ADDRESSES**) in MS Word, Rich Text format, or Plain Text format, and include the species common name in the title line (for example, "Fassett's Locoweed 5-Year Review Comments").

Information submitted to the U.S. Fish and Wildlife Service Ecological Services Field Supervisor (see **ADDRESSES**) must be received within sufficient time to allow adequate time to conduct these 5-year reviews (see **DATES**). If you do not respond to this request for information but subsequently possess information on the status of these species, we will accept new information regarding any federally listed species at any time.

Our practice is to make information, including names and home addresses of respondents, available for public review during regular business hours. Before including your address, telephone number, e-mail address, or other personal identifying information with your response, you should be aware that your entire submission—including your personal information—may be made publicly available at any time. While you can ask us in your response to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not, however, consider information submitted anonymously. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Information received in response to this notice will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES**).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 29, 2007.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. E7-14535 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Notice of Availability of the Draft Revised Recovery Plan for the Apache Trout (*Oncorhynchus apache*)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft revised Recovery Plan for the Apache trout (*Oncorhynchus apache*). The

Apache trout currently inhabits the upper Salt River and Little Colorado River drainages in Arizona. The Service solicits review and comment from the public on this draft revised Recovery Plan. The Service will also accept any new information received during the comment period to complete its 5-year review of the Apache trout.

DATES: The comment period for this draft revised Recovery Plan (Recovery Plan) closes September 25, 2007. Comments on the Recovery Plan must be received by the closing date to ensure consideration.

ADDRESSES: Persons wishing to review the Recovery Plan can obtain a paper or CD copy from the Arizona Fishery Resources Office, U.S. Fish and Wildlife Service, P.O. Box 39, Pinetop, Arizona 85935, telephone 928/338-4288, facsimile 928/338-4763, e-mail: Stewart_Jacks@fws.gov. The Recovery Plan may also be obtained from the Internet at <http://www.fws.gov/endangered> by selecting "Species Search" from the left-side menu bar and entering the species' name in the "Search Species" text box. If you wish to comment on the Recovery Plan, you may submit your comments and materials to the Arizona Fishery Resources Office.

FOR FURTHER INFORMATION CONTACT: Stewart Jacks, Project Leader, at the Pinetop address above.

SUPPLEMENTARY INFORMATION:**Background**

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these

comments into account in the course of implementing recovery plans.

The Service is also conducting a 5-year review for Apache trout under section 4(c)(2)(A) of the Act. A 5-year review is a periodic process, based on the best scientific and commercial data available at the time of the review, conducted to ensure that the classification of a species as threatened or endangered on the List of Endangered and Threatened Species (List) is accurate. We initiated the 5-year review for Apache trout on April 21, 2006 (71 FR 20714). Because the Service has not yet completed this review, we will use any new information received during the comment period for the revised Recovery Plan to complete the 5-year review for Apache trout. Based on the results of the 5-year review, we will make a recommendation whether the Apache trout should retain its current classification as threatened, be reclassified to endangered, or removed from the List (delisted). The Service will undertake a separate rulemaking process if the Apache trout is to be reclassified or delisted.

The document submitted for review is the revised Recovery Plan for the Apache trout. Currently, the Apache trout is believed to occur in a 190 km (118 mi) reach of the upper Salt River and Little Colorado River drainages in Arizona. The species was listed as federally endangered in 1967 (32 FR 4001) and reclassified to threatened in 1975 (40 FR 29863). Critical habitat has not been designated. Throughout much of its historic range, the decline of the Apache trout may be attributed to destruction, drastic modification, or severe curtailment of its habitat and hybridization with introduced trout species.

The Recovery Plan includes scientific information about the species and provides criteria and actions needed to delist (recover) the species. Delisting of the species may be considered when 30 self-sustaining populations that maintain, to the maximum extent practicable, the remaining genetic diversity of the species have been established within historical range and threats to the populations have been identified, assessed, and ameliorated. Recovery actions designed to achieve this criterion include: (1) Complete any regulatory compliance required under the National Environmental Policy Act, Clean Water Act, or other applicable legislation to implement recovery actions; (2) Construct new fish barriers and maintain existing fish barriers; (3) Remove or minimize undesirable fish using piscicides or other feasible means in all or portions of recovery streams; (4)

Establish and maintain 30 self-sustaining populations of pure Apache trout; and, (5) Monitor all populations.

The original Apache trout Recovery Plan was finalized in 1979 and revised in 1983. This draft revised Recovery Plan retains the 1983 criterion to establish and maintain 30 self-sustaining populations; however, it limits recovery populations to those within historic range. It also includes additional objectives to ameliorate threats relative to the five listing factors. The revised recovery strategy allows for the use of hatchery propagated Apache trout to repatriate a renovated and secured stream if such populations cannot be established by moving fish from a relict or replicated population. A post-delisting management plan will incorporate genetic considerations.

The Recovery Plan is being submitted for review to all interested parties. Peer review will be conducted concurrent with public review. After consideration of comments received during the public and peer review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the final Recovery Plan and new information will also be used to complete the 5-year review.

Public Availability of Comments

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

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 28, 2007.

Benjamin N. Tuggle,

Regional Director, Region 2.

[FR Doc. E7-14550 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-039-1320-PK]

Notice of Public Meeting, Dakotas 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 (FELPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Dakotas Resource Advisory Council will meet as indicated below.

DATES: A meeting will be held September 6, 2007, at the BLM North Dakota Field Office at 99 23rd Avenue West, Dickinson, ND 58601 beginning at 8 a.m. The public comment period will begin at 1 p.m. on Thursday, September 6, 2007.

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 North and South Dakota. 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, or other reasonable accommodations, should contact the BLM as provided below. The Council will hear updates to Recreation Resource Advisory Committee roles, Sage Grouse Conservation, recreation fees and upcoming resource management planning efforts.

FOR FURTHER INFORMATION CONTACT:

Lonny Bagley, Field Manager, North Dakota Field Office, 99 23rd Avenue West, Dickinson, ND 58601, North Dakota, 701.227.7700, or Marian Atkins, Field Manager, South Dakota Field Office, 310 Roundup St., Belle Fourche, South Dakota, 605.892.7000.

Dated: July 23, 2007.

Karen A. Wolf,

Acting Field Manager.

[FR Doc. 07-3694 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-SS-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW159721]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW159721 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW159721 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14547 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW159720]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW159720 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW159720 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14551 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW157981]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW157981 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157981 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14552 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW157980]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW157980 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157980 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14553 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW157979]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW157979 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157979 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14556 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-923-1310-FI; WYW157978]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW157978 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157978 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14557 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[WY-923-1310-FI; WYW157243]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Rocky Mountain Land & Leasing LLC for competitive oil and gas lease WYW157243 for land in Lincoln County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775-6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163.00 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW157243 effective February 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.
[FR Doc. E7-14558 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[OR-930-6310-PN-LITU; HAG 07-0141]

Notice of Availability of the Record of Decision To Amend Resource Management Plans To Remove the Survey and Manage Mitigation Measure Standards and Guidelines

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), and the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) to amend selected portions of the 1994 Record of Decision for the Northwest Forest Plan by removing the Survey and Manage Mitigation Measure Standards and Guidelines. The ROD amends Resource Management Plans for the BLM Districts in western Oregon and northwestern California. The U.S. Forest Service is expected to concurrently announce a similar decision amending their respective Land and Resource Management Plans.

Under the Northwest Forest Plan, Survey and Manage added conservation measures for rare and little known species to BLM and U.S. Forest Service requirements for providing for late successional and old growth forest-related species. These Survey and Manage Standards and Guidelines had made it difficult for the BLM and the U.S. Forest Service to meet the other resource management goals set forth in the Northwest Forest Plan (*i.e.* timber harvest, hazardous fuels treatment, and ecosystem restoration). Although the Survey and Manage Standards and Guidelines are removed with this decision, conservation of rare and little known species will continue to be accomplished through the other elements of the Northwest Forest Plan and the BLM and U.S. Forest Service's Special Status Species Programs.

ADDRESSES: The Requests to receive copies of the ROD should be sent to Carol Hughes, P.O. Box 3623, Portland, OR 97208-3623, or submit e-mail to ORSMSEIS@blm.gov. Alternatively, the ROD is available on the Internet at <http://www.reo.gov/s-m2006>. Copies will be available for inspection after August 3, 2007 at BLM offices in western Oregon and northwestern California. Copies of the Draft, Supplement to the Draft, and Final

Supplement to the 2004 Supplemental Environmental Impact Statement are also available at the above address and on the Internet.

FOR FURTHER INFORMATION CONTACT:

Michael Haske, Chief, Branch of Forest Resources and Special Status Species, Bureau of Land Management, P.O. Box 2965, Portland, OR 97208, telephone (503) 808-6066.

SUPPLEMENTARY INFORMATION: In June 2007, the BLM and U.S. Forest Service released a Final Supplement to the 2004 Final Supplemental Environmental Impact Statement (FSEIS) to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines. The Final Supplement presented the entire 2004 analysis, updated for new information and supplemented to include:

- Responses to three deficiencies identified in August 2005 by the U.S. District Court for the Western District of Washington, and;
- An additional alternative to respond to implications of a November 2006 decision by the U.S. Court of Appeals for the Ninth Circuit relative to the red tree vole on the BLM's Cow Catcher and Cottonsnake Timber Sales in Oregon.

The analysis covered 337 species of fungi, bryophytes, lichens, mollusks, vascular plants, and 7 species of vertebrates. The analysis showed that, compared to the No Action Alternatives, 53 species would have insufficient habitat in all or a portion of their Northwest Forest Plan range to support stable populations. However, the analysis points out that these species are generally either secure in other areas of their range or that State Heritage programs do not rate them imperiled enough to qualify for the BLM and U.S. Forest Service's Special Status Species Programs. The analysis also shows the selected alternative improves the BLM and U.S. Forest Service's ability to achieve other Northwest Forest Plan objectives.

Based on the Final Supplement, a similar and nearly simultaneous decision is expected from the Department of Agriculture affecting 19 National Forest Land and Resource Management Plans, but the Department of the Interior decision is not dependent upon it.

Four alternatives were considered in detail in the Final Supplement. In addition to two action alternatives, two no-action alternatives were included to examine Survey and Manage both with and without changes made by the prescribed 2001, 2002, and 2003 Annual Species Reviews. These reviews were

reconsidered in the Final Supplement because in November 2006, the U.S. Court of Appeals for the Ninth Circuit ruled the 2001 and 2003 Annual Species Review decisions for the red tree vole should have included additional NEPA analysis.

The ROD also effectively removes the Survey and Manage mitigation measure from the 5,400-acre Coquille Forest, since by agreement, the Coquille Forest follows the requirements of the Northwest Forest Plan on the adjacent BLM Coos Bay District.

Readers should note this ROD was signed by the Assistant Secretary, Land and Minerals Management. Therefore, no administrative review ("protest") through the BLM was available on the Final Supplement under 43 CFR 1610.5-2.

The Governors of Oregon and Washington were provided with copies of the Final Supplement and proposed action on May 8, 2007 for 60-day consistency review. No inconsistencies with State or local plans, policies, or programs were identified during the Governors' consistency review of the proposed plan amendments.

Edward W. Shepard,

State Director, OR/WA, USDI Bureau of Land Management.

[FR Doc. E7-14664 Filed 7-26-07; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives

from the general public (one of whom shall be a person representing those receiving benefits from a retirement plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire on November 14, 2007. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) insurance; (4) accounting; and (5) the general public (representing those receiving benefits from a retirement plan). The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Advisory Council.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Larry Good, ERISA Advisory Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N-5623, Washington, DC 20210.

Recommendations must be delivered or mailed on or before October 1, 2007. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Recommendations should include the position for which the nominee is recommended and the nominee's contact information. The recommendation also must state that the candidate will accept appointment to the Council if offered and commit to attend meetings and to actively participate in the Council's work to carry out its responsibilities under ERISA. Historically, this has meant a commitment of 15-20 days per year.

Signed at Washington, DC this 20th day of July, 2007.

Bradford P. Campbell,

Acting Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E7-14469 Filed 7-26-07; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Proposed Collection for the Benefits, Timeliness, and Quality Data Collection System; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Benefits Timeliness and Quality (BTQ) data collection system, which is part of the Unemployment Insurance (UI) Performs measurement system.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.doleta.gov/OMBCN/OMBControlNumber.cfm>.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before September 25, 2007.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C4522, Washington, DC 20210, Attention: Delores Mackall. Telephone number: 202-693-3183 (this is not a toll-free number). Fax: 202-693-3975. E-mail: Mackall.Delores@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor, under the Social Security Act, Title III, Section

302 (42 U.S.C. 502), funds the necessary cost of proper and efficient administration of each state UI law. The BTQ program collects information and analyzes data to do this. The BTQ data measure the timeliness and quality of states' administrative actions and administrative decisions related to UI benefit payments.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Revision of Approved Collection.

Agency: Employment and Training Administration.

Title: Benefits, Timeliness, and Quality Review.

OMB Number: 1205-0359.

Affected Public: State governments.

Agency Numbers: ETA-9050, ETA-9051, ETA-9052, ETA-9054, ETA-9055, ETA-9056, ETA-9057. ETA 9053, a previous form, was eliminated, resulting in a reduction in burden of 636 hours.

Record Keeping: State governments.

Cite/Reference/Form/etc: Section 303 of Title III of the Social Security Act.

Total Respondents: 53 state agencies.

Frequency: Monthly and Quarterly.

Total Responses: 28,276.

Average Time per Response: 80 minutes.

Summary of Burden:

MONTHLY UNIVERSE MEASURES: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Reports per year	Total responses	Hrs. per resp.	Total hrs/year
9050	First Payment Time Lapse, Core Measure	53	12	636	.5	318
9050	First Payment Time Lapse, Partial/Part Total Claims, Management Information Measure.	53	12	636	.5	318
9050	First Payment Time Lapse, Workshare Claims, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Partial Part/Total, Management Information Measure.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Workshare, Management Information Measure.	53	12	636	.5	318
9052	Nonmonetary Determinations Time Lapse, Detection Date, Core Measure.	53	12	636	1.0	636
9054	Lower Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Lower Authority Appeals Case Aging, Core Measure	53	12	636	1.0	636
9054	Higher Authority Appeals Time Lapse, Management Information Measure.	53	12	636	.5	318
9055	Higher Authority Appeals Case Aging, Core Measure	53	12	636	1.0	636
Subtotal	.....	.....	.....	.....	.....	4452

QUARTERLY SAMPLE REVIEW MEASURES: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hrs. per resp.	Total hrs/year
9056	Nonmonetary Determination Quality, Core Measure.	29 Small States	240	6,960	1	6,960
9056	Nonmonetary Determination Quality, Core Measure.	24 Large States	400	9,600	1	9,600
9057	Lower Authority Appeals Quality, Core Measure.	47 Small States	80	3,760	3.5	13,160
9057	Lower Authority Appeals Quality, Core Measure.	6 Large States	160	960	3.5	3,360
Subtotal	.....	.....	.....	.....	.....	33,080

Estimated Total Burden Hours: 37,532 hours.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and

Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 23, 2007.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E7-14519 Filed 7-26-07; 8:45 am]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0063]

Bloodborne Pathogens Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The information collection requirements specified in the Bloodborne Pathogens Standard provides employers and employees with means to provide protection from adverse health effects associated with occupational exposure to bloodborne pathogens.

DATES: Comments must be submitted (postmarked, sent, or received) by September 25, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2007-0063, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA

docket number for the ICR (OSHA-2007-0063). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT:

Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible

unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Bloodborne Pathogens Standard require employers to: Develop and maintain exposure control plans; develop a housekeeping schedule; provide employees with hepatitis B virus (HBV) vaccinations, as well as post-exposure medical evaluations and follow-ups; provide employees with information and training; maintain medical and training records for specified periods; and provide OSHA, the National Institute for Occupational Safety and Health, employees and their authorized representatives with access to these records; HIV and HBV research laboratories and production facilities must also adopt or develop, and review at least once a year, a biosafety manual; and establish and maintain a sharps injury log for the recording of percutaneous (through the skin) injuries from contaminated sharps.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect employees, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Bloodborne Pathogens Standard (29 CFR 1910.1030). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Bloodborne Pathogens Standard (29 CFR 1910.1030).

OMB Number: 1218-0180.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; Federal, State, Local, or Tribal Governments.

Number of Respondents: 630,021.

Frequency: On occasion.

Total Responses: 23,586,234.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain records to 1.5 hours for employees to receive training or medical evaluations.

Estimated Total Burden Hours: 14,060,528.

Estimated Cost (Operation and Maintenance): \$24,507,892.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0063). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 23, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–14516 Filed 7–26–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0049]

Ionizing Radiation Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Ionizing Radiation Standard (29 CFR 1910.1096). The information collection requirements contained in the Ionizing Radiation Standard protects employees from the adverse health effects that may result from occupational exposure to ionizing radiation, including tissue damage and cancer.

DATES: Comments must be submitted (postmarked, sent, or received) by September 25, 2007.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0049, U.S. Department of Labor, Room N–2625,

200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0049). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Jamaa N. Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH

Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The basic purpose of the information collection requirements in the Standard is to document that employers are providing their employees with protection from hazardous ionizing radiation exposure.

Several provisions of the Standard specify paperwork requirements, including: Monitoring of employee exposure to ionizing radiation, instructing employees on the hazards associated with ionizing radiation exposure and precautions to minimize exposure, posting of caution signs at radiation areas, reporting of employee overexposures to OSHA, maintaining exposure records, and providing exposure records to current and former employees.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect employees, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements specified in the Ionizing Radiation Standard. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of currently approved collection.

Title: Ionizing Radiation Standard (29 CFR 1910.1096).

OMB Number: 1218-0103.

Affected Public: Business or other for-profit; Not-for-profit institutions;

Federal Government; State, Local or Tribal Governments.

Number of Respondents: 12,113.

Frequency: On Occasion; Quarterly; Annually; Immediately; Within 24 hours; Within 30 days.

Total Responses: 225,619.

Average Time per Response: Time per response varies from 5 minutes (.08 hour) to maintain radiation exposure records to 30 minutes (.5 hours) for employers to gather and prepare training materials and to provide training to employees.

Estimated Total Burden Hours: 39,531.

Estimated Cost (Operation and Maintenance): \$2,341,440.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA-2007-0049). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the [http://](http://www.regulations.gov)

www.regulations.gov website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC, on July 23, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7-14531 Filed 7-26-07; 8:45 am]

BILLING CODE 4510-26-P

MARINE MAMMAL COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Tuesday, 28 August 2007, from 10:15 a.m. to 6 p.m.; Wednesday, 29 August 2007, from 8 a.m. to 6 p.m.; and Thursday, 30 August 2007, from 8 a.m. to 3 p.m. The Commission and the Committee will meet in executive session on Tuesday, 28 August 2007, from 8 a.m. to 9:45 a.m.

PLACE: Hilton Vancouver Washington, 301 West 6th Street, Vancouver, WA 98660; telephone: 360-828-4352; fax: 360-828-4309.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be for internal discussions of process, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include the status and trends of West Coast ecosystems, the status of mammal stocks on the West Coast,

impacts of growing pinniped populations, possible resumption of whaling activities by the Makah Tribe, research related to the tuna-dolphin issue in the eastern tropical Pacific Ocean, and conservation of certain marine mammal species, including northern and southern sea otters and southern resident killer whales.

CONTACT PERSON FOR MORE INFORMATION: Suzanne Montgomery, Special Assistant to the Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301-504-0087; e-mail: smontgomery@mmc.gov.

Dated: July 25, 2007.
Timothy J. Ragen,
Executive Director.
 [FR Doc. 07-3703 Filed 7-25-07; 1:25 pm]
BILLING CODE 6820-31-M

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through

the Public Electronic Reading Room (PERR) link: <http://www.nrc.gov/reading-rm.html> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this import license amendment application follows.

NRC IMPORT LICENSE AMENDMENT APPLICATION

Name of applicant, date of application, date received, application No., docket No.	Description of material			
	Material type	Total volume and activity level	End use	Country of origin
Diversified Scientific Services, Inc. (DSSI/Perma-Fix) May 14, 2007, June 18, 2007, IW012/03 11005322.	Class A radioactive mixed waste consisting of solids, semi-solids, and liquids contaminated with various materials including tritium, C-14, mixed fission product radionuclides and other contaminants.	Total Volume: 378,000 kg Total Activity Level: 7,500 curies.	Volume Reduction. Amend to: (1) increase the total activity level to 7,500 curies; (2) extend the expiration date to March 31, 2010; and (3) change the licensee's point of contact.	Canada.

Dated this 18th day of July 2007 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Acting Deputy Director, Office of International Programs.

[FR Doc. E7-14566 Filed 7-26-07; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of technical specification (TS) moderator temperature coefficient (MTC) surveillance requirements (SR)

associated with implementation of WCAP-16011-P-A, "Startup Test Activity Reduction (STAR) Program." The NRC staff has also prepared a model license amendment request and a model no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models are to permit the NRC to efficiently process amendments that propose to modify TS MTC surveillance requirements for implementing the STAR Program. Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires August 27, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via

U.S. mail. Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O-1F21), Rockville, Maryland. Comments may be submitted by electronic mail to CLIIP@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Timothy Kobetz, Mail Stop: O-12H2, Technical Specifications Branch, Division of Inspection & Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1932.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000-06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for

Power Reactors," was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes, by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice solicits comment on a proposed change to the STS that modifies MTC surveillance requirements for implementing the STAR Program. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves the modification of TS MTC surveillance requirements for implementing the STAR Program. This change was proposed for incorporation into the standard technical specifications by the Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF-486. TSTF-486 can be viewed on the NRC's Web page at <http://www.nrc.gov/reactors/operating/licensing/techspecs.html>.

Applicability

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in TSTF-486 include TS Bases for the proposed TS consistent with the TS Bases proposed in TSTF-486. The staff is requesting that the TS Bases be included with the proposed license amendments in this case because the changes to the TS and the changes to the associated TS Bases form an integral change to a plant's licensing basis. To ensure that the overall change, including the TS Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the TS Bases document and that the licensee

control changes to the TS Bases in accordance with the licensee's TS Bases Control Program. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested TS Bases. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to operating license to announce the modification of MTC surveillance requirements for implementing the STAR program for each plant that receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change TSTF-486, Modification of Technical Specification Moderator Temperature Coefficient Surveillance Requirements associated with implementation of the Startup Test Activity Reduction (STAR) Program.

1.0 Introduction

By letter dated June 3, 2005, (Reference 1) the Technical Specifications Task Force (TSTF), a joint owners group activity, submitted TSTF-486, "Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)," Revision 0, for NRC review. By letter dated February 20, 2007, (Reference 2) the TSTF submitted TSTF-486, Revision 1, for NRC review. By letter

dated March 10, 2007, (Reference 3) the TSTF submitted TSTF-486, Revision 2, for NRC review. TSTF-486 is proposing to change NUREG 1432, "Standard Technical Specifications Combustion Engineering Plants," (CE STS) Revision 3.1 (Reference 4), to generically implement moderator temperature coefficient (MTC) surveillance requirement changes associated with implementation of WCAP-16011-P-A, "Startup Test Activity Reduction (STAR) Program," (Reference 5).

WCAP-16011-P-A describes methods to reduce the time required for startup testing. To this end, WCAP-16011-P-A proposes methods to eliminate the control element assembly (CEA) worth and isothermal temperature coefficient (ITC) measurements at hot zero power (HZIP). The measured ITC is used to calculate the HZIP MTC. WCAP-16011-P-A includes a method to substitute the measured verification of MTC at HZIP with an alternate MTC verification consisting of the predicted (calculated) MTC and measured critical boron concentration (CBC) at HZIP. When this alternate MTC verification is utilized, WCAP-16011-P-A adds the requirement for the early in cycle MTC measurement to verify MTC is not more negative than allowed is also used to verify MTC is not more positive than allowed. WCAP-16011-P-A adds an ITC measurement at intermediate to hot full power (HFP) and applicability requirements for core design, fabrication, refueling, startup testing, and CEA lifetime viability requirements. WCAP-16011-P-A methods can only be applied to cores that are well characterized by an existing database. WCAP-16011-P-A is only applicable to the particular plants that participated in its development, as indicated in the document.

TSTF-486 will provide standardized wording in the CE STS for plants implementing the WCAP-16011-P-A alternate MTC verification at startup.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The regulations do not specify the particular requirements to be included in a plant's TS and do not explicitly prescribe specific post-refueling startup testing.

However, the genesis for post-refueling startup testing can be traced to the preoperational testing required to be specified in the Final Safety Analysis Report by 10 CFR 50.34. Additionally, 10 CFR 50.36 specifies SRs relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met. Additionally, 10 CFR Part 50, Appendix A, "General Design Criteria" (GDC) apply, in that the GDC establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety. Additionally, 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants" apply, in that Criterion III "Design Control" requires that " * * * measures shall provide for verifying or checking the adequacy of design, such as by the performance of design reviews, by the use of alternate or simplified calculational methods, or by the performance of a suitable testing program." Specifically, MTC is a parameter controlled in the licensee's TS, including surveillance requirements. As a value in the TS, MTC and the applicable SRs are subject to regulatory oversight.

2.1 Proposed Change

TSTF-486 would make the following changes to the CE STS contained in NUREG-1432.

- The proposed change revises the MTC (Analog) Surveillance Requirement (SR) 3.1.3.1, Surveillance, to indicate the MTC upper limit is specified in the Core Operating Limits Report (COLR).
- The proposed change revises the MTC (Analog) SR 3.1.3.1, Frequency, to add a requirement to verify MTC is within the upper limit within seven (7) effective full power days (EFPD) of reaching 40 EFPD of core burnup. This verification would only be required if the MTC determined prior to entering Mode 1 is determined using an adjusted, predicted MTC.
- The proposed change revises MTC (Analog) surveillance requirement (SR) 3.1.3.2, Note, to indicate the MTC lower limit is specified in the COLR.
- The proposed change revises MTC (Analog) SR 3.1.3.2, Frequency, to replace the phrase 'effective full power days' with the acronym 'EFPD.'
- The proposed change revises MTC (Digital) SR 3.1.3.1, Surveillance, to indicate the MTC upper limit is

specified in the Core Operating Limits Report (COLR).

- The proposed change revises MTC (Digital) SR 3.1.3.1, Frequency, to add a requirement to verify MTC is within the upper limit within seven (7) EFPD of reaching 40 EFPD of core burnup. This verification would only be required if the MTC determined prior to entering Mode 1 is determined using an adjusted predicted MTC.
- The proposed change revises MTC (Digital) SR 3.1.3.2, Surveillance, and accompanying Note to indicate the MTC lower limit is specified in the COLR.
- The proposed change revises MTC (Analog) SR 3.1.3.2, Frequency, to replace the phrase 'effective full power days' with the acronym 'EFPD.' TSTF-486 includes changes to the CE STS Bases B 3.1.3 contained in NUREG-1432.
- Deletes the last sentence of the second paragraph of the Background section. (Analog) (Digital)
- Modifies the first sentence of the first paragraph in the LCO section to state that the COLR contains both positive and negative MTC limits. Modifies the third sentence of the first paragraph in the LCO section to state the purpose of the positive MTC limit in the COLR. (Analog) (Digital)
- Inserts a new paragraph in the LCO section, between the existing first and second paragraphs, into the LCO section to explain the positive MTC limits contained in CE STS LCO 3.1.3. (Analog) (Digital)
- Modifies the current second paragraph in the LCO section to include a discussion of how MTC may be controlled using CEA position and boron concentration. (Analog) (Digital)
- Modifies the Surveillance Requirements section by adding a Reviewer Note describing the use of the Alternate MTC verification method contained in WCAP-16011-P-A. (Analog) (Digital)
- Modifies the first paragraph of the Surveillance Requirements section breaking it into three paragraphs. The new first paragraph consists of the first and second sentences and precedes the Reviewer's Note; the text is otherwise unchanged. The new second paragraph is the third sentence of the current first paragraph; the text is otherwise unchanged. The new third paragraph is the remainder of the current first paragraph, it is modified to state the MTC verification must occur within seven (7) effective full power days of reaching 40 effective full power days and that the MTC limits are in the COLR. (Analog) (Digital)
- The existing second paragraph of the Surveillance Requirements section

becomes the fourth paragraph and is modified to state the end of cycle MTC limit is specified in the COLR. (Analog) (Digital)

- The References section is modified to add, in brackets, WCAP-16011-P-A. (Analog) (Digital)

3.0 Technical Evaluation

As stated previously WCAP-16011-P-A describes methods to reduce the time required for startup testing. The NRC approved WCAP-16011-P-A on January 14, 2005, for referencing in license applications to the extent specified and under the limitations stated in the topical report and NRC evaluation.

CE STS SR 3.1.3.1 (Analog) and SR 3.1.3.1 (Digital) are being revised to add a frequency that is required by WCAP-16011-P-A when the alternate MTC verification method is used to verify MTC is within the upper limit during startup testing. That frequency coincides with the SR 3.1.3.2 verification that MTC is within the lower limit at 40 EFPD. This frequency is consistent with WCAP-16011-P-A and therefore acceptable.

CE STS SR 3.1.3.1 (Analog), and SR 3.1.3.1 (Digital) are also being revised to state the upper MTC limit is in the COLR. Currently, the location of the upper limit is not specified in either Analog or Digital CE STS SR. CE STS 3.1.3 (Analog) LCO states, "The MTC shall be maintained within the limits specified in the COLR. The maximum positive limit shall be that specified in Figure 3.1.3-1." Figure 3.1.3-1 is contained in the CE STS. CE STS 3.1.3 (Digital) LCO states, "The MTC shall be maintained within the limits specified in the COLR, and a maximum positive limit as specified below:" Two equations then follow for determining the maximum positive limit. The use of the plural in the LCO statements indicate the STS expect there to be upper and lower limits in the COLR, of which the upper limit would be bounded by the value in the TS. Therefore, specifying in the SR that the upper limit be within the COLR limit is consistent with the CE STS. The specific wording is also consistent with current phrasing in the CE STS. Therefore, this change is acceptable.

CE STS SR 3.1.3.2 (Digital) is also being revised to state the lower MTC limit is in the COLR. Currently, the location of the lower limit is specified in the Note. This change makes the CE STS SR 3.1.3.2 (Digital) consistent with the analog equivalent. The specific wording is also consistent with current phrasing in the CE STS. Therefore, this change is acceptable.

The first sentence of the Note in CE STS SR 3.1.3.2 (Analog) and SR 3.1.3.2 (Digital) is being revised from, "If the MTC is more negative than the COLR limit * * *" to "If the MTC is more negative than the limit specified in the COLR * * *" SR 3.1.3.2 (Digital) is being revised from "Verify MTC is within the lower limit." to "Verify MTC is within the lower limit specified in the COLR." In all instances the MTC lower limit is specified in the COLR. The revised wording is consistent with other CE STS references to the COLR. Therefore, this change is acceptable.

The revision to the CE STS Bases for B 3.1.3 (Analog) and B 3.1.3 (Digital) Background section is removing an incorrect statement in the CE STS that was identified during the staff's review associated with Reference 1. The TSTF has agreed to remove the sentence as part of TSTF-486 Revision 2. Therefore, this change is acceptable.

The modification of the first paragraph in the CE STS Bases for B 3.1.3 (Analog) and B 3.1.3 (Digital) LCO section is intended to identify the location of the upper and lower MTC limits. This change is consistent with the proposed changes to CE STS described above and therefore acceptable.

The addition of a new second paragraph in the CE STS Bases for B 3.1.3 (Analog) and B 3.1.3 (Digital) LCO section is intended to describe the purpose of the limits and reinforce that the upper MTC limit in the COLR must be bounded by that in the TS. This change is consistent with the proposed changes to CE STS described above and therefore acceptable.

The modification to the current second paragraph in the LCO section adds a discussion of how MTC may be controlled using CEA position and boron concentration. While staff acknowledges that the combination of CEA position and boron concentration can be used to control MTC, the staff believes it is an incomplete discussion that ignores the effects of temperature, pressure, and power level. However, there is no intention that the STS Basis become a tutorial. Therefore, while the discussion is incomplete it is not detrimental to safety and the change is acceptable.

The Reviewer's Note added to the Surveillance Requirements section describes the restrictions on the use of the Alternate MTC surveillance. The Reviewer's Note is consistent with WCAP-16011-P-A and therefore acceptable.

The current first paragraph of the Surveillance Requirements section is

being modified by breaking it into three paragraphs.

- The new first paragraph consists of the first and second sentences and precedes the Reviewer Note, the text is otherwise unchanged. This is an editorial change and acceptable.

- The new second paragraph is the third sentence of the current first paragraph, the text is otherwise unchanged. Making the sentence a separate paragraph is an editorial change and acceptable.

- The new third paragraph is the remainder of the current first paragraph; it is modified to state the MTC verification must occur within seven (7) effective full power days of reaching 40 effective full power days and that the MTC limits are in the COLR. These changes are editorial and acceptable.

Moving the existing second paragraph of the Surveillance Requirements section to become the fourth paragraph and modifying it to state the end of cycle MTC limit is specified in the COLR are editorial changes. These changes are acceptable.

Adding WCAP-16011-P-A, in brackets, to the References section is appropriate. The brackets indicate WCAP-16011-P-A is an optional reference. It would only be included on plants that have implemented the Alternate MTC surveillance. This change is acceptable.

3.1 Summary

TSTF-486 would provide standardized wording in the CE STS for plants implementing the WCAP-16011-P-A alternate MTC verification at startup. The changes to NUREG-1432 proposed by TSTF-486 have been reviewed for consistency with the current NUREG-1432 and WCAP-16011-P-A. The proposed changes have been found to be consistent with NUREG-1432 and WCAP-16011-P-A, therefore the proposed changes are acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [] State official was notified of the proposed issuance of the amendment. The State official had [(1) No comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. [For licensees adding a TS Bases Control

Program: The amendment also changes record keeping, reporting, or administrative procedures or requirements.] The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding [FR]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. Letter from the Technical Specifications Task Force (TSTF), a joint owners group activity, re: TSTF-486, "Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)," dated June 3, 2005. (ADAMS ML051580191)
 2. Letter from the Technical Specifications Task Force (TSTF), a joint owners group activity, re: "Response to NRC Request for Additional Information Regarding TSTF-486, Revision 0," "Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)," and "Submittal of Revision 1," dated February 20, 2007. (ADAMS ML070510667)
 3. Letter from the Technical Specifications Task Force (TSTF), a joint owners group activity, re: TSTF-486, Revision 2, "Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)," dated March 10, 2007. (ADAMS ML071300267)
 4. NUREG 1432, "Standard Technical Specifications Combustion Engineering Plants," Television 3.1. (ADAMS ML062510040 and ML062510042)
 5. WCAP-16011-P-A, "Startup Test Activity Reduction Program," dated February 2005. (ADAMS ML050660127)
- The following example of an application was prepared by the NRC staff to facilitate

use of the consolidated line item improvement process (CLIP). The model provides the expected level of detail and content for an application to revise technical specifications regarding moderator temperature coefficient surveillance for startup test activity reduction (STAR) program using CLIP. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as Nuclear Regulatory Commission regulations.

U.S. Nuclear Regular Commission,
Document Control Desk,
Washington, DC 20555.

Subject: PLANT NAME, DOCKET NO. 50-,
APPLICATION FOR TECHNICAL
SPECIFICATION CHANGE REGARDING
MODERATOR TEMPERATURE
COEFFICIENT (MTC) SURVEILLANCE
FOR STARTUP TEST ACTIVITY
REDUCTION (STAR) PROGRAM USING
THE CONSOLIDATED LINE ITEM
IMPROVEMENT PROCESS

Gentleman: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for moderator temperature coefficient (MTC) surveillance requirements (SR) associated with implementation of WCAP-16011-P-A, "Startup Test Activity Reduction (STAR) Program."

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,
[Name, Title]

Attachments:

1. Description and Assessment.
2. Proposed Technical Specification Changes.
3. Revised Technical Specification Pages.
4. Regulatory Commitments.
5. Proposed Technical Specification Bases Changes.

cc: NRC Project Manager, NRC Regional Office, NRC Resident Inspector, State Contact.

Attachment 1—Description and Assessment

1.0 Description

The proposed amendment would modify TS requirements for moderator temperature coefficient (MTC) surveillance requirements (SR) associated with implementation of WCAP-16011-P-A, "Startup Test Activity Reduction (STAR) Program."

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF-486 Revision 2. The **Federal Register** notice published on [DATE] announced the availability of this TS improvement through the consolidated line item improvement process (CLIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF-486 Revision 2. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the modified TSTF-486 Revision 2 and the NRC staff's model safety evaluation dated [DATE].

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, the [LICENSEE] verifies the applicability of TSTF-486 to [PLANT], and commits to establishing Technical Specification Bases for TS [3.1.3] as proposed in TSTF-486, Revision 2.

The proposed TSTF-486 change revises SR 3.1.3.1 in the digital and analog Combustion Engineering STS (NUREG-1432) by adding a second Frequency. This second Frequency requires verifying that MTC is within the upper limit each fuel cycle within 7 EFPD after reaching 40 EFPD of core burnup, but only when the MTC determined prior to entering MODE 1 is verified using predicted MTC as adjusted for actual RCS boron concentration. The Frequency is consistent with the existing MODE 1 MTC Surveillance Frequency. The Bases are revised to describe the new requirements and to clarify the

analytical basis of the MTC utilizing the suggested changes in WCAP-16011-P. The Bases modifications clarify the relationship between the MTC limits specified in the Core Operating Limits Report (COLR) and the maximum positive MTC value specified in the LCO.

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

Attachment 3—Proposed Technical Specification Pages

Attachment 4—List Of Regulatory Commitments

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] will establish the Technical Specification Bases for TS [3.1.3] as adopted with the applicable license amendment.	[Complete, implemented with amendment OR within X days of implementation of amendment].

Attachment 5—Proposed Changes to Technical Specification Bases Pages

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [Plant Name] requests adoption of an approved change to the standard technical specifications (STS) for Combustion Engineering (CE) Plants (NUREG-1432) and plant specific technical specifications (TS), to allow modification of TS moderator temperature coefficient (MTC) surveillance requirements (SR) associated with implementation of WCAP-16011-P-A, "Startup Test Activity Reduction (STAR) Program," dated February 2005. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) STS Traveler, TSTF-486, Revision 1, "Revise MTC Surveillance for Startup Test Activity Reduction (STAR) Program (WCAP-16011)." WCAP-16011-P-A describes methods to reduce the time required for startup testing. To this end, WCAP-16011-P-A proposes methods to eliminate the control element assembly (CEA) worth and isothermal temperature coefficient (ITC) measurements at hot zero power (HZIP). The measured ITC is then used to calculate the HZIP MTC. WCAP-16011-P-A includes a method to substitute the measured verification of MTC

at HZP with an alternate MTC verification consisting of the predicted (calculated) MTC and measured critical boron concentration (CBC) at HZP. When this alternate MTC verification is utilized, WCAP-16011-P-A adds the requirement for the early in cycle MTC measurement to verify MTC is not more negative than allowed is also used to verify MTC is not more positive than allowed. WCAP-16011-P-A adds an ITC measurement at intermediate to hot full power (HFP) and applicability requirements for core design, fabrication, refueling, startup testing, and CEA lifetime viability requirements. WCAP-16011-P-A methods can only be applied to cores that are well characterized by an existing database.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements MTC SR changes associated with implementation of WCAP-16011-P-A, STAR Program. WCAP-16011-P-A describes methods to reduce the time required for startup testing. The consequences of an accident after adopting TSTF-486 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF-486 provides the means and standardized wording for CE STS plants implementing the previously approved WCAP-16011-P-A alternate MTC verification at startup. MTC is a parameter controlled in the licensee's TS, including surveillance requirements. As stated previously WCAP-16011-P-A describes methods to reduce the time required for startup testing. The changes to NUREG-1432 proposed by TSTF-486 have been reviewed for and found to be consistent with the current NUREG-1432 and WCAP-16011-P-A, and therefore the proposed changes are acceptable and do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the

amendment request, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 19th day of July, 2007.

For The Nuclear Regulatory Commission.

Timothy J. Kobetz,

Section Chief, Technical Specifications Branch, Division of Inspection & Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. E7-14573 Filed 7-26-07; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 30, 2007:

Closed Meetings will be held on Tuesday, July 31, 2007 at 2 p.m. and Thursday, August 2, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the Closed Meeting scheduled for Tuesday, July 31, 2007 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and
Other matters related to enforcement proceedings.

The subject matter of the Closed Meeting scheduled for Thursday, August 2, 2007 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and
Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: July 24, 2007

Nancy M. Morris,

Secretary.

[FR Doc. E7-14597 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56109; File No. SR-CBOE-2007-75]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of the Customer Portfolio Margin Pilot Program

July 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 29, 2007, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. CBOE has filed the proposed rule as a "non-controversial" proposed rule change 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

CBOE proposes to extend an existing customer portfolio margining pilot program ("Pilot Program") through July 31, 2008. The Pilot Program is codified in CBOE Rules 12.4, 9.15(c), 13.5 and 15.8A. There is no change to the rule

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).

text in conjunction with this proposed rule change. The text of the proposed rule change is available on CBOE's Web site (<http://www.cboe.org/legal>), at CBOE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program, as previously approved by the Commission, allows broker-dealers, for eligible securities, to compute customer margin requirements based on a portfolio margining methodology.

The purpose of the proposed rule change is to extend the Pilot Program for a twelve-month period, commencing on August 1, 2007, through July 31, 2008. The existing Pilot Program expires on July 31, 2007. The Exchange believes that extending the Pilot Program for twelve months is warranted in that time is needed to assess the operation of the rules, especially in light of the fact that amendments to the rule effective April 2, 2007, made equities, equity options, narrow-based index options, unlisted derivatives and security futures eligible for portfolio margining.⁵ CBOE has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons and the reasons cited in the Pilot Adoption Filing, CBOE requests that the Commission extend the Pilot Program through July 31, 2008. CBOE proposes to make the proposed rule change operative on July 31, 2007.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the section 6(b) of the Act,⁶ in general, and furthers

the objectives of section 6(b)(5)⁷ of the Act, in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 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 foregoing 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 prior to 30 days after the date of filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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-CBOE-2007-75 on the subject line.

⁷ 15 U.S.C. 78(f)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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-2007-75. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-CBOE-2007-75 and should be submitted on or before August 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-14505 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

⁵ See Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006); see also Exchange Act Release No. 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005) ("Pilot Adoption Filing").

⁶ 15 U.S.C. 78f(b).

¹⁰ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56114; File No. SR-CBOE-2007-81]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE's Rules Related To Credit Default Options

July 20, 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 16, 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, II, and III below, which Items have been prepared substantially by the Exchange. The Exchange has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) 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 amend its rules pertaining to Credit Default Options ("CDOs") in order to set out certain parameters that the Exchange intends to use for determining the applicable share to be allocated to a Successor Reference Entity if there is a CDO contract adjustment due to a Succession Event.⁵ The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received approval to list and trade Credit Default Options or CDOs, which are binary call options based on Credit Events⁶ in one or more debt securities of an issuer or guarantor.⁷ The Exchange is now proposing to amend Rule 29.4, *Adjustments*, in order to set out certain parameters that the Exchange intends to use for determining the applicable share to be allocated to a Successor Reference Entity if there is a CDO contract adjustment due to a Succession Event.⁸

By way of background, the cash settlement amount for a CDO is generally \$100,000 per contract (equal to an exercise settlement value of \$100 multiplied by a contract multiplier of 1,000) upon automatic exercise if the Exchange confirms a Credit Event.⁹ If a Credit Event is not confirmed, the cash settlement value will be \$0. Among other things, Rule 29.4 provides that CDO contracts will be subject to adjustment and replaced by one or more CDOs derived from Successor Reference Entities based on the applicable share of each Successor Reference Entity. The "applicable share" is a percentage amount used to determine the adjusted cash settlement amount and adjusted contract multiplier applicable to each

replacement CDO.¹⁰ For example, if there are two Successor Reference Entities that each have an applicable share of 50%, the cash settlement amount for each replacement CDO would be \$50,000 (equal to an exercise settlement value of \$100 multiplied by the revised contract multiplier of 500).

Currently, the rule is silent regarding the calculation of the applicable share. Based on feedback from potential CDO investors and in order to provide more clarity and certainty to such investors, the Exchange is proposing to codify certain parameters that it intends to utilize in determining the applicable share. As set out in the proposed revisions to the rule text, in determining the applicable share the Exchange, as a general rule, would allocate an equal share to each Successor Reference Entity that has succeeded the Reference Entity as issuer and guarantor of (i) at least one Relevant Obligation and (ii) at least 25% of the principal amount of the original Reference Entity's outstanding debt obligations other than non-recourse indebtedness. If no Successor Reference Entity satisfies the "at least 25%" requirement and the original Reference Entity does not survive following the Succession Event, an equal share will be allocated to the Successor Reference Entity(ies) that succeeded to the largest percentage of the original Reference Entity's outstanding debt obligations other than non-recourse indebtedness.¹¹ These applicable share parameters would override any contradictory provision in the Relevant Obligation(s) terms. In addition, the Exchange intends to apply these parameters to all presently listed and any future-listed CDO contracts.

The following examples illustrate the application of the parameters:

- Assume a Succession Event is confirmed by the Exchange in a Reference Entity with \$100 million outstanding in debt obligations and, under the terms of the Succession Event, Successor Reference Entity A succeeds to certain Relevant Obligations and other debt obligations totaling \$40 million (40% of the original Reference Entity's outstanding debt obligations), Successor Reference Entity B succeeds to certain Relevant Obligations and other debt obligations totaling \$30

¹⁰ Every determination by the Exchange pursuant to Rule 29.4 is within the Exchange's sole discretion, is conclusive and binding on all holders and sellers, and is not subject to review. See Rule 29.4(d).

¹¹ If no Successor Reference Entity satisfies the "at least 25%" requirement and the original Reference Entity survives, then no Succession Event will be deemed to have occurred and the CDO contract will not be adjusted.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ The terms "applicable share," "Successor Reference Entity," and "Succession Event" are described further below.

⁶ A "Reference Obligation" is a specific debt security of an issuer or guarantor that underlies a CDO. The set of the Reference Obligation and any other debt security obligation(s) of the issuer or guarantor (other than non-recourse indebtedness) that underlie a CDO are referred to as the "Relevant Obligations." A "Credit Event" occurs when a Reference Entity has a Failure-to-Pay Default on, any other Event of Default on, and/or a Restructuring of the Relevant Obligation(s). Failure-to-Pay Defaults, Events of Default and Restructuring are defined in accordance with the terms of the Relevant Obligation(s) and subject to certain minimum threshold amounts provided in Rule 29.1(c).

⁷ See Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (SR-CBOE-2006-84).

⁸ A "Successor Reference Entity" and a "Succession Event" are defined in accordance with the terms of the Relevant Obligation(s). See Rule 29.4(a)(1)(i).

⁹ See Rule 29.1(a).

million (30%), and Successor Reference Entity C succeeds to all other Relevant Obligations and other debt obligations totaling \$30 million (30%). A CDO contract overlying Relevant Obligations on the original Reference Entity would be adjusted and replaced with three new CDOs, one each for Successor Reference Entities A, B and C, and each having an equal share value equivalent to 33.333%, the “applicable share,” of the original CDO contract (e.g., 33.333% of \$100,000, or \$33,333, which is equal to an exercise settlement value of \$100 multiplied by the revised contract multiplier of 333.33).

- Assume a Succession Event is confirmed by the Exchange in a Reference Entity with \$100 million outstanding in debt obligations and, under the terms of the Succession Event, Successor Reference Entity A succeeds to certain Relevant Obligations and other debt obligations totaling \$45 million (45% of the original Reference Entity's outstanding debt obligations), Successor Reference Entity B succeeds to certain Relevant Obligations and other debt obligations totaling \$40 million (40%), and Successor Reference Entity C succeeds to all other Relevant Obligations and other debt obligations totaling \$15 million (15%). A CDO contract overlying Relevant Obligations on the original Reference Entity would be adjusted and replaced with two new CDOs, one each for Successor Reference Entities A and B, and each having an equal share value equivalent to 50% of the original CDO contract (e.g., 50% of \$100,000, or \$50,000, which is equal to an exercise settlement value of \$100 multiplied by the revised contract multiplier of 500). Successor Reference Entity C's applicable share would be 0.

- Assume a Succession Event is confirmed by the Exchange in a Reference Entity with \$100 million outstanding in debt obligations and, under the terms of the Succession Event, Successor Reference Entities A and B each succeed to certain Relevant Obligations and other debt obligations totaling \$23 million each (23% of the original Reference Entity's outstanding debt obligations) and Successor Reference Entities C, D and E each succeed to certain Relevant Obligations and other debt obligations totaling \$18 million each (18%). A CDO contract overlying Relevant Obligations on the original Reference Entity would be adjusted and replaced with two new CDOs, one each for Successor Reference Entities A and B, and each having an equal share value equivalent to 50% of the original CDO contract (e.g., 50% of \$100,000, or \$50,000, which is equal to an exercise settlement value of \$100

multiplied by the revised contract multiplier of 500). Successor Reference Entities C, D and E's applicable shares would be 0.

As indicated above, the Exchange is proposing to codify these parameters for determining the applicable share of each Successor Reference Entity based on feedback we have received thus far from potential CDO investors. The Exchange believes that setting forth these parameters would clarify how the Exchange intends to administer the Succession Event confirmation process, thereby affording investors additional clarity and certainty regarding the impact of a Succession Event on an outstanding CDO contract. The Exchange also understands that these parameters would be substantially similar to and generally consistent with the practice in the over-the-counter market.

Finally, the Exchange is also proposing a non-substantive change to Rule 29.4. Specifically, the Exchange is substituting the phrase “the adjusted cash settlement amount(s) and the adjusted contract multiplier(s)” for “adjusted unit of trading and the adjusted exercise price” in paragraph (c) to be consistent with the use and meaning of those terms elsewhere in the rule text.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to national securities exchanges. Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹² which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. As indicated above, the Exchange believes that setting forth the “applicable share” parameters would clarify how the Exchange intends to administer the Succession Event confirmation process, thereby affording investors additional clarity and certainty regarding the impact of a Succession Event on an outstanding CDO contract.

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

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act¹³ and Rule 19b-4(f)(1) thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-81 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-2007-81. 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

¹³ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁴ 17 CFR 240.19b-4(f)(1).

¹² 15 U.S.C. 78f(b)(5).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2007-81 and should be submitted on or before August 17, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14507 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56117; File No. SR-ISE-2007-47]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Generic Listing Standards for Index-Linked Securities

July 23, 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 26, 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 Exchange. On July 17, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order

provides notice of the proposed rule change, as amended, and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) Adopt generic listing standards for equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), and currency-linked securities ("Currency-Linked Securities," and together with Equity Index-Linked Securities and Commodity-Linked Securities, collectively, "Index-Linked Securities") under new ISE Rule 2130, and (2) make conforming changes to ISE Rules 2100 and 2101 in regard to the adoption of the generic listing standards for Index-Linked Securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 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

The Exchange proposes to adopt new ISE Rule 2130 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities), which would provide generic listing standards to permit the trading of Index-Linked Securities on the Exchange pursuant to Rule 19b-4(e) under the Act.³ The Exchange seeks to

³ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change if the Commission has approved the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities

be able to list and/or trade Index-Linked Securities without individual Commission approval of each such product pursuant to section 19(b)(2) of the Act.⁴ In addition, the Exchange proposes to amend ISE Rule 2101(a) to add Index-Linked Securities to the list of securities that will only trade on the Exchange pursuant to unlisted trading privileges ("UTP"). Thus, while the proposal would allow the Exchange to trade Index-Linked Securities by either listing or trading pursuant to UTP, the Exchange would only trade Index-Linked Securities pursuant to UTP. In order to trade by listing such Index-Linked Securities on the Exchange, the Exchange would first need to seek Commission approval and amend its rules. Finally, the Exchange proposes to amend ISE Rule 2100(c)(7) to add Index-Linked Securities to the definition of Equity Securities.

The Exchange represents that any securities it lists and/or trades pursuant to proposed ISE Rule 2130 will satisfy the standards set forth therein. The Exchange states that within five business days after commencement of trading of an Index-Linked Security in reliance on proposed ISE Rule 2130, the Exchange will file a Form 19b-4(e) with the Commission.⁵

Index-Linked Securities

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments, or market indexes of the foregoing (the "Underlying Index" or "Underlying Indexes").⁶ Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year, but not greater than thirty years, and are tied to the performance of the Underlying Index.⁷ Index-Linked Securities may or may not make interest payments based on dividends or other cash distributions paid on the components comprising the Underlying

product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e)(1).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See 17 CFR 240.19b-4(e)(2)(ii) and 17 CFR 249.820.

⁶ The Exchange states that the holder of an Index-Linked Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component assets. For example, an Index-Linked Security may be subject to a "cap" on the maximum principal amount to be repaid to holders or a "floor" on the minimum principal amount to be repaid to holders at maturity.

⁷ E-mail from Laura Clare, Assistant General Counsel, ISE, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 18, 2007 (confirming the description of Index-Linked Securities).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Index or Indexes to the holder during their term. Despite the fact that Index-Linked Securities are linked to an Underlying Index, each will trade as a single, exchange-listed security.

The Exchange represents that the proposed generic listing standards will not be applicable to Index-Linked Securities with respect to which the payment at maturity is based on a multiple of negative performance of an Underlying Index or Indexes. An Index-Linked Security may or may not provide "principal protection," *i.e.*, a minimum guaranteed amount to be repaid.⁸ The Exchange believes that the flexibility to list a variety of Index-Linked Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

Index-Linked Securities do not give the holder any right to receive a portfolio component, dividend payments, or any other ownership right or interest in the portfolio or underlying components comprising the Underlying Index. Pursuant to proposed ISE Rule 2130, the current or composite value of the Underlying Index will be widely disseminated at least every 15 seconds during the trading day.

Proposed Listing Criteria for Index-Linked Securities

The Exchange will apply the following requirements to all issuers of Index-Linked Securities:

(A) If the issuer is a company listed on the New York Stock Exchange, NYSE Arca, Inc., American Stock Exchange LLC, or The NASDAQ Stock Market LLC, the entity must be a company in good standing (*i.e.*, meets the continued listing criteria of such exchange). If not listed, the issuer must meet the following criteria:

(i) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in (ii) below, the Exchange generally will require the issuer to have the following: (x) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (y) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

(ii) The issuer's pre-tax income from continuing operations shall substantially exceed \$750,000 in its last fiscal year, or in two of its last three

fiscal years (sovereign issuers will be evaluated on a case-by-case basis).

(B) The issuer will be expected to have a minimum tangible net worth⁹ of \$250,000,000. In the alternative, the issuer will be expected: (i) To have a minimum tangible net worth of \$150,000,000; and (ii) not to have issued Index-Linked Securities, the original issue price of which, combined with all the issuer's other Index-Linked Securities listed on a national securities exchange, exceeds 25% of the issuer's tangible net worth at the time of issuance. If the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will rely on such affiliate's tangible net worth for purposes of these requirements and will include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate.

(C) The issuer must be in compliance with Rule 10A-3 under the Act.¹⁰

The Exchange will apply the following requirements to each issue of Index-Linked Securities:

(1) The issue must have (a) A minimum public distribution of at least 1 million units, except if the Index-Linked Securities are traded in thousand dollar denominations, and (b) at least 400 holders, except if the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis¹¹ or the Index-Linked Securities are traded in thousand dollar denominations;

(2) The issue must have a principal amount/aggregate market value of not less than \$4 million;

(3) The issue must have a term of at least one year, but not greater than thirty years;

(4) The issue must be the non-convertible debt of the issuer; and

(5) The issue must not base its payment at maturity on a multiple of the negative performance of an Underlying Index or Indexes, although the payment at maturity may or may not provide for a multiple of the positive performance of an Underlying Index or Indexes.

Index-Linked Securities must have at least 400 holders at the time of listing, except if the Index-Linked Securities are traded in thousand dollar denominations or the Index-Linked

Securities are redeemable at the option of the holders thereof on at least a weekly basis. The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the Index-Linked Securities and the performance of the Underlying Index, as holders will be unlikely to sell their Index-Linked Securities for less than their redemption value if they have a weekly right to be redeemed for their full value. In addition, in the case of Index-Linked Securities with a weekly redemption feature, the issuer has the ability to issue new Index-Linked Securities from time to time at the indicative value at the time of such sale. This provides a ready supply of new Index-Linked Securities, thereby lessening the possibility that the market price of such securities will be affected by a scarcity of available Index-Linked Securities for sale. It also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire Index-Linked Securities from the issuer at that price.

The ability to list Index-Linked Securities with these characteristics without any specific requirements as to the number of holders is important to the successful listing of such securities. Issuers issuing these types of Index-Linked Securities generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange traded fund issuance, in that the issue is launched without any significant distribution event, and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the securities at a point when the Underlying Index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell to sufficient investors on the listing date to meet a specific number-of-holders requirement. However, the Exchange believes that this difficulty in ensuring 400 holders on the listing date is not indicative of a likely long-term lack of liquidity in Index-Linked Securities or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the Index-Linked Securities or a successful two-sided market.

⁹ "Tangible net worth" is defined as total assets, less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights, and trademarks.

¹⁰ See 17 CFR 240.10A-3 (setting forth the listing standards relating to audit committees).

¹¹ E-mail from Laura Clare, Assistant General Counsel, ISE, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated July 18, 2007 (clarifying the exceptions to the holder distribution requirement).

⁸ Some Index-Linked Securities may provide for "contingent" protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain predetermined level.

Equity Index-Linked Securities Listing Standards

Equity Index-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(c) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Equity Index-Linked Security, such Underlying Index must be comprised of at least ten component securities of different issuers. The Underlying Index must also either (i) be approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act¹² and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (ii) meet the following requirements:

- Each component security must have a minimum market value of at least \$75 million, except that, for each of the lowest dollar-weighted component securities in the Underlying Index that in the aggregate account for no more than 10% of the dollar weight of such Underlying Index, the market value can be at least \$50 million;

- Each component security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest dollar-weighted component securities in the Underlying Index that, in the aggregate, account for no more than 10% of the dollar weight of such Underlying Index, the trading volume shall be at least 500,000 shares in each of the last six months;

- Underlying Indexes based upon the equal-dollar or modified equal-dollar weighting methodology must be rebalanced at least quarterly;

- In the case of a capitalization-weighted or modified capitalization-weighted Underlying Index, the lesser of the five highest dollar-weighted component securities in the Underlying Index or the highest dollar-weighted component securities in the Underlying Index that, in the aggregate, represent at least 30% of the total number of component securities in the Underlying Index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

- No component security can represent more than 25% of the dollar weight of the Underlying Index, and the five highest dollar-weighted component securities in the Underlying Index cannot, in the aggregate, account for more than 50% of the dollar weight of the Underlying Index (60% for an

Underlying Index consisting of fewer than 25 component securities);

- 90% of the Underlying Index's dollar weight and at least 80% of the total number of component securities must meet the then current criteria for standardized options trading on a national securities exchange; and

- All component securities must either (A) be securities (other than foreign country securities and American Depositary Receipts ("ADRs")) that are issued by a reporting company under the Act that is listed on a national securities exchange and be an "NMS stock," as defined in Rule 600 of Regulation NMS,¹³ or (B) be foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements with the Exchange cannot, in the aggregate, represent more than 20% of the dollar weight of the Underlying Index.

The Exchange would commence delisting or removal proceedings of an Equity Index-Linked Security if any of the standards set forth in the initial eligibility criteria are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the dollar weight of the Underlying Index and the five highest dollar-weighted components in the Underlying Index cannot represent more than 50% (or 60% for Underlying Indexes with less than 25 components) of the dollar weight of the Underlying Index, need only be satisfied for capitalization-weighted, modified capitalization-weighted, and price-weighted Underlying Indexes as of the first day of January and July in each year;

- The total number of components in the Underlying Index may not increase or decrease by more than 33⅓% from the number of components in the Underlying Index at the time of its initial listing, and in no event may be less than ten components;

- The trading volume of each component security in the Underlying Index must be at least 500,000 shares for each of the last six months, except that for each of the lowest dollar-weighted components in the Underlying Index that, in the aggregate, account for no more than 10% of the dollar weight of the Underlying Index, trading volume must be at least 400,000 shares for each of the last six months; and

- For a capitalization-weighted or modified capitalization-weighted Underlying Index, the lesser of the five highest dollar-weighted component securities in the Underlying Index or the highest dollar-weighted component securities in the Underlying Index that, in the aggregate, represent at least 30% of the total number of stocks in the Underlying Index must have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Equity Index-Linked Security, the Exchange will commence delisting or removal proceedings if an Underlying Index or Indexes fails to satisfy the maintenance standards or conditions for such Underlying Index or Indexes, as set forth by the Commission in its order under section 19(b)(2) of the Act¹⁴ approving the Underlying Index or Indexes for the trading of options or other derivatives. The Exchange will also commence delisting or removal proceedings of an Equity Index-Linked Security under any of the following circumstances:

- If the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;

- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the Equity Index-Linked Securities trade on the Exchange; or

- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Commodity-Linked Securities Listing Standards

Commodity-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(d) for initial and continued listing. An issue of Commodity-Linked Securities must meet initial listing standards set forth in either the first or second bullet point below:

- One or more physical commodities or commodity futures, options or other commodity derivatives, Commodity-Based Trust Shares (as defined in ISE Rule 2125), or a basket or index of any of the foregoing (the "Commodity Reference Asset") to which the Commodity-Linked Security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust Shares, options, or other derivatives by the Commission under

¹² 15 U.S.C. 78s(b)(2).

¹³ See 17 CFR 242.600(b)(47).

¹⁴ 15 U.S.C. 78s(b)(2).

section 19(b)(2) of the Act¹⁵ and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

- The pricing information for each component of a Commodity Reference Asset must be derived from a market which is an ISG member or affiliate member or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association.

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Commodity Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the Commodity-Linked Securities trade on the Exchange; and

- In the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of the subject Commodity-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Commodity-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above is not continuously maintained. Notwithstanding the foregoing, an issue of Commodity-Linked Securities will not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Commodity Reference Asset has at least ten components, and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Commodity Reference Asset. The Exchange will also commence delisting or removal proceedings:

- If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;

- The value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of proposed ISE Rule 2130; or

- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Currency-Linked Securities Listing Standards

Currency-Linked Securities will be subject to the criteria in proposed ISE Rule 2130(e) for initial and continued listing. An issue of Currency-Linked Securities must meet the initial listing standards set forth in either bullet point below:

- One or more currencies, options or currency futures or other currency derivatives, Currency Trust Shares (as defined in ISE Rule 2126), or a basket or index of any of the foregoing (the "Currency Reference Asset") to which the Currency-Linked Security is linked shall have been reviewed and approved for the trading of Currency Trust Shares, options, or other derivatives by the Commission under section 19(b)(2) of the Act¹⁶ and rules thereunder, and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or

- The pricing information for each component of a Currency Reference Asset must be (a) the generally accepted spot price for the currency exchange rate in question or (y) derived from a market which is an ISG member or affiliate member or with which the Exchange has in place a comprehensive surveillance sharing agreement and is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

In addition, the issue must meet both of the following initial listing criteria:

- The value of the Currency Reference Asset must be calculated and widely disseminated on at least a 15-second basis during the time the Currency-Linked Securities trade on the Exchange; and

- In the case of Currency-Linked Securities that are periodically redeemable, the indicative value of the subject Currency-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Currency-Linked Securities trade on the Exchange.

The Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above is not continuously maintained. Notwithstanding the foregoing, an issue of Currency-Linked Securities will not be delisted for a failure to have in place comprehensive surveillance sharing agreements if the Currency Reference Asset has at least ten components, and the Exchange has comprehensive

surveillance sharing agreements with respect to at least 90% of the dollar weight of the Currency Reference Asset. The Exchange will also commence delisting or removal proceedings under any of the following circumstances:

- If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;

- If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of proposed ISE Rule 2130; or

- If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Exchange Rules Applicable to Index-Linked Securities

Index-Linked Securities traded on the Exchange will be subject to all Exchange rules governing the trading of equity securities. Accordingly, the Exchange proposes to amend the definition of "Equity Security" to include Index-Linked Securities.¹⁷ The Exchange's equity margin rules and the Exchange's regular trading hours (from 9 a.m. to 4 p.m. Eastern Time) will apply to transactions in Index-Linked Securities.

Regulatory Information Circular

Upon evaluating the nature and complexity of each Index-Linked Security, the Exchange represents that it will prepare and distribute, if appropriate, a Regulatory Information Circular to Electronic Access Members ("EAMs") describing the product. Accordingly, the particular structure of, and the corresponding risks transacting in, an Index-Linked Security will be highlighted and disclosed. In particular, the Regulatory Information Circular will set forth the Exchange's suitability rule that requires EAMs recommending a transaction in Index-Linked Securities (1) To determine that such transaction is suitable for the customer (ISE Rule 610), and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such transaction. In addition, the Regulatory Information Circular will reference the requirement that EAMs must deliver a prospectus to investors purchasing newly issued Index-Linked Securities prior to or concurrently with the confirmation of a transaction.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See ISE Rule 2100(c)(7).

Surveillance

The Exchange will closely monitor activity in Index-Linked Securities to identify and deter any potential improper trading activity in such securities. Additionally, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities. Specifically, the Exchange will rely on its existing surveillance procedures governing equities, options, and exchange-traded funds. The Exchange has developed procedures to closely monitor activity in Index-Linked Securities and the Underlying Indexes and their components to identify and deter potential improper trading activity. To the extent applicable, the Exchange will be able to obtain trading and beneficial holder information from the primary trading markets for the components of the Underlying Indexes in relation to Index-Linked Securities, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Firewall Procedures

If the Underlying Index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index, and the Underlying Index shall be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Underlying Index licensor or administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Underlying Index or portfolio.

Trading Halts

In the case of Commodity- or Currency-Linked Securities, if the indicative value or the Commodity Reference Asset value or Currency Reference Asset value, as the case may be, applicable to a series of securities is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the Underlying Index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading

day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. With respect to Index-Linked Securities admitted to dealings by the Exchange pursuant to UTP, the Exchange will halt trading in accordance with proposed ISE Rule 2101(a), if such Index-Linked Security is no longer listed or trading on the primary listing market.

2. Statutory Basis

The proposal is consistent with section 6(b) of the Act,¹⁸ in general, and section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2007-47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-47. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2007-47 and should be submitted on or before August 17, 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, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,²¹ which requires, among other things, that the Exchange's rules be designed 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

²⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

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.

Generic Listing Standards for Index-Linked Securities

To list and/or trade any issue of Index-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act²² and Rule 19b-4 thereunder.²³ However, Rule 19b-4(e) under the Act²⁴ provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act²⁵ if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and/or trading of Index-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements. The Exchange's ability to rely on Rule 19b-4(e) to list and/or trade Index-Linked Securities that meet the requirements of proposed ISE Rule 2130 should reduce the timeframe for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards that are substantially similar to ISE's proposal.²⁶ The Commission believes that the proposed generic listing standards for Index-Linked Securities should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.²⁷

Listing and Trading Index-Linked Securities

Taken together, the Commission finds that ISE's proposal contains adequate rules and procedures to govern the listing and trading of Index-Linked Securities pursuant to Rule 19b-4(e) on the Exchange. All such securities listed and/or traded under their respective generic standards will be subject to the full panoply of ISE rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, ISE has proposed size, earnings, and minimum tangible net worth requirements for each issuer, as well as minimum public distribution and shareholder, principal amount/aggregate market value, and minimum term thresholds for each issuance of Index-Linked Securities.²⁸ In addition, the Exchange's proposal requires that the assets (or their derivatives) underlying such securities must either have (1) Been reviewed and approved for trading by the Commission, or (2) in the case of Equity Index-Linked Securities, such underlying assets or their derivatives have sufficient market value and trading volume and not constitute an unreasonable percentage of the overall dollar weight of the Underlying Index, or, in the case of Commodity- and Currency-Linked Securities, their pricing information be reliable or derived from certain required sources. These requirements are designed to ensure that the trading markets for the underlying components are adequately capitalized and sufficiently liquid. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission also finds that (1) In the case of Equity Index-Linked Securities, the requirement that all component securities must either be securities issued by a reporting company under the Act that is listed on a national securities exchange and be an NMS stock (as defined in Rule 600 of

Regulation NMS)²⁹ or be foreign country securities or ADRs, so long as such foreign country securities or foreign country securities underlying the ADRs that are primarily traded on foreign markets, which are not ISG members or parties to comprehensive surveillance sharing agreements, do not in the aggregate represent more than 20% of the dollar weight of the Underlying Index, and (2) in the case of Commodity-Linked and Currency-Linked Securities with at least ten components, the requirement that at least 90% of the dollar weight of the corresponding Commodity Reference Asset or Currency Reference Asset, as the case may be, must have comprehensive surveillance sharing agreements with the Exchange, in each case, should aid the Exchange in identifying potential trading and other violations of its rules. The Commission believes that such a requirement will contribute to the transparency of the applicable Underlying Index. The Commission also notes that, by requiring pricing information for the relevant components to be readily available, the proposed listing standards of ISE Rule 2130 should help ensure a fair and orderly market for Index-Linked Securities listed and/or traded pursuant to Rule 19b-4(e).

The Exchange has also developed delisting criteria that will permit it to suspend trading of Index-Linked Securities in circumstances that make further dealings in such products inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each such security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index for Index-Linked Securities (or, for Commodity-Linked and Currency-Linked Securities that are periodically redeemable, the corresponding indicative value) is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings. The Commission also notes that, because Index-Linked Securities would only be traded on the Exchange pursuant to UTP under proposed ISE Rule 2101(a), the Exchange would halt the trading of such securities if such Index-Linked

²² 15 U.S.C. 78s(b)(1).

²³ 17 CFR 240.19b-4.

²⁴ 17 CFR 240.19b-4(e).

²⁵ 17 CFR 240.19b-4(c)(1).

²⁶ See Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45) (amending the generic listing standards for Index-Linked Securities and approving generic listing standards for Commodity- and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities).

²⁷ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange

from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular equity-, commodity-, or currency-linked product. The Commission further notes that securities that satisfy ISE's proposed generic listing standards for Index-Linked Securities would only be traded on the Exchange pursuant to UTP, pursuant to proposed ISE Rule 2101(a), and that the Exchange would be required to submit a separate filing pursuant to Section 19(b)(2) requesting Commission approval if the Exchange seeks to trade such securities by listing them. See ISE Rule 2101(a).

²⁸ The Commission notes that ISE's proposed initial requirements for all issuers and issuances of Index-Linked Securities are substantially similar to those adopted by other exchanges. See *supra* note 26.

²⁹ See 17 CFR 242.600(b)(47).

Securities are no longer listed or trading on the original listing market.

Surveillance

The Commission notes that any Index-Linked Securities approved for listing and/or trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it has developed to closely monitor activity in such securities and the Underlying Indexes and/or portfolios. The Exchange also has represented that its surveillance procedures are adequate to properly monitor the trading of Index-Linked Securities listed pursuant to the proposed generic listing standards and that it will be able to obtain necessary trading and beneficial holder information from the primary trading markets for the underlying components, either pursuant to bilateral information sharing agreements with those markets or because those markets are full or affiliate members of ISG.

Regulatory Information Circular

The Exchange has represented that it will distribute, as appropriate, a Regulatory Information Circular to EAMs describing the product, the specific structure of the product, and the corresponding risks of transacting in Index-Linked Securities. In addition, the Regulatory Information Circular will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index-Linked Securities to customers and the prospectus delivery requirements.

Firewall Procedures

The Exchange has further represented that if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a "firewall" around personnel responsible for the maintenance of such Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index. As an added measure, a third-party who is not a broker-dealer will be required to calculate the value of the Underlying Index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an Underlying Index licensor or administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public

information regarding the applicable Underlying Index or portfolio.

Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Exchange requested accelerated approval of the proposal to facilitate the prompt trading of Index-Linked Securities pursuant to UTP based on the specified criteria of proposed ISE Rules 2100, 2101, and 2130. The Commission notes that the Exchange's proposed generic listing standards for Index-Linked Securities are substantially based on previously approved listing standards for such securities³⁰ and presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,³¹ 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,³² that the proposed rule change (SR-ISE-2007-47), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E7-14502 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56108; File No. SR-NASD-2007-045]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Portfolio Margin Pilot Program

July 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 2, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NASD. NASD has designated the proposed rule change as constituting 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 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

NASD proposes to extend through July 31, 2008 the portfolio margin pilot program set forth in Rule 2520(g). The portfolio margin pilot program permits members to margin certain products according to a prescribed portfolio margin methodology and is set to expire on July 31, 2007. There is no change to the rule text with this proposed rule change. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and <http://www.nasd.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, 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

³⁰ See *supra* note 26.

³¹ 15 U.S.C. 78s(b)(2).

³² *Id.*

³³ 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.

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 12, 2007, NASD filed SR-NASD-2007-013 for immediate effectiveness to establish a portfolio margin pilot program that permits member firms to elect to margin certain products according to a prescribed portfolio margin methodology.⁵ The portfolio margin pilot program is substantially similar to margin rule amendments by the New York Stock Exchange ("NYSE") and the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.⁶ Consistent with the amended NYSE and CBOE portfolio margin programs, NASD's pilot, as proposed in SR-NASD-2007-013, started on April 2, 2007 and ends on July 31, 2007.

NASD proposes to extend the operation of the pilot for an additional one-year period to July 31, 2008. NASD believes that extending the pilot for twelve months is warranted in that time is needed to assess the operation and utility of the program, especially in light of the fact that the rules establishing the pilot, effective April 2, 2007, made equities, equity options, narrow-based index options, unlisted derivatives and security futures eligible for portfolio margining. An extension will enable NASD to determine whether the program better aligns margin requirements with the actual risk of hedged products, thereby potentially alleviating excess margin calls and potentially reducing the risk of forced

liquidations of positions in customer accounts. For these reasons, NASD requests that the Commission extend the pilot program until July 31, 2008.

NASD has filed the proposed rule change for immediate effectiveness.⁷

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,⁸ 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 a one-year extension will enable NASD to evaluate the operation and utility of the portfolio margin pilot program to determine whether the program better aligns the margin requirements with actual risk.

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.

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 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 prior to 30 days after the date of filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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.

⁷ The operative date of the proposed rule change will be August 1, 2007.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

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-2007-045 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-2007-045. 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 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-2007-045 and should be submitted on or before August 17, 2007.

⁵ See Exchange Act Release No. 55471 (March 14, 2007), 72 FR 13149 (March 20, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-013).

⁶ See Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) (SR-NYSE-2006-13, relating to further amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR-NYSE-2005-93, relating to amendments to the NYSE's portfolio margin pilot program); Exchange Act Release No. 52031 (July 14, 2005) 70 FR 42130 (July 21, 2005) (SR-NYSE-2002-19, relating to the NYSE's original portfolio margin pilot). See also Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006) (SR-CBOE-2006-014, relating to amendments to the CBOE's portfolio margin pilot); Exchange Act Release No. 52032 (July 14, 2005) 70 FR 42118 (July 21, 2005) (SR-CBOE-2002-03, relating to the CBOE's original portfolio margin pilot).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14504 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56113; File No. SR-NSX-2007-05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change to Modify Chapter VII of the Exchange's Rules Regarding Suspensions of an ETP Holder by Certain Exchange Officers

July 20, 2007.

I. Introduction

On May 9, 2007, the National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to modify Chapter VII of the Exchange's rules to provide that the Chairman of the Exchange's Board of Directors ("Chairman") or the Exchange's Chief Regulatory Officer, or their respective designees, would have the authority to summarily suspend or place limitations or conditions on an ETP Holder or summarily suspend a person from access to Exchange services in certain circumstances. Notice of the proposed rule change was published for comment in the **Federal Register** on June 18, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NSX Rule 7.1 currently authorizes the Chairman of the NSX Board of Directors ("Chairman") or NSX's President ("President") to summarily suspend an ETP Holder, or impose such conditions and restrictions upon an ETP Holder as are reasonably necessary for the protection of investors, the Exchange, the creditors, and the customers of such ETP Holder, if such ETP Holder, among other things, has failed to perform its contracts, is insolvent, or is in such

financial or operational condition or operating its business in such a manner that it cannot be permitted to continue in business with safety to its customers, creditors, and other ETP Holders of the Exchange.⁴ The Chairman or President may also lift such a suspension without further proceedings, if appropriate.⁵ NSX Rule 7.6 currently permits the Chairman or President to, under certain circumstances, summarily limit or prohibit, persons from access to services offered by the Exchange.

NSX proposes to amend Rules 7.1 and 7.6 to authorize the Chairman or NSX's Chief Regulatory Officer ("CRO"), or their respective designees, to impose and lift suspensions as described above. NSX's President would no longer have such authority. The Exchange represents that the designee for the Chairman would be the Chairman of the Exchange's Regulatory Oversight Committee ("ROC"), a member of the ROC, or another independent member of the Exchange's Board of Directors,⁶ in that order of priority. The designee for the CRO would be an officer in the Exchange's Regulatory Services Division. The proposal does not otherwise modify NSX's rules regarding suspension, including its provisions for review of summary actions.

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that it is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposed rule change furthers the objectives of section 6(b)(1)⁸ of the Act, which requires the Exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act and the rules of the Exchange. In addition, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of a national

securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the reallocation of authority under NSX Rules 7.1 and 7.6 from the Chairman and President to the Chairman and CRO, or their respective designees, is consistent with the Act. The Commission also believes that the reallocation is designed to provide for continuity in the event that the Chairman or CRO is unavailable. The Commission notes that the Exchange's rules governing the review of suspensions remain unchanged.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-NSX-2007-05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14506 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56107; File No. SR-NYSE-2007-56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Portfolio Margin Pilot Program Under NYSE Rules 431 (Margin Requirements) and 726 (Delivery of Options Disclosure Document and Prospectus)

July 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 28, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ See NSX Rule 7.1(a).

⁵ See NSX Rule 7.1(c).

⁶ NSX By-Law Section 1.1(I)(1) defines "Independent Director" as a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any ETP Holder, other than as a member of the Board.

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(1).

⁹ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55893 (June 11, 2007), 72 FR 33551.

The Exchange has designated the proposed rule change as constituting 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 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 NYSE is filing with the Commission rules previously approved in order to secure a one-year extension of the pilot program (from August 1, 2007 until July 31, 2008) reflected in the changes embodied in SR-NYSE-2006-13, which was approved by the Commission on December 12, 2006 on a pilot basis, to expire on July 31, 2007.⁵ The previously approved changes to NYSE Rule 431 (“Margin Requirements”) expanded the scope of products that are eligible for treatment as part of the original Commission-approved portfolio margin pilot program⁶ and expanded pilot;⁷ eliminated the \$5 million equity requirement, except for accounts that carry unlisted derivatives; and eliminated the use of a cross-margin account for margining eligible securities products with eligible commodity products. The approved pilot rules also deleted the “Sample Portfolio Margining and Cross Margining Risk Disclosure Statement to Satisfy Requirements of Exchange Rule 431(g),” previously found in NYSE Rule 726 (“Delivery of Options Disclosure Document and Prospectus”).⁸

There is no change to the rule text with this proposed rule change. The text of the proposed rule change is available at the NYSE’s Web site (<http://www.nyse.com>), at the principal office of the NYSE, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend for one year the portfolio margin pilot program,⁹ which has been expanded to make the following products eligible for treatment under portfolio margin requirements: all margin equity securities,¹⁰ listed options, unlisted derivatives, and security futures products, provided certain requirements are met. The Exchange believes that the benefits which these regulations deliver, together with the widespread industry acceptance of the changes, supports a one year extension of the pilot program. Such an extension will give the Exchange an opportunity to better gauge the impact of the changes to the credit profile of its member organizations and to determine whether changes to the pilot are needed. The Exchange will also seek to determine whether fixed income securities should be added to the list of eligible products.

The proposed rule change will facilitate the continuing evaluation of the portfolio margin pilot. The Exchange believes that the proposed rule change is non-controversial, given the extensive prior publication of the portfolio margining rules, their previous approval in pilot status, the lack of problematic public comment on prior filings, and the lack of comment on the December 2006 approval of the pilot program.¹¹

a. The Original Pilot

On July 14, 2005, the Commission approved the original portfolio margin rules that amended Exchange Rules 431 and 726 to permit, on a two-year pilot basis, the use of a prescribed risk-based

methodology¹² for listed, broad-based U.S. index options and index warrants, along with any underlying instruments, as an alternative to the strategy or position based margin requirements,¹³ currently required in Rule 431(a) through (f).

b. Portfolio Margin Requirements

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group. The pilot utilizes a Commission-approved theoretical options pricing model.¹⁴ These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount. Member organizations are no longer required to compute a margin requirement for each individual position or strategy for eligible positions in a customer’s portfolio margin account.¹⁵

Utilizing portfolio margin enables the portfolio to be subjected to certain preset market volatility parameters that reflect historical moves in the underlying security thereby assessing potential loss in the portfolio in the aggregate. Accordingly, such a methodology provides a more risk based calculation of margin requirements.

As a pre-condition to permitting portfolio margining, member organizations are required to establish

¹² See *supra* note 6.

¹³ Prior to the portfolio margin pilot, member organizations were solely subject, pursuant to NYSE Rule 431, to strategy or position-based margin requirements. This methodology applied specific margin percentage requirements as prescribed in Rule 431 to each security position and/or strategy, either long or short, held in a customer’s account, irrespective of the fact that all security (e.g., options) prices do not change equally (in percentage terms) with a change in the price of the underlying security. When utilizing a portfolio margin methodology, offsets are fully realized, whereas under strategy or position-based methodology, positions and/or groups of positions comprising a single strategy are margined independently of each other and offsets between them do not efficiently impact the total margin requirement.

¹⁴ The theoretical options pricing model is used to derive position values at each valuation point for the purpose of determining the gain or loss. For purposes of the portfolio margin pilot, the amount of initial and maintenance margin required with respect to a portfolio is the larger of: (1) The greatest loss amount among the valuation calculations; or (2) the sum of \$.375 for each option and security future in the portfolio multiplied by the contract’s (e.g. 100 shares per contract) or instrument’s multiplier.

¹⁵ See NYSE Rule 431.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4.

⁵ See Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006) [SR-NYSE-2006-13].

⁶ See Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) [SR-NYSE-2002-19]; see also NYSE Information Memo 05-56, dated August 18, 2005, for additional information.

⁷ See Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006) (SR-NYSE-2005-93); see also NYSE Information Memo 06-57, dated August 2, 2006, for additional information.

⁸ See *supra* note 5.

⁹ See *supra* note 5.

¹⁰ The term “margin equity security” utilizes the definition at Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System, excluding a non-equity security.

¹¹ See *supra* note 5.

comprehensive procedures and controls to monitor credit risk to the member organization's capital, including intra-day credit risk and stress testing of portfolio margin accounts. Further, member organizations must establish procedures for regular review and testing of these required risk analysis procedures and controls.¹⁶

c. Expanded Pilot

On December 29, 2005, the Exchange filed with the Commission a proposed rule change to Rule 431 to expand the approved products for certain customers eligible for treatment under portfolio margin requirements to include security futures and single stock options.¹⁷ Collectively, these approved pilot rules are referred to as the "Expanded Pilot."¹⁸ The Expanded Pilot was noticed for comment in the **Federal Register** on January 23, 2006.¹⁹ The comment period that ended February 13, 2006, resulted in three comment letters received, dated February 13, 2006, from the Securities Industry Association, Citigroup Global Markets Inc. and the Futures Industry Association.

On June 2, 2006 the Exchange filed with the Commission a response to the comment letters. In its response to comments, the Exchange noted that many of the comments included in these three letters were addressed in a subsequent rule filing, SR-NYSE-2006-13²⁰ that was made by the Exchange with the Commission on March 1, 2006. Specifically, in SR-NYSE-2006-13, the Exchange proposed the elimination of the cross-margin account and the expansion of the types of eligible products that could be included in a portfolio margining account.²¹

On July 11, 2006, the Commission approved the Expanded Pilot²² to include listed security futures and listed

single stock options as eligible products for customer portfolio margining.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the section 6(b) of the Act,²³ in general, and furthers the objectives of section 6(b)(5)²⁴ of the Act, in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. A one-year extension of the portfolio margin pilot program is consistent with this section in that it will enable the Exchange to better judge the operation and benefit of the rules, which in turn are expected to better align margin requirements with the actual risk of hedged products, potentially alleviate excess margin calls and potentially reduce the risk of forced liquidations of positions in customer accounts. In addition, it will allow the Exchange to study the impact of these changes to the credit profile of its member organizations.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 prior to 30 days after the date of filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

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-NYSE-2007-56 on the subject line.

Paper Comment

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2007-56. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSE-2007-56 and should be submitted on or before August 17, 2007.

¹⁶ See NYSE Rule 431(g).

¹⁷ The Exchange and CBOE received letters in late September 2005 from SEC Chairman Cox asking the SROs to consider expanding portfolio margining to a broader universe of products. The SEC encouraged the Exchanges to file a rule proposal before year-end 2005.

¹⁸ The discussion under the "Expanded Pilot" section includes the portfolio margin rules, as expanded to include security futures and single stock options only. This discussion does not include the portfolio margin rules as approved by the Commission in December 2006. See Sections I and II.A.1. for a discussion of the portfolio margin rules as approved in December 2006; see also *supra* note 5.

¹⁹ See Exchange Act Release No. 53126 (January 13, 2006) 71 FR 3586 (January 23, 2006) [SR-NYSE-2005-93].

²⁰ See Exchange Act Release No. 53577 (March 30, 2006) 71 FR 17539 (April 6, 2006) [SR-NYSE-2006-13].

²¹ See *supra* note 5.

²² See *supra* notes 7 and 18.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-14503 Filed 7-26-07; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity/debt security financing to Intacct Corporation ("Intacct"), 125 S. Market Street, Suite 600, San Jose, CA 95113. The financing is contemplated to fund the ongoing operating needs of the business.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., all Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Intacct, and therefore Intacct is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: July 6, 2007.

Harry Haskins,

Acting Associate Administrator.

[FR Doc. E7-14592 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10866 and #10867]

Kansas Disaster Number KS-00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 10.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kansas (FEMA-1699-DR), dated 05/06/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/04/2007 through 06/01/2007.

Effective Date: 07/18/2007.

Physical Loan Application Deadline Date: 08/06/2007.

EIDL Loan Application Deadline Date: 02/06/2008.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Kansas, dated 05/06/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Mcpherson, Pottawatomie, Smith.

Contiguous Counties: Kansas, Nemaha, Nebraska, Webster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-14515 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10923 and #10924]

Kansas Disaster Number KS-00022

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Kansas (FEMA-1711-DR), dated 07/05/2007.

Incident: Severe Storms and Flooding.

Incident Period: 06/26/2007 and continuing.

Effective Date: 07/18/2007.

Physical Loan Application Deadline Date: 09/04/2007.

EIDL Loan Application Deadline Date: 04/07/2008.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Kansas, dated 07/05/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Anderson, Bourbon, Butler, Chautauqua, Cherokee, Coffey, Crawford, Franklin, Greenwood, Osage, Woodson.

Contiguous Counties:

Kansas: Chase, Harvey, Lyon, Marion, Shawnee, Wabaunsee.

Missouri: Barton, Jasper, Newton.

Oklahoma: Ottawa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-14517 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10946 and # 10947]

Massachusetts Disaster # MA-00011

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 07/23/2007.

Incident: Bernat Mill Complex Fire.

Incident Period: 07/21/2007.

Effective Date: 07/23/2007.

Physical Loan Application Deadline Date: 09/21/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 04/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

²⁷ 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Worcester

Contiguous Counties:

Massachusetts: Franklin, Hampden,

Hampshire, Middlesex, Norfolk.

Connecticut: Tolland, Windham.

New Hampshire: Cheshire,

Hillsborough.

Rhode Island: Providence.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10946 5 and for economic injury is 10947 0.

The States which received an EIDL Declaration # are Massachusetts, Connecticut, New Hampshire, Rhode Island.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 23, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7-14590 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10925]

New York Disaster Number NY-00046

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for Public Assistance Only for the State of New York (FEMA-1710-DR), dated 07/02/2007.

Incident: Severe Storms and Flooding.

Incident Period: 06/19/2007.

Effective Date: 07/13/2007.

Physical Loan Application Deadline Date: 08/31/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT:

A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 07/02/2007, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Ulster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7-14518 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10944 and # 10945]

Vermont Disaster # VT-00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Vermont dated 07/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 07/09/2007 through 07/11/2007.

Effective Date: 07/23/2007.

Physical Loan Application Deadline Date: 09/21/2007.

Economic Injury (EIDL) Loan

Application Deadline Date: 04/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Washington.

Contiguous Counties:

Vermont, Addison, Caledonia,

Chittenden, Lamoille, Orange.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	5.750
Homeowners Without Credit Available Elsewhere:	2.875
Businesses With Credit Available Elsewhere:	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 10944 B and for economic injury is 10945 0. The State which received an EIDL Declaration # is Vermont.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: July 23, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7-14591 Filed 7-26-07; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

Federal Register Notice of Intent To Prepare an Environmental Assessment; Notice of Intent To Prepare an Environmental Assessment and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement; Enbridge Energy, Limited Partnership (Alberta Clipper Project)

AGENCY: Department of State.

ACTION: Notice of intent to prepare an Environmental Assessment (EA) and to conduct public scoping meetings. Notice of floodplain and wetlands involvement.

SUMMARY: Enbridge Energy, Limited Partnership (Enbridge) has applied to

the United States Department of State for a Presidential Permit for the proposed construction, connection, operation, and maintenance at the border of the United States of facilities for the export and import of petroleum to and from a foreign country (Alberta Clipper Project). The Department of State receives and considers applications for Presidential Permits for such energy-related pipelines pursuant to authority delegated to it by the President under Executive Order 13337 of April 30, 2004 (69 FR 25299). To issue a Permit, the Department of State must find that issuance would serve the national interest. The Department intends to consult extensively with concerned Federal and State agencies on this application, and invites public comment to assist it in arriving at its determination. In accordance with Section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500–1508) and the Department of State (22 CFR part 161), including in particular 22 CFR 161.7(c)(1), the Department of State intends to prepare an environmental assessment (EA) to determine if there are any potential significant impacts and to address alternatives to the proposed action.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for scoping meetings, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the Alberta Clipper Project EA. As the proposed project may involve an action in a floodplain or wetland, the EA will also include a floodplain and wetlands assessment and floodplain statement of findings.

In addition, Enbridge proposes to construct an additional pipeline concurrently and within a portion of the same pipeline corridor adjacent to the Alberta Clipper Project between Clearbrook, MN and Superior, WI. This project is not subject to a Presidential Permit or other Department of State jurisdiction. However, because the two projects will be constructed in the same corridor, the Department of State will accept comments on potential issues relevant to the construction of this facility.

DATES: Department of State invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental

issues and in determining the appropriate scope of the Alberta Clipper Project EA. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until September 10, 2007. Written, electronic and oral comments will be given equal weight and the State will consider all comments received or postmarked by September 10, 2007 in defining the scope of the Alberta Clipper Project EA. Comments received or postmarked after that date will be considered to the extent practicable.

During this public scoping period, the Department of State plans to use the scoping process in conjunction with the Minnesota Public Utilities Commission public hearing process to help identify consulting parties and historic preservation issues for consideration under Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800). Dates and locations for the public scoping meetings are:

1. August 13; 11 a.m.–2 p.m.; Kennedy; MN; VFW & Cafe; 103 5th St. E.

2. August 13; 6 p.m.–9 p.m.; Stephen; MN; Stephen Community Center; 319 5th Street.

3. August 14; 6 p.m.–9 p.m.; Thief River Falls; MN; Best Western Meeting Room; 1060 Highway 32 South.

4. August 15; 11 a.m.–2 p.m.; Oklee; MN; Oklee Community Hall; 2nd Ave. between fire hall and gas station.

5. August 15; 6 p.m.–9 p.m.; Gully; MN; Gully Community Center; 120 S. Main St.

6. August 16; 6 p.m.–9 p.m.; Clearbrook; MN; City Hall Gym; 200 Elm St. SE.

7. August 20; 11 a.m.–2 p.m.; Bemidji; MN; Holiday Inn Express Conference Center; 2422 Ridgeway Ave.

8. August 20; 6 p.m.–9 p.m.; Bemidji; MN; Holiday Inn Express Conference Center; 2422 Ridgeway Ave.

9. August 21; 11 a.m.–2 p.m.; Cass Lake; MN; Palace Casino and Hotel; 16599 69th Ave. NW.

10. August 21; 6 p.m.–9 p.m.; Cohasset; MN; Cohasset Community Center; 305 NW 1st Ave.

11. August 22; 6 p.m.–9 p.m.; Floodwood; MN; St. Louis County Fair Building; 107 W. 7th Ave.

12. August 23; 6 p.m.–9 p.m.; Carlton; MN; Black Bear Hotel; 1789 Highway 210; Lake Hall Room.

The public is encouraged to become involved in this process and provide specific comments or concerns about the proposed project. By becoming a commentator, your concerns will be addressed in the Alberta Clipper Project EA and considered by the Department of

State. Your comments should focus on the potential environmental impacts, reasonable alternatives (including alternative facility sites and alternative pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. The public scoping meetings identified above are designed to provide another opportunity to offer comments on the proposed project. Interested individuals and groups are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the Alberta Clipper EA. Again, written comments are considered with equal weight in the process relative to those received in public scoping meetings.

ADDRESSES: Written comments or suggestions on the Alberta Clipper EA and scope of environmental review should be addressed to: Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Comments may be submitted electronically to: albertaclipper@state.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed projects or to receive a copy of the Draft Alberta Clipper EA when it is issued, contact Elizabeth Orlando at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone (202) 647–4284, or by fax at (202) 647–5947.

More information on the Enbridge Alberta Clipper Project application for a Presidential Permit, including associated maps and drawings will be downloadable in its entirety from an Enbridge hosted project Web site that is being established for this purpose and will be accessible from: <http://www.enbridgeUS.com/publicinfo>. This Web site is expected to be operational on or about August 13, 2007. This Web site will NOT accept public comments for the record, but it will provide a link to the Department of State project e-mail address noted above. Department of State Presidential Permit information and process can be found at <http://www.state.gov/e/eeb/c9986.htm>.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

The Department of State has received an application from Enbridge Energy, Limited Partnership (“Enbridge”) for a Presidential Permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain a 36-inch crude oil and liquid hydrocarbon pipeline at the U.S.-

Canadian border at Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada. Enbridge seeks this authorization in connection with its Alberta Clipper Project ("Alberta Clipper Project"), which is designed to transport Canadian crude oil from the Western Canadian Sedimentary Basin ("WCSB") to existing refinery markets in the Midwest region of the United States. The project description set forth in this notice is based on information provided by Enbridge in its Presidential permit application.

Enbridge is planning to increase its ability to provide additional supplies of petroleum to markets in the United States in response to customer requests and marketplace demands. To fulfill this goal, Enbridge has embarked upon an expansion program to increase its transportation capacity. The Enbridge Expansion Program is specifically designed to increase petroleum transportation services from the increasingly accessible oil sands supply in the WCSB to refineries in the Midwest. Enbridge proposes to construct and operate a petroleum pipeline and related facilities from Hardisty, Alberta, Canada, to Superior, Wisconsin in the United States. The Alberta Clipper Project would have an initial capacity to deliver 450,000 barrels per day (bpd) of petroleum from an existing terminal at Hardisty, Alberta to an existing terminal in Superior, Wisconsin.

In total, the Alberta Clipper Project would consist of approximately 992 miles of new pipeline in total. The proposed system expansion would include the construction of approximately 326 miles of new 36-inch-diameter pipeline from the United States-Canada border near Neche, North Dakota to the existing Enbridge tank farm in Superior, Wisconsin for the transportation of petroleum. Enbridge proposes to construct the pipeline generally along its existing pipeline right-of-way. In Canada, the project would involve the construction of approximately 666 miles of new pipeline from Hardisty, Alberta to the United States-Canada border. Appropriate regulatory authorities in Canada will conduct an independent environmental review for the Canadian facilities.

The Alberta Clipper Project also would require modifications at existing pump stations and the construction of delivery facilities and mainline valves. Modifications of the pump stations would occur at locations necessary to

maintain adequate flow through the pipeline. Mainline valves would be installed and located as dictated by the hydraulic characteristics of the transported petroleum. Enbridge proposes to begin construction of the project in November 2008. Construction would occur over approximately 14 months, with an in-service date on or before December 31, 2009.

U.S. counties that could possibly be affected by construction of the proposed pipeline are:

North Dakota: Pembina.

Minnesota: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Beltrami, Hubbard, Cass, Itasca, Aitkin, St. Louis, Carlton.

Wisconsin: Douglas.

The Alberta Clipper Project would be constructed within or adjacent to Enbridge's existing right-of-way between the United States-Canadian border near Neche, North Dakota and Superior, Wisconsin. Construction of the proposed pipeline would generally require a 140-foot-wide construction right-of-way to allow temporary storage of topsoil and spoil and to accommodate safe operation of construction equipment. The spoil side (i.e., topsoil and ditch spoil stockpile area) would typically be up to 50-feet wide and generally located within the existing maintained right-of-way. The working side (i.e., equipment work area and travel lane) would typically be 90-feet wide and mostly be located outside the existing maintained right-of-way. Following construction, Enbridge would retain right-of-way to maintain 75-feet from the current outermost pipeline.

Dated: July 23, 2007.

David Brown,

Director, Office of International Oceans, Environment and Scientific Affairs, U.S. Department of State.

[FR Doc. E7-14486 Filed 7-26-07; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF STATE

Federal Register Notice of Intent To Prepare an Environmental Assessment; Notice of Intent To Prepare an Environmental Assessment and To Conduct Scoping Meetings and Notice of Floodplain and Wetland Involvement; Enbridge Pipelines (Southern Lights) L.L.C. (LSr Project)

AGENCY: Department of State.

ACTION: Notice of intent to prepare an environmental assessment (EA) and to conduct public scoping meetings. Notice of floodplain and wetlands involvement.

SUMMARY: Enbridge Pipelines (Southern Lights) L.L.C. has applied to the United States Department of State for a Presidential Permit for the proposed construction, connection, operation, and maintenance at the border of the United States of facilities for the export and import of petroleum to and from a foreign country (LSr Project). The Department of State receives and considers applications for Presidential Permits for such energy-related pipelines pursuant to authority delegated to it by the President under Executive Order 13337 of April 30, 2004 (69 FR 25299). To issue a Permit, the Department of State must find that issuance would serve the national interest. The Department intends to consult extensively with concerned Federal and State agencies on this application, and invites public comment to assist it in arriving at its determination. In accordance with Section 102(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500-1508) and the Department of State (22 CFR part 161), including in particular 22 CFR 161.7(c)(1), the Department of State intends to prepare an environmental assessment (EA) to determine if there are any potential significant impacts and to address alternatives to the proposed action.

The purpose of this Notice of Intent is to inform the public about the proposed action, announce plans for scoping meetings, invite public participation in the scoping process, and solicit public comments for consideration in establishing the scope and content of the LSr Project EA. As the proposed project may involve an action in a floodplain or wetland, the EA will also include a floodplain and wetlands assessment and floodplain statement of findings.

DATES: Department of State invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and in determining the appropriate scope of the LSr Project EA. The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until September 10, 2007. Written, electronic and oral comments will be given equal weight and State will consider all comments received or postmarked by September 10, 2007 in defining the scope of the LSr Project EA. Comments received or postmarked after that date

will be considered to the extent practicable.

During this public scoping period, the Department of State plans to use the scoping process in conjunction with the Minnesota Public Utilities Commission public hearing process to help identify consulting parties and historic preservation issues for consideration under section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800). Dates and locations for the public scoping meetings are:

1. August 13; 11 a.m.–2 p.m.; Kennedy; MN; VFW & Cafe; 103 5th St. E.
2. August 13; 6 p.m.–9 p.m.; Stephen; MN; Stephen Community Center; 319 5th Street.
3. August 14; 6 p.m.–9 p.m.; Thief River Falls; MN; Best Western Meeting Room; 1060 Highway 32 South.
4. August 15; 11 a.m.–2 p.m.; Oklee; MN; Oklee Community Hall; 2nd Ave. Between Fire Hall and Gas Station.
5. August 15; 6 p.m.–9 p.m.; Gully; MN; Gully Community Center; 120 S. Main St.
6. August 16; 6 p.m.–9 p.m.; Clearbrook; MN; City Hall Gym; 200 Elm St. SE.

The public is encouraged to become involved in this process and provide specific comments or concerns about the proposed project. By becoming a commentator, your concerns will be addressed in the LSr Project EA and considered by the Department of State. Your comments should focus on the potential environmental impacts, reasonable alternatives (including alternative facility sites and alternative pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. The public scoping meetings identified above are designed to provide another opportunity to offer comments on the proposed project. Interested individuals and groups are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the LSr EA. Again, written comments are considered with equal weight in the process relative to those received in public scoping meetings.

ADDRESSES: Written comments or suggestions on the scope of the LSr EA should be addressed to: Elizabeth Orlando, OES/ENV Room 2657, U.S. Department of State, Washington, DC 20520. Comments may be submitted electronically to: southernlights@state.gov.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft LSr EA when it is issued, contact Elizabeth Orlando at the address listed in the **ADDRESSES** section of this notice by electronic or regular mail as listed above, or by telephone (202) 647–4284, or by fax at (202) 647–5947.

More information on the Enbridge LSr Project application for a Presidential Permit, including associated maps and drawings will be downloadable in its entirety from an Enbridge hosted project Web site that is being established for this purpose and will be accessible from: <http://www.enbridgeUS.com/publicinfo>. This Web site is expected to be operational on or about August 13, 2007. This Web site will NOT accept public comments for the record, but it will provide a link to the Department of State project e-mail address noted above. Department of State Presidential Permit information and process can be found at: <http://www.state.gov/e/eeb/c9986.htm>.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

The Department of State has received an application from Enbridge Pipelines (Southern Lights) L.L.C. (“Enbridge”) for a Presidential Permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain a 20-inch crude oil and liquid hydrocarbon pipeline at the U.S.-Canadian border at Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada. Enbridge seeks this authorization in connection with its Southern Lights Pipeline Project (“LSr Project”), which is designed to transport Canadian crude oil from the Western Canadian Sedimentary Basin (“WCSB”) to existing refinery markets in the Midwest region of the United States. The project description set forth in this notice is based on information provided by Enbridge in its Presidential permit application.

Enbridge is planning to increase its ability to provide additional supplies of petroleum to markets in the United States in response to customer requests and marketplace demands. To fulfill this goal, Enbridge has embarked upon an expansion program to increase its transportation capacity. The Enbridge Expansion Program is specifically designed to increase petroleum transportation services from the increasingly accessible oil sands supply in the WCSB to refineries in the

Midwest. Enbridge proposes to construct and operate a petroleum pipeline and related facilities from Cromer, Manitoba, Canada, to Clearbrook, Minnesota in the United States. The LSr Project would have the capacity to deliver 186,000 barrels per day (bpd) of petroleum from a supply hub near Cromer, Manitoba to an existing terminal in Clearbrook, Minnesota.

In total, the LSr Project would consist of approximately 313 miles of new pipeline in total. The proposed system expansion would include the construction of approximately 136 miles of new 20-inch-diameter pipeline from the United States-Canada border near Neche, North Dakota to the existing Enbridge tank farm in Clearbrook, Minnesota for the transportation of petroleum. Enbridge proposes to construct the pipeline generally along its existing pipeline right-of-way. In Canada, the project would involve the construction of approximately 178 miles of new pipeline from Cromer, Manitoba to the United States-Canada border. Appropriate regulatory authorities in Canada will conduct an independent environmental review for the Canadian facilities.

The LSr Project also would require modifications at existing pump stations and the construction of delivery facilities and mainline valves. Modifications of the pump stations would occur at locations necessary to maintain adequate flow through the pipeline. Mainline valves would be installed and located as dictated by the hydraulic characteristics of the transported petroleum. Enbridge proposes to begin construction of the project in mid-2008. Construction would occur over approximately 6 months, with an in-service date on or before December 31, 2008.

U.S. counties that could possibly be affected by construction of the proposed pipeline are:

North Dakota: Pembina.

Minnesota: Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater.

The LSr Project would be constructed within or adjacent to Enbridge’s existing right-of-way between the United States-Canadian border near Neche, North Dakota and Clearbrook, Minnesota. Construction of the proposed pipeline would generally require a 100-foot-wide construction right-of-way to allow temporary storage of topsoil and spoil and to accommodate safe operation of construction equipment. The spoil side (i.e., topsoil and ditch spoil stockpile area) would typically be 25 feet wide and generally located within the existing maintained right-of-way. The

working side (i.e., equipment work area and travel lane) would typically be 75 feet wide and partially located outside the existing maintained right-of-way. Following construction, up to a 50-foot-wide permanent right-of-way in addition to the existing permanent right-of-way will be maintained for operation of the pipeline.

Dated: July 23, 2007.

David Brown,

Director, Office of Environmental Policy, Bureau of International Oceans, Environment and Scientific Affairs, U.S. Department of State.

[FR Doc. E7-14488 Filed 7-26-07; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting, Special Committee 213 Enhanced Flight Vision Systems/Synthetic Vision System, (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision System, (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision System, (EFVS/SVS).

DATES: The meeting will be held August 21-23, 2007 from 9 a.m.-5 p.m.

ADDRESSES: The meeting will be held at Hilton Gardens 1801 East Valley Road, Renton, WA 98055.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833-9339; fax (202) 833-9434; Web site <http://www.rtca.org> for directions. Hilton Gardens: telephone (425) 430-1414.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 213 meeting. The agenda will include:

- August 21:
- Opening Plenary Session (Welcome, Introductions, and Agenda Review).
- Review SC-213 Objectives, Action Items, and SC-213 Web site content.
- Review initial reports from WG 1, and WG 2.
- Presentations.
- Afternoon: WG 1 and WG 2 meetings.
- August 22:

- WG 1 and WG 2 meeting.
- August 23:
- Morning: Work Group meetings and development of actions items.
- Afternoon: Plenary.
- Review action items and
- Define next steps for continued MASPS development.
- Closing Plenary Session (Other Business, Establish date and time for next meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 23, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07-3677 Filed 7-26-07; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cole County, MO

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 (EIS) will be prepared for proposed improvements to U.S. 50/U.S. 63, (Rex Whitton Expressway), in Jefferson City, Cole County, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 638-2620 or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751-2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposal to upgrade the existing U.S. 50/U.S. 63 (Rex Whitton Expressway) facility. MoDOT completed a Problem Definition Study for the study area in April 2006. The study identified issues and potential concepts to address the issues.

The proposed action will accomplish several goals: (1) Provide sufficient roadway capacity and improve traffic operations, (2) improve traffic safety, (3) address geometric and structural deficiencies, (4) and improve access to major activity centers and encourage development.

The proposed project study area is defined as the area in Jefferson City from just east of the U.S. 50/U.S. 54 Tri-level interchange to the Eastland Drive interchange for an approximate length of 3 miles; and from 300 feet south of U.S. 50/U.S. 63 to McCarty Street on the north. An additional area to the north of McCarty will be studied to address access to the Missouri State Prison Redevelopment site. The width of the study area varies from 400 to 800 feet.

Known potential impacts include access changes, and residential, commercial and institutional acquisitions/relocations. Properties eligible for the National Register of Historic Places which are protected by Section 4(f) of the Department of Transportation Act of 1966 may also be impacted. Other potential Section 4(f) impacts are to the East Miller Park, the Lincoln University Recreation Park, and the Lincoln University Tennis Courts. The Lincoln University Tennis Courts are also protected by the Land and Water Conservation Fund Act requirements. A floodplain development permit from the State Emergency Management Agency may be required.

It is anticipated that the following will be invited to be participating agencies on this project: The U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the State Emergency Management Agency, the Missouri Department of Conservation, the Missouri Department of Natural Resources, and the State Historic Preservation Office.

Alternatives under consideration include: (1) No build, (2) build alternatives, and (3) transportation management options. The Problem Definition Study looked at a number of alternatives but made no recommendation. The EIS will look at the work done in this study as a starting point and use this information in developing and evaluating the reasonable alternatives.

To date, preliminary coordination has occurred with local officials and other interested parties. A public meeting and two stakeholder meetings were held during the Problem Definition Study. As part of the scoping process, an

interagency coordination meeting will be held August 14, 2007 with federal, state, and local agencies. In addition, public information meetings and further meetings for community officials will be held to solicit public and agency input on the project coordination plan, the purpose and need for the project, and the reasonable range of alternatives. A location public hearing will be held to present the findings of the Draft EIS. Public notice will be given announcing the time and place of all public meetings and 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 this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway 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.

Peggy J. Casey,

Environmental Project Engineer, Jefferson City.

[FR Doc. E7-14572 Filed 7-26-07; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35064]

Watco Companies, Inc., and Watco Transportation Services, Inc.—Continuance in Control Exemption—Michigan Central Railway, LLC

Watco Companies, Inc. (Watco Companies) and its wholly owned subsidiary, Watco Transportation Services, Inc. (Watco Transportation) (collectively, Watco), both noncarriers, jointly have filed a verified notice of exemption to continue in control of Michigan Central Railway, LLC (Michigan Central), upon Michigan Central's becoming a Class II rail carrier through its proposed acquisition and operation of certain rail lines in Michigan and Indiana. Michigan Central will be controlled directly by Watco Transportation, with a 67% membership interest, and indirectly by Watco, while Norfolk Southern Railway Company

(NSR) will have a noncontrolling 33% membership interest.¹

This transaction is related to a petition for exemption for the acquisition and operation of these rail lines concurrently filed in STB Finance Docket No. 35063, *Michigan Central Railway, LLC—Acquisition and Operation Exemption—Lines of Norfolk Southern Railway Company*. In that proceeding, Michigan Central seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire and operate some 299 miles of rail line owned and operated by NSR, and some 85.5 miles of trackage rights, in Michigan and Indiana.² In the proposed acquisition, NSR will contribute these rails lines, trackage rights, and related assets to Michigan Central, subject to certain traffic restrictions, in exchange for its 33% interest. Watco Transportation will contribute over time \$18 million in cash and locomotives to Michigan Central in exchange for its controlling 67% interest.³

This transaction also is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35065, *Norfolk Southern Railway Company—Trackage Rights Exemption—Michigan Central Railway, LLC*. There, Michigan Central has agreed to grant limited local trackage rights to NSR in Michigan and Indiana.

The parties intend to consummate the transaction after the Board has issued a final decision granting the petition for exemption in STB Finance Docket No. 35063.

Watco currently controls 16 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Timber Rock Railroad, Inc., Stillwater Central Railroad, Inc., Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., Pennsylvania Southwestern Railroad, Inc., Great

Northwest Railroad, Inc., Kaw River Railroad, Inc., Mission Mountain Railroad, Inc., Mississippi Southern Railroad, Inc., Yellowstone Valley Railroad, Inc., Louisiana Southern Railroad, Inc., Arkansas Southern Railroad, Inc., Alabama Southern Railroad, Inc., and Vicksburg Southern Railroad, Inc.⁴

Watco represents that: (1) The rail lines to be acquired by Michigan Central do not connect with any other railroads in the Watco corporate family; (2) these continuance in control is not part of a series of anticipated transactions that would connect these railroads with each other or any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 3, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35064, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at: <http://www.stb.dot.gov>.

Decided: July 19, 2007.

¹ Watco has filed a copy of the First Amended and Restated Agreement into which Watco Transportation, NSR, and Michigan Central will enter in connection with the consummation of the proposed control transaction and related transactions referenced in this notice. The agreement provides for the independent management of Michigan Central, according to Watco, under Watco's control.

² In STB Finance Docket No. 35063, Michigan Central also has filed a petition to revoke the otherwise applicable class exemption at 49 CFR 1150.31 for the acquisition and operation of rail lines by a noncarrier and a proposed procedural schedule.

³ A redacted version of the Transaction Agreement by and among NSR, Michigan Central and Watco Transportation was filed with the petition for exemption in STB Finance Docket No. 35063. The full version of the Transaction Agreement was concurrently filed under seal along with a motion for protective order.

⁴ A former Watco Class III railroad, the Appalachian & Ohio Railroad, Inc., was acquired by Four Rivers Transportation, Inc. *See Four Rivers Transportation, Inc.—Control Exemption—Appalachian & Ohio Railroad, Inc.*, STB Finance Docket No. 34856 (STB served May 23, 2006).

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E7-14310 Filed 7-26-07; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35065]

Norfolk Southern Railway Company— Trackage Rights Exemption—Michigan Central Railway, LLC

Pursuant to a written trackage rights agreement, Michigan Central Railway, LLC (Michigan Central), a noncarrier, has agreed to grant limited local trackage rights to Norfolk Southern Railway Company (NSR), over certain lines to be acquired from NSR by Michigan Central extending between (a) Milepost KH 1.4 at Elkhart, IN, and milepost KH 27.4 at Three Rivers, MI; (b) milepost FB 27.3 at Three Rivers, MI, and milepost FB 101.5 at Grand Rapids, MI; (c) milepost KY 0.0 at Gibson, MI, and milepost KY 0.3 at CP BO in Kalamazoo, MI; (d) milepost MH 143.03 at CP BO in Kalamazoo, MI, and milepost MH28 at CP Ypsi; and (e) milepost LZ 0.0 at Jackson, MI, and milepost LZ 35.0 at Holt, MI.¹

This transaction is related to a petition for exemption for the acquisition and operation of these and other rail lines concurrently filed in STB Finance Docket No. 35063, *Michigan Central Railway, LLC—Acquisition and Operation Exemption—Lines of Norfolk Southern Railway Company*. In that proceeding, Michigan Central seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to acquire and operate some 299 miles of rail line owned and operated by NSR, and some 85.5 miles of trackage rights, in Michigan and Indiana.² This transaction also is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35064, *Watco Companies, Inc., and*

Watco Transportation Services, Inc.—Continuance in Control Exemption—Michigan Central Railway, LLC, wherein Watco Companies, Inc. and its wholly owned subsidiary, Watco Transportation Services, Inc., jointly have filed a verified notice of exemption to continue in control of Michigan Central upon its becoming a rail carrier.

The parties intend to consummate the transaction after the Board has issued a final decision granting the petition for exemption in STB Finance Docket No. 35063.

Under the trackage rights agreement, NSR will retain the right to serve, under certain specified conditions, the General Motors facilities at Grand Rapids and Lansing, MI, and the RSDC of Michigan LLC automotive steel processing facility at Holt, MI, as well as any subsequent occupant(s) of any of these facilities. The agreement will permit NSR to serve these facilities with its own trains, locomotives, cars and equipment, and with its own crews, only if Michigan Central fails to meet the specified service standards under the conditions and over the timeframes set forth in the agreement.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than August 3, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35065, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on G. Paul Moates, Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at: <http://www.stb.dot.gov>.

Decided: July 19, 2007.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E7-14351 Filed 7-26-07; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-55 (Sub-No. 681X)]

CSX Transportation, Inc.— Abandonment Exemption—in Orange County, FL

CSX Transportation, Inc. (CSXT), has filed a notice of exemption¹ under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.69-mile rail line on its Southern Region, Jacksonville Division, Sanford Subdivision, from railroad milepost ST 815.88 to railroad milepost ST 816.57, known as the “Mills & Nebraska Lead,” in Orlando, Orange County, FL. The line traverses United States Postal Service Zip Code 32803.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 28, 2007, unless stayed pending

¹ The earliest date the abandonment can be consummated is August 28, 2007 (the effective date of the exemption). CSXT stated the consummation date as August 27, 2007, in the verified notice of exemption. CSXT has been notified concerning this correction of the consummation date.

¹ A redacted version of the proposed agreement between NSR and Michigan Central was filed with the notice of exemption. The full version was concurrently filed under seal along with a motion for protective order. As required by 49 CFR 1180.6(a)(7)(ii), the parties must file a copy of the executed agreement within 10 days of the date that the agreement is executed.

² In STB Finance Docket No. 35063, Michigan Central also has filed a petition to revoke the otherwise applicable class exemption at 49 CFR 1150.31 for the acquisition and operation of rail lines by a noncarrier and a proposed procedural schedule.

reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 6, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 16, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Steven C. Armbrust, Esq., CSX Transportation, Inc., 500 Water Street, J-150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed environmental and historic reports addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 3, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by July 27, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

² The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

³ Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at: <http://www.stb.dot.gov>.

Decided: July 23, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7-14440 Filed 7-26-07; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meetings

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission will hold meetings on August 8-10, 2007 and August 22-24, 2007, at the Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC. On August 8 and August 22, the sessions will begin at 10 a.m. and end at 4:30-5:30 p.m. On August 9 and August 23, the sessions will begin at 8:30 a.m. and end at 4:30-5:30 p.m. On August 10 and August 24, the sessions will begin at 8:30 a.m. and end at 12 noon-3 p.m. depending on the final agenda for each session. Each meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the first August meeting will feature the final report of the Center of Naval Analyses (CNA) and a report of the Institute of Medicine (IOM) Committee on Presumptions. The Commission will review technical comments from VA and make final decisions on three Issues Papers related to specific Research Questions approved by the Commission on October 14, 2005. The topics will be: Transition Issues (addressing Research Questions 26-31), Vocational Rehabilitation and Employment (Research Question 17), and Ancillary and Special Purpose Benefits (Research Question 20). VA and the Department of Defense (DoD) will respond to the report of the IOM Committee on Medical Evaluation of Veterans for Disability, and the Commission will decide its position on the two IOM studies and recommendations made to VA on the topic of Post-Traumatic Stress Disorder (PTSD). Additional discussions and

potential decisions will be reached on options to achieve equity in lifetime benefits, integrating the findings of various studies and research projects conducted for the Commission, and drafting the Commission's final report.

The agenda for the second August meeting will be devoted to drafting the Commission's final report and may include a limited number of clarifying presentations on topics the Commission requires to complete its final report.

There will be time set aside at each meeting for public comments. Interested persons may attend and present oral statements to the Commission on August 8 or August 22. Oral presentations will be limited to five minutes or less. Interested parties may also provide written comments for review by the Commission prior to the meeting or at any time, by e-mail to veterans@vetscommission.com or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: July 23, 2007.

By direction of the Secretary:

E. Philip Riggins,

Committee Management Officer.

[FR Doc. 07-3675 Filed 7-26-07; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Times and Dates:

8:30 a.m.-5 p.m., September 5, 2007.

8:30 a.m.-3 p.m., September 6, 2007.

Place: CDC, 1600 Clifton Road, NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to

the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; presentations and discussions on current and planned CLIAC Research; an overview of the September 2007 Institute for Critical Issues in Health Laboratory Practice: Managing for Better Health; an update on oversight of Genetic Testing; and an Introduction to Quality Management Systems for the Clinical Laboratory. Agenda items are subject to change as priorities dictate.

New Information—Online Registration Required: In order to expedite security clearance process at the CDC Roybal Campus located on Clifton Road, *all* CLIAC attendees are required to register for the meeting online at least 30 days in advance at <http://wwwn.cdc.gov/cliac/default.aspx>, by clicking the "Register for Meeting" link; complete the form and click "submit." Please complete all required fields before submitting your registration and submit no later than August 5, 2007.

Providing Oral or Written Comments: It is CLIAC policy to accept written public comments and provide a brief period for oral public comments whenever possible. **Oral Comments:** In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting summary report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should notify the contact person below at least one week prior to the meeting date. **Written Comments:** For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration and public distribution. Written comments should be on hard copy with original signature provided to the contact person below. Written comments will be included in the meeting summary report.

Contact Person for Additional Information: Nancy Anderson, Acting Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, National Center for Preparedness, Detection, and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop F-11, Atlanta, Georgia 30333; telephone (404) 718-1025; fax (404) 718-1085; or via e-mail at Nancy.Anderson@cdc.hhs.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7-14571 Filed 7-26-07; 8:45 am]

BILLING CODE 4163-18-P



Federal Register

**Friday,
July 27, 2007**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**50 CFR Parts 600 and 635
Atlantic Highly Migratory Species; Atlantic
Shark Management Measures; Proposed
Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 635****[Docket No. 0612242866–7310–01]****RIN 0648–AU89****Atlantic Highly Migratory Species; Atlantic Shark Management Measures**

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

ACTION: Proposed rule; availability of the Fishery Management Plan (FMP); request for comments; public hearings.

SUMMARY: NMFS announces the availability of the draft Amendment 2 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its accompanying proposed rule. Amendment 2 examines different management alternatives available to rebuild sandbar, dusky, and porbeagle sharks, consistent with the 2006 shark stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. The proposed rule to implement Amendment 2 would, among other things, allow for a limited shark research fishery for sandbar sharks, establish a trip limit for commercial harvest of non-sandbar large coastal sharks (LCS), prohibit the landing and possession of porbeagle sharks, require all sharks landed to have fins attached through landing, eliminate the regions and trimester seasons, and modify the species that can be landed by recreational fishermen. These changes could affect all fishermen who fish for sharks in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea.

DATES: Comments on this proposed rule and draft Amendment 2 must be received no later than 5 p.m. on October 10, 2007.

Ten public hearings on this proposed rule and draft Amendment 2 will be held in August and September 2007. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in Florida, Louisiana, Maryland, New Hampshire, New Jersey, North Carolina, and Texas. For specific locations see the **SUPPLEMENTARY INFORMATION** of this document.

Written comments on the proposed rule and draft Amendment 2 may be submitted to Michael Clark, Highly

Migratory Species Management Division:

- Email: ShkA2@noaa.gov. Include in the subject line the following identifier: Shark amendment 2 comments.

- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Shark amendment 2 comments.”

- Fax: 301–713–1917.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael Clark, Highly Migratory Species Management Division and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395–7285.

Copies of the draft Amendment 2 to the Consolidated HMS FMP, the latest shark stock assessments, and other documents relevant to this rule are available from the Highly Migratory Species Management Division website at www.nmfs.noaa.gov/sfa/hms or by contacting Heather Halter at 301–713–2347.

FOR FURTHER INFORMATION CONTACT:

Michael Clark, Karyl Brewster-Geisz, or LeAnn Southward Hogan at 301–713–2347 or fax 301–713–1917 or Jackie Wilson at 404–806–7622 or fax 404–806–9188.

SUPPLEMENTARY INFORMATION:**Background**

The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Consolidated HMS FMP is implemented by regulations at 50 CFR part 635.

Based on the results of the 2005 Canadian porbeagle shark stock assessment, the 2006 dusky shark stock assessment, and the 2005/2006 LCS stock assessment, NMFS has determined that a number of shark fisheries are overfished and an amendment to the current Consolidated HMS FMP is needed to develop management measures to rebuild overfished shark stocks and to prevent overfishing.

Unlike past assessments, the recently completed 2005/2006 LCS stock assessment determined that it is inappropriate to assess the LCS complex as a whole due to the variation in life history parameters, different intrinsic rates of increase, and different catch and abundance data for all species included in the LCS complex. Based on these results, NMFS changed the status of the LCS complex from overfished to unknown (71 FR 65086, November 7, 2006).

According to this stock assessment, sandbar sharks are overfished ($SSF_{2004}/SSF_{MSY} = 0.72$; SSF is spawning stock fecundity and was used a proxy for biomass), and overfishing is occurring ($F_{2004}/F_{MSY} = 3.72$). As described in the 2005/2006 stock assessment, spawning stock fecundity, which is the sum of the number of mature females at age times their pup-production, is used instead of biomass because biomass does not influence pup production in sharks. The assessment recommends that rebuilding could be achieved with 70 percent probability by 2070 with a total allowable catch (TAC) across all fisheries that catch sharks of 220 metric tons (mt) whole weight (ww) each year (158 mt dressed weight (dw)) and fishing pressure (F) between 0.0009 and 0.011. The proposed rebuilding plan mirrors the rebuilding plan recommended by the stock assessment.

Based on tagging studies that suggested that the blacktip shark stocks are geographically distinct and isolated, the 2005/2006 stock assessment assessed blacktip sharks for the first time as two separate populations: Gulf of Mexico and Atlantic. NMFS has declared that the Gulf of Mexico blacktip shark population is not overfished with no overfishing occurring (71 FR 65086, November 7, 2006). The 2005/2006 stock assessment indicated that the Gulf of Mexico population is healthy and that current catches should not increase in order to keep this population at a sustainable level. For the blacktip shark population in the South Atlantic region, the 2005/2006 assessment was unable to provide estimates of stock status or reliable population projections, but indicated that current catch levels should not change. NMFS has declared that the South Atlantic blacktip shark population is unknown (71 FR 65086, November 7, 2006).

In 1999, dusky sharks, which were in the LCS complex, were placed on the prohibited species list due to their low population growth rate and low reproductive potential. In 2003, in Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (68 FR 74746, December 24, 2003), NMFS established a mid-Atlantic shark time/area closure to protect dusky sharks and juvenile sandbar sharks. Due to high catch rates of dusky sharks in the shark bottom longline fishery in the mid-Atlantic closed area and the high mortality of dusky sharks on bottom longline gear, NMFS closed this area to bottom longline fishing from January 1 through July 31 of every year, starting in January 2005. NMFS released the first dusky-specific shark assessment in May

2006 (71 FR 30123, May 25, 2006). The 2006 dusky shark stock assessment used data through 2003 and indicates that dusky sharks are overfished ($B_{2003}/B_{MSY} = 0.15$ 0.47) with overfishing occurring ($F_{2004}/F_{MSY} = 1.68$ 1,810). The assessment indicates that rebuilding for dusky sharks could require 100 to 400 years. Based on these results, NMFS declared the status of dusky sharks as overfished with overfishing occurring (71 FR 65086, November 7, 2006). The proposed rule would establish a rebuilding plan to rebuild dusky sharks in 100 to 400 years consistent with the stock assessment. This rebuilding plan includes keeping dusky sharks on the prohibited species list and actions to reduce dusky shark mortality and bycatch, to the extent practicable.

Canada has conducted stock assessments on porbeagle sharks in 1999, 2001, 2003, and 2005. Reduced Canadian porbeagle quotas in 2002 brought the 2004 exploitation rate to a sustainable level. According to the 2005 recovery assessment report conducted by Canada, the North Atlantic porbeagle stock has a 70 percent probability of recovery in approximately 100 years if F is less than or equal to 0.04. To date, the United States has not conducted a stock assessment on porbeagle sharks. NMFS has reviewed the Canadian stock assessment and deems it to be the best available science and appropriate to use for U.S. domestic management purposes because porbeagle sharks are a unit stock that extends into U.S. waters. The Canadian assessment indicates that porbeagle sharks are overfished ($SSN_{2004}/B_{SSNMSY} = 0.15$ 0.32; SSN is spawning stock number and used as a proxy for biomass). However, the Canadian assessment indicates that overfishing is not occurring ($F_{2004}/F_{MSY} = 0.83$). Based on these results, NMFS declared porbeagle sharks as overfished, but not experiencing overfishing (71 FR 65086, November 7, 2006). While United States vessels take only a small proportion of the porbeagle sharks harvested in the Northwest Atlantic, NMFS proposes measures to increase the likelihood that fishing mortality remains below 0.04 and rebuilding occurs in 100 years. Because Canada has the largest harvest of porbeagle sharks, the proposed rule would establish a rebuilding plan for porbeagle sharks that is consistent with the Canadian assessment. This rebuilding plan includes placing porbeagle sharks on the prohibited species list to prevent fishing effort from increasing in the future and minimizing porbeagle shark mortality and bycatch, to the extent practicable.

NMFS announced its intent to conduct an environmental impact statement (EIS) on November 7, 2006 (71 FR 65086) and held seven scoping meetings in January 2007 (72 FR 123, January 3, 2007). In March 2006, NMFS presented a predraft of the Amendment 2 to the HMS Advisory Panel (72 FR 7860, February 21, 2007). Based in part on the comments received during scoping and from the HMS Advisory Panel, NMFS proposes a number of management measures that would implement Amendment 2. Consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, the objectives for this proposed rule are to: (1) implement rebuilding plans for sandbar, dusky, and porbeagle sharks; (2) provide an opportunity for the sustainable harvest of blacktip and other sharks, as appropriate; (3) prevent overfishing of Atlantic sharks; (4) analyze bottom longline time/area closures and take necessary action to maintain or modify the closures, as appropriate; and (5) improve, to the extent practicable, data collections or data collection programs.

In addition to the proposed management alternative described below, NMFS proposes to take additional administrative actions. These include: (1) allowing fishermen to remove hooks from smalltooth sawfish (§ 635.21 (d)(3)) based on a March 23, 2007, memorandum from the Office of Protected Resources changing this requirement in the 2003 Biological Opinion for Atlantic sharks; (2) requiring stock assessments at least once every 5 years; (3) allowing for the release of the annual Stock Assessment and Fishery Evaluation report by fall of each year; and (4) clarifying various existing regulations, for example stating that only the first receiver needs a shark dealer permit and that shark dealer reports must be species-specific.

NMFS prepared a Draft EIS (DEIS) for the draft Amendment 2 that discusses the impact on the environment as a result of this rule. A copy of the DEIS/draft Amendment 2 is available from NMFS (see ADDRESSES). The Environmental Protection Agency is expected to publish the notice of availability for this DEIS on or about the same date that this proposed rule publishes.

The following is a summary of the alternatives analyzed in the DEIS for Amendment 2. Additional analyses and descriptions are provided in the DEIS. NMFS fully considered five different alternative suites based on the above-described objectives and best available scientific information. Based on the recommendations of the latest stock

assessments, significant reductions in quotas are needed to prevent overfishing and rebuild overfished stocks. The necessary reductions effectively preclude operation of the shark fishery as it has been prosecuted in past years. As reflected below, NMFS has developed alternative suites that would provide for some fishing of sharks consistent with the stock assessments and that would allow for continued collection of data needed for stock assessments and evaluation of conservation and management measures. Each alternative suite analyzed certain management actions under seven different topics including quotas/species complexes, retention limits, time/area closures, reporting, seasons, regions, and recreational measures. The proposed alternative discussed below is the preferred alternative in the DEIS.

Analyses of the Proposed Alternative Suite

Under the proposed alternative (alternative 4), NMFS would, among other things, remove sandbar sharks from the LCS complex; establish a commercial sandbar shark quota of 116.6 mt dw; establish a commercial non-sandbar LCS quota of 541.2 mt dw; add porbeagle sharks to the prohibited species list; establish a shark research fishery that would allow a limited number of commercial vessels to fish a limited number of trips for all LCS, including sandbar sharks; reduce the retention limit for all other commercial vessels to 22 non-sandbar LCS and 0 sandbar sharks; require fins, including the tail, to be landed attached to all sharks; maintain the mid-Atlantic shark closed area and implement several other closed areas from Florida through North Carolina, per the recommendation of the South Atlantic Fishery Management Council (SAFMC); require dealer reports be received (rather than postmarked) by a certain date; eliminate the trimesters and regions and replace them with one fishing season starting January 1 and one region including the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea; and limit recreational anglers to possessing only those shark species that are easily identified, including bonnethead, nurse, tiger, great hammerhead, smooth hammerhead, scalloped hammerhead, lemon, sharpnose, shortfin mako, common thresher, oceanic whitetip, and blue sharks.

A. Quotas, Species Complexes, and Retention Limits

Under the proposed alternative, the current LCS complex would be split

into two groups: sandbar sharks and non-sandbar LCS. The sandbar shark quota would be 116.6 mt dw (257,056 lb dw) and the commercial non-sandbar LCS quota would be 541.2 mt dw (1,196,129.5 lb dw). The 116.6 mt dw quota for sandbar sharks would be allocated to the vessels operating in the research fishery. In addition, based on catch composition in the bottom longline observer program, NMFS anticipates that 50 mt dw (110,230 lb dw) of the non-sandbar LCS quota would be caught in the research fishery. The rest of the non-sandbar LCS quota could be taken by vessels operating outside of the research fishery. These quotas are based on recommendations from the most recent LCS stock assessment. Therefore, this level of fishing effort would stop overfishing of sandbar sharks and allow sandbar sharks to rebuild as well as keep other LCS, such as the blacktip shark, from being overfished and from experiencing overfishing.

Establishing a separate category for sandbar sharks from the LCS complex is mainly administrative in nature and should only affect how NMFS monitors the sandbar shark quota. The establishment of a separate sandbar shark category by itself will not impact fishermen, as they currently record shark interactions on a species basis in the logbooks. Similarly, establishing the other LCS into a non-sandbar LCS category is similar to how the LCS fishery has been managed in the past and should have few economic or social impacts. However, as described below, the quota reductions and retention limits could have negative economic and social impacts.

Under the proposed alternative, vessels with either a directed or incidental shark limited access permit (LAP) could apply to participate in the shark research fishery. Each year NMFS would publish shark research objectives for the year and request proposals that meet these objectives. Shark fishermen who were interested in participating would apply for a permit to fish in the shark research fishery. Based on the research objectives for a given year, NMFS scientists and managers would select a few vessels (i.e., 5–10 vessels) each year to conduct the prescribed research. Selected vessels would work with NMFS to conduct shark research. Vessels selected for the research fishery would be subject to 100 percent observer coverage; however, fishermen in the shark research fishery would be afforded higher trip limits and could sell their catch, including sandbar sharks, compared to vessels outside the research fishery. This research fishery

would allow the collection of fishery-dependent data for future stock assessments as well as allow NMFS and fishermen to conduct cooperative research to meet the shark research objectives for NMFS.

Only vessels operating within the research fishery would be allowed to harvest the sandbar shark quota until 80 percent of the sandbar shark or non-sandbar LCS quota was met. At that time, the shark fishery would shut down to account for state landings and ensure the 116.6 mt dw commercial sandbar quota was not overharvested.

Retention limits of sandbar sharks and non-sandbar LCS for vessels operating in the shark research fishery would depend on the research objectives of a given year. For example, assuming a catch composition of 70 percent sandbar sharks (and hence, 30 percent non-sandbar LCS) the 116.6 mt dw sandbar quota could be fulfilled in 92 trips with a 4,000 lb dw sandbar and non-sandbar LCS trip limit ($70 \text{ percent} \times 4,000 \text{ lb dw trip limit} = 2,800 \text{ lb dw sandbar sharks per trip}$; $92 \text{ trips} \times 2,800 \text{ lb dw of sandbar sharks} = 257,600 \text{ lb dw or } 116.6 \text{ mt dw}$). On average, under the current regulations, 872 directed permit holder trips were made under the 4,000 lb dw LCS trip limit from 2003 to 2005. NMFS expects the number of trips under the research shark permit to be lower than the current average number of trips per year, and therefore, anticipates that the proposed alternative would have positive ecological impacts for sandbar sharks. Each shark research permit would specify the amount of sandbar and non-sandbar LCS allowed per trip.

To participate in the research fishery, vessel owners holding a directed or incidental shark LAP would need to submit an application annually to NMFS for a shark research permit. The shark research permit would be considered a specifically authorized activity, and fishermen would apply in a manner similar to how they apply for an exempted fishing permit (EFP). NMFS would review all applications and would issue permits to those vessel owners that meet certain criteria as specified in the regulations and also meet the published shark research objectives for that year. Specifically, NMFS would need to ensure that eligible vessels are spread throughout the range of the shark fishery and that vessels could fish for sharks throughout the year. The number of vessels issued a shark research permit each year may vary depending on available quota and the amount expected to be collected by each individual vessel. Depending on the data needed from the fishery that year for stock assessment and other

scientific purposes (e.g., comparison of catch rates between circle and J hooks), NMFS may include other criteria, as needed, including the need to attend specific training sessions such as the shark identification workshops that are currently required for shark dealers. Vessel owners issued a shark research permit would not need to submit the interim or annual reports required with other specifically authorized activities. Rather, vessel owners would need to continue submitting logbook reports as required when fishing under the shark LAP. Once issued, the shark research permit would be valid only when a NMFS-approved observer is on board and all other terms and conditions of the permit are being followed.

Vessels in the shark research fishery would be required to sell sharks, including sandbar sharks, to only permitted dealers, as is currently required. NMFS is considering requiring dealers to obtain specific information from each vessel owner or operator for each sandbar shark landed. This information may be required to accompany each sandbar shark to final disposition. NMFS is also considering other methods of ensuring that sandbar sharks are landed only by vessels issued a shark research permit with an observer on board but is not proposing a specific method at this time.

Vessels that do not have a shark research permit, or vessels that have been issued a shark research permit but do not have a NMFS-approved observer on board, could still land 22 non-sandbar LCS per trip and SCS and pelagic sharks subject to the current retention limits determined by their permit type. On average, directed permit holders landed 40 non-sandbar LCS per trip as reported in the Coastal Fisheries and HMS Logbooks from 2003 to 2005. Therefore, this would be a 48 percent reduction in non-sandbar LCS per trip for directed permit holders. Incidental permit holders landed 3.7 non-sandbar LCS per trip on average as reported in the Coastal Fisheries and HMS Logbooks from 2003 to 2005. Therefore, NMFS does not anticipate any adverse effects on incidental permit holders. Total landings of non-sandbar LCS by boats outside the research fishery would be limited to approximately 491 mt dw (assuming, as discussed previously, that 50 mt dw of the non-sandbar LCS quota would be caught while fishermen filled the 116.6 mt dw of sandbar shark quota in the research fishery), in order to ensure that the total 541.2 mt dw of the LCS quota would not be exceeded.

It is anticipated that sandbar shark discards will occur on gear such as pelagic longline (PLL) gear, which could

interact with sandbar sharks from vessels operating outside the research fishery (approximately 4.3 mt dw). Shark discards in the research fishery are anticipated to occur as they have during directed shark trips in the past. Outside of the research fishery, vessels would not be able to land sandbar sharks and would have to discard them. Because of these discards in and out of the research fishery, it is anticipated that discards of sandbar sharks may increase by 36 percent compared to current discards. However, commercial landings and discards would still be reduced by 82 percent compared to alternative 1 (no action: 728 mt dw in landings + 9.6 mt dw in discards = 737.6 mt dw total; alternative 4: 116.6 mt dw in landings + 13.1 mt dw in discards = 129.7 mt dw). The total commercial landings and discards plus an estimated 27 mt dw of recreational landings (156.7 mt dw total) is still below the 158.3 mt dw sandbar shark TAC recommended in the 2005/2006 LCS stock assessment. Therefore, quotas and retention limits under the proposed alternative would meet the rebuilding plan for sandbar sharks and would have positive ecological impacts on this stock.

Additionally, since the boats in the research fishery would be directing on sharks, it is assumed that dusky shark discards would occur during those research trips as they have in the past when there were directed BLL trips. However, since the overall number of boats operating in the research fishery would be limited, it is anticipated that dusky shark discards could decrease by 72 percent under the proposed alternative, resulting in positive ecological impacts for this stock.

Based on the small number of boats that could fish for sandbar sharks in the research fishery, most current directed and incidental permit holders would not be allowed to land sandbar sharks, resulting in negative socio-economic impacts for these permit holders. In addition, since directed permit holders presumably make a greater percentage of their gross revenues from sandbar shark landings, directed permit holders outside the research fishery would be expected to have larger negative socioeconomic impacts compared to incidental permit holders outside of the research fishery. However, to mitigate some of these impacts, directed and incidental permit holders outside of the research fishery would still be allowed to land non-sandbar LCS, SCS, and pelagic sharks.

In 2006 ex-vessel prices, it is estimated that vessels operating in the research fishery could make \$490,411 in gross revenues of sandbar shark and

non-sandbar LCS landings. Vessels operating outside of the research fishery could make approximately \$1,502,994 in gross revenues. In total, vessels operating in and outside of the research fishery are expected to have gross revenues of \$1,993,435 in sandbar shark and non-sandbar LCS landings. This is a 48 percent reduction in gross revenues from sandbar sharks and non-sandbar LCS under the no action alternative (gross revenues based on current directed and incidental permit holders' landings were \$3,824,589).

Also under the proposed alternative, porbeagle sharks would be prohibited in the commercial and recreational sectors. This is expected to have neutral ecological impacts for this stock since the United States has had minimal landings of this species. In addition, since most porbeagle sharks are caught on pelagic longline gear, reductions in fishing effort associated with BLL gear from reductions in the sandbar shark quota are not anticipated to have much of an ecological benefit for this species. Prohibiting the retention of porbeagle sharks is anticipated to increase dead discards by 0.4 porbeagle sharks per year. Based on the average porbeagle shark landings from 2002 to 2004 (1.5 mt dw or 3,402 lb dw) and 2006 ex-vessel prices, placing porbeagle sharks on the prohibited species list is equivalent to a \$6,081 gross revenues loss in porbeagle shark landings.

This alternative would also change how NMFS adjusts quotas. Under the current regulations, NMFS adjusts the shark quota based on under- and overharvests from the previous year. Under this alternative, adjustments would be based, in part, on the status of the stock. If the status of the stock is considered to be unknown or overfished and/or if overfishing is occurring, NMFS would not adjust for underharvests. NMFS would continue to adjust for overharvests. These measures should ensure that overfished species continue to rebuild under the rebuilding plan and species that are unknown or that have overfishing occurring do not become overfished. However, if the status of the stock is known or not overfished and if overfishing is not occurring, then NMFS would adjust for underharvests until the quota is 50 percent above the base quota (e.g., if the base quota is 100 mt, NMFS would adjust it to a maximum of 150 mt). As with the no action alternative, NMFS would continue to adjust for overharvests. These measures should ensure that species that are not overfished do not become overfished.

This alternative would also require all shark fins, including the tail, to be landed attached to the shark carcass.

Fishermen could cut the fin partially off the carcass as long as skin remains attaching the fin to the carcass. This type of cut should allow the fins to be folded against the carcass for storage purposes and should ensure that the quality of the meat does not degrade. Requiring the fins to remain on the carcass is a change from the current fishery, which allows fishermen to cut the fins off the carcass prior to landing as long as both the fins and carcass are landed together. Keeping the fins attached to the carcass should have some positive ecological impacts in that species identification should be improved for reporting and enforcement purposes, and enforcement of the ban on shark finning would be facilitated. The overall economic impacts should also be minor as fishermen should be able to receive the same ex-vessel price for the meat and fins but, in the short term, the market would likely undergo some changes as fishermen and dealers work out who would be responsible for cutting the fins off the shark once the shark is offloaded.

This alternative would also modify the current quota available for EFPs and display permits. This alternative would not limit the sharks available under scientific research permits or letters of acknowledgment. The current shark quota for EFPs and display permits is 60 mt ww. This alternative would not allow for dusky sharks to be taken under EFPs or display permits. This alternative would also split sandbar sharks out of the 60 mt ww quota and provide for quotas of 1.4 mt ww (1 mt dw) for sandbar shark EFPs, 1.4 mt ww for sandbar shark display permits, and 57.2 mt ww (41.2 mt dw) for all other shark species, other than dusky sharks. Except for dusky sharks, these quota changes are mainly administrative in nature because the quota has not been taken in the past. However, all of these changes should help NMFS provide more control over shark species that are on long-term rebuilding plans.

B. Time/Area Closures

Also, under the proposed alternative, NMFS would maintain the mid-Atlantic shark closed area to BLL gear and the current BLL closures in the Caribbean that were implemented in March 2007 (72 FR 5633, February 7, 2007). Therefore, the ecological impacts associated with these closures would be the same as described under the no action alternative.

In addition, NMFS would implement the marine protected areas (MPAs) recommended by the SAFMC that range from North Carolina to the Florida Keys. These MPAs were proposed in

Amendment 14 to the Snapper Grouper FMP. A total of 19 MPAs were initially considered in Amendment 14, and 8 of the MPAs were preferred in the SAFMC's final recommendations in June 2007. The eight MPAs include one off southern North Carolina, three off South Carolina, one off Georgia, and three off Florida.

The primary purpose of Amendment 14 is to protect the population and habitat of slow growing, long-lived deepwater snapper grouper species (speckled hind, snowy grouper, Warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, and blueline tilefish) from directed fishing pressure. The only HMS authorized gear that has the potential to interact with these species is bottom longline gear. HMS permitted vessels that fish with bottom longline gear normally target large coastal sharks, but small coastal, pelagic and dogfish species are also caught. Bycatch may include groupers, tilefishes, wahoo, skates, rays, and other species.

NMFS agreed to analyze the ecological and socio-economic impacts of the MPAs on HMS fisheries and to consider rulemaking to prohibit shark bottom longline gear in the preferred MPAs.

NMFS used shark bottom longline observer program data from 1994–2006 to evaluate the impact of the shark bottom longline fishery on the snapper-grouper complex within the all of the MPAs initially considered by the SAFMC. Using a Geographic Information System (GIS), NMFS plotted the locations of all observed sets on the MPAs in the South Atlantic region to provide an overview of the number and locations of sets that intersected the MPAs. Since most of the MPAs are relatively small (<10 nautical miles in diameter), the sets tend to either start or end outside of the MPAs. In most cases, only a portion of the set intersected with an MPA and few if any sets were entirely within the MPAs. However, if a set intersected any portion of an MPA, then all bycatch reported on that set was counted as occurring in the MPA regardless of where on the set it occurred. NMFS used this approach because it is not possible to determine where on a set the bycatch actually occurred. Of the sets that intersected the MPAs, a large portion of each set actually occurred primarily outside the MPAs. As a result, the number of bycatch species reported as occurring in the MPAs is most likely an overestimate.

Of the 1,563 observed sets over the approximately twelve-year period, a total of 34 sets (2 percent) intersected all

of the MPAs initially considered by the SAFMC. Of those, only two sets occurred entirely within the boundary of the proposed MPAs (one in Snowy Grouper Wreck and one in North Florida MPA). A concentration of observed sets is apparent in the areas north of Cape Canaveral. The remaining sets tend to be more widely spaced and although observer coverage is not necessarily uniform, the level of observer coverage was based on the level of fishing effort in the different areas. Few sets occurred in the MPAs because they are located on the edge of the shelf in deeper water where currents are strong and gear may be lost. Most bottom longline sets occur shoreward of the 200 m depth contour with the exception of the Snowy Grouper Wreck MPA. The few sets that did occur in the MPAs should not be considered representative of overall shark fishing effort, and may in fact be considered anomalous based on the low number of observed sets that occurred in these areas. As very few sets occurred in the MPAs, very little shark fishing effort and associated bycatch occurred in the MPAs, resulting in minimal ecological impacts.

Using the observer data and fishing effort reported in the Coastal Fisheries Logbook, NMFS estimated the total bycatch and expanded coastal shark catches within all of the MPAs initially considered by the SAFMC to obtain overall estimates of catch within the proposed MPAs. Only one of the original MPAs, Snowy Wreck, had sufficient data to produce statistically robust expanded bycatch estimates. Based on the low estimate of total expanded bycatch, it is likely the shark bottom longline fishery has minimal impact on the MPAs. If additional data becomes available, expanded take estimates could be calculated for those MPAs for which NMFS was unable to provide estimates in the current analysis.

Given that only 34 out of 1,563 observed trips (2 percent) intersected all of the MPAs initially considered by the SAFMC, the impact of shark longline vessels on the snapper grouper complex in the MPAs is expected to be minimal. Taking all 34 sets that occurred in all the MPAs into account, only 28 grouper were observed caught over a 12 year period. Of these, only one species that was observed caught (snowy grouper) is from a stock that is considered overfished with overfishing occurring. Two individuals of this species were caught.

A total of 1,816 sharks, or 2.6 percent of the total number of sharks observed, were observed caught on sets that

intersected all of the MPAs initially considered by the SAFMC. Based on expanded catch estimates, a total of 25,395 sharks were estimated to be caught in the MPAs each year. If all the MPAs were closed to bottom longline gear, this could have a positive impact on shark populations by reducing overall mortality and landings of sharks in the South Atlantic. The total number of sharks caught annually in the MPAs is likely an overestimate because most of the catch recorded on the sets did not occur entirely within the MPA as described above. Thus the actual number of sharks caught in the MPAs may be lower.

For the eight proposed MPAs (which were approved by the SAFMC in June 2007), only 21 fish (4.8 percent of total) were reported as bycatch, and of those, only 13 individuals were comprised of grouper species. No snowy grouper were observed caught in the proposed MPAs. For sharks, 818 sharks were observed caught in the proposed MPAs (1.6 percent of total) with the majority of the catch comprised of sandbar shark.

The SAFMC has expressed concern about habitat impacts of shark bottom longline gear in the MPAs. In the Consolidated HMS FMP, NMFS completed a review of all HMS (and other state and Federally managed gears) that may have an impact on HMS essential fish habitat (EFH). In addition, NMFS considered the impact of HMS gears on EFH for other Federally managed species. NMFS concluded that bottom longline gear was the only gear that has the potential to impact EFH, specifically benthic habitat types. However, the degree to which the gear will impact EFH also depends on the substrate that makes up the EFH. Certain substrates, such as complex coral reef habitat, will be more susceptible to damage than will mud and sand substrates because of the extended time for habitat recovery. The impact of shark bottom longline gear on benthic habitat has not been rigorously studied and conclusions are mixed. For example, the 1999 NMFS EFH Workshop categorized the impact of bottom longline gear on mud, sand, and hard-bottom as low. Bottom longline may have some negative impact if gear is set in more complex habitats, such as sponges or coral reefs, however only small portions of some of the MPAs are characterized as being comprised of hardbottom, and none of the areas are considered to have sponge or coral habitat. Bottom longline gear in the shark fishery is primarily used in sandy and/or mud habitats where it is expected to have minimal impacts.

On November 7, 2006, NMFS published a Notice of Intent (71 FR 65088) to prepare an Environmental Impact Statement to examine management alternatives for revising existing HMS EFH, consider additional Habitat Areas of Particular Concern (HAPCs), and to identify ways to avoid or minimize, to the extent practicable, adverse fishing impacts on EFH consistent with the Magnuson-Stevens Act and other relevant Federal laws. In Amendment 1 to the Consolidated HMS FMP, NMFS will consider the impact of bottom longline gear on EFH. Depending on the outcome of the analysis, NMFS may consider alternatives to prohibit bottom longline gear if it is found to have more than a minimal and not temporary impact. Factors that NMFS will consider include the overlap of bottom longline gear with EFH, the duration and extent of the impact, and the susceptibility of the habitat to damage from bottom longline gear consistent with previous guidance issued by NMFS. The SAFMC has also expressed concerns about the enforceability of prohibiting only snapper grouper bottom longline gear and not shark bottom longline gear in the MPAs. Because the gears are virtually indistinguishable, and many fishermen hold both types of permits, prohibiting only one type of gear could create an enforcement loophole. As a result, NMFS proposes to close the MPAs to shark bottom longline gear based on enforceability concerns raised by the SAFMC.

The proposed MPAs are generally small (<10 miles wide) and vessels should be able to make minor adjustments to fishing locations to avoid the MPAs. Most of the observed shark bottom longline sets occurred shoreward of the MPAs. Assuming bycatch rates are higher in the MPAs than outside the MPAs, affected vessels may forego some loss of revenue from the reduced bycatch of grouper and other species caught on shark BLL sets in the proposed MPAs, however, these losses are expected to be minimal. Based on the expanded catch estimates, the total shark catches for the proposed MPAs were 25,395 and this equates to approximately \$1,060,083 based on 2006 ex-vessel prices for shark (assuming 5 percent of the landing weight was fins and 95 percent of the landings was carcasses). Since there are approximately 285 shark LAPs in Florida, this would amount to a loss of revenue of approximately \$3,722 per vessel per year in Florida if vessels are unable to catch as many sharks outside the MPAs. Given the small size of the

MPAs, it is unlikely that vessels would be unable to catch as many sharks outside the MPAs.

C. Reporting

Under the proposed alternative, NMFS would also modify the reporting frequency for dealers. The requirement for dealer reports to be postmarked within 10 days after each reporting period (1st through 15th and 16th through last day of month), would be modified to state that dealer reports must be received by NMFS not later than 10 days after each reporting period (i.e., 25th and 10th of each month). Shark dealers would have to submit these reports in advance of the 10th and 25th of each month to ensure adequate time for delivery, depending on the means employed for report submission. Requiring that all dealer reports are actually received by NMFS in a more timely fashion would provide more frequent reports of shark landings in order to better assess quantities of sharks landed and whether or not a closure or other management measure is warranted to prevent overfishing. This could decrease the likelihood that extensive overharvests of sharks would occur. Dealers would still be required to submit reports indicating that no sharks were purchased during inactive periods. NMFS does not expect any economic impacts as a result of this management measure.

Participants selected to participate in the shark research program would be subject to 100 percent observer coverage as a requirement for eligibility to participate in the program. Increasing observer coverage for vessels participating in this program would result in positive ecological impacts because observer reports could be used to monitor landings, bycatch, and interactions with protected resources in near "real-time." Vessels outside the shark research program would still be required to carry a NMFS-approved observer if selected and all vessels would still be required to complete logbooks within 48 hours of fishing activity and then submit the logbooks to NMFS within seven days.

D. Seasons

The proposed alternative would open all shark fisheries on January 1 of each year dependant upon available quota. There would only be one season per year. Upon achieving 80 percent of landings, fishermen would be given at least 5 days notice from the date of filing with the Office of the **Federal Register** prior to the closure. Official notice would be made via the **Federal Register**, however, the public would

also be informed simultaneously via the HMS website and email notice listserve. The fishery for non-sandbar LCS and sandbar sharks would both close when either quota reaches 80 percent of their respective quota because of concerns regarding sandbar shark bycatch that might occur if the non-sandbar LCS fishery were kept open after the sandbar shark quota had been filled. Closing both fisheries should also prevent individuals from mis-identifying sandbar sharks as non-sandbar LCS. Additionally, any dealer reports that note "shark" landings or unidentified shark landings would be counted against the sandbar shark quota.

The fishery for SCS and pelagic sharks would be closed individually upon achieving 80 percent of their respective quotas. Upon achieving 80 percent of landings, fishermen would be given at least 5 days notice from the date of filing with the Office of the **Federal Register** prior to the closure. Official notice would be made via the **Federal Register**, however, the public would also be informed simultaneously via the HMS website and email notice listserve. Fishing effort might increase as a result of providing this 5-day advance notice as fishermen and dealers would know that the season is about to end, however, they would still be bound by the retention limits for individual trips.

Commercial shark fisheries have been managed on a trimester basis since 2003 to provide a higher degree of resolution on which to manage seasonal fisheries, reduce fishing mortality during peak pupping seasons, and address other bycatch concerns. As described above, the proposed alternative would implement significantly reduced quotas and retention limits for sandbar shark, which is the most valuable shark in commercial fisheries because of its fin value. It is estimated that the reductions in fishing effort as a result of these reduced retention limits and quotas could provide ecological benefits to all shark species. The ecological benefits of minimizing fishing mortality during peak pupping seasons or having a higher degree of resolution on which to manage fisheries seasonally could be replaced by the fact that this alternative would implement a significant reduction in the quota for sandbar sharks and reduced retention limits for both sandbar sharks and non-sandbar LCS.

Additionally, since all sandbar sharks and some of the non-sandbar LCS would be landed by a limited number of vessels participating in a shark research program, NMFS would have more information concerning when the

sandbar shark and non-sandbar LCS quotas would likely be reached. This may result in positive ecological impacts because it should reduce overharvests. To ensure collection of information that is needed for stock assessments, NMFS would need to ensure data collection throughout different areas (e.g., throughout the sharks' range) and also throughout the year. However, fishing effort and landings (e.g., landings by state fishermen in state waters) that would occur outside the shark research program are difficult to predict and negative ecological impacts may occur as a result of the sandbar shark or non-sandbar LCS quota being filled by vessels outside of the shark research program as this would mean that fishing under the shark research program and collection of biological samples would also cease.

NMFS is seeking public input specifically in response to two questions regarding the potential ecological impacts of two variables that could affect season length. First, is the selection of 80 percent of any given species/species complex an appropriate threshold for taking action to close the fishery? Eighty percent was chosen because it is close enough to 100 percent to allow for a limited number of trips to be completed after NMFS receives landings reports from dealers and takes action to close the fishery without resulting in overharvests. Second, is providing five days notice to fishermen before the season closes for any species/species complex adequate notice for fishermen? Or, conversely, is five days notice too long and should NMFS follow the same timeline for sharks as it does for inseason actions for bluefin tuna, which is three days from date of filing?

E. Regions

Under the proposed alternative, NMFS would eliminate the three regions and manage all shark fisheries throughout the Atlantic Ocean, the Gulf of Mexico, and Caribbean Sea as one region. The ecological impacts of this change are expected to be neutral. The regions were implemented in 2004 to address regional differences in fisheries and to provide fishing opportunities for regions that do not have sharks present throughout the year. As stated above, in terms of the reduction in fishing effort that would result under the quotas and retention limits proposed in this alternative are likely to achieve, NMFS does not expect that maintaining a regional management scheme would provide any additional ecological benefits for Atlantic sharks, protected

resources, or other bycatch. However, to ensure that NMFS has a variety of biological samples from different regions, NMFS would maintain adequate regional coverage when selecting vessels for the shark research program.

Eliminating a regional management scheme would likely have negative economic impacts on regions that do not have sharks present year round. The North Atlantic region could be disadvantaged as a result of eliminating a regional management scheme because the quota would likely be harvested in southern regions before sharks are present in the North Atlantic. Vessels could either move to southern areas to participate in the shark fishery in areas where sharks are present year-round or redistribute fishing effort to other fisheries. Dealers in the North Atlantic region could also be affected, possibly even more so than vessels, as the likelihood of having shark products consistently available would decrease. However, given that the North Atlantic region mostly handles pelagic sharks and few LCS or SCS, any economic impacts of removing the regions for LCS and SCS are likely to be slight.

F. Recreational Management Measures

Finally, under the proposed alternative, recreational anglers (HMS Angling, Charter Headboat, and General Category permit holders participating in a registered HMS tournament) would only be able to possess species of shark that are easy to identify including: bonnethead, nurse, tiger, great hammerhead, smooth hammerhead, scalloped hammerhead, lemon, sharpnose, shortfin mako, common thresher, oceanic whitetip, and blue sharks. These sharks are easier to identify than other shark species and are less likely to be confused with dusky or sandbar sharks. Species that were previously authorized, but would no longer be allowed to be possessed in recreational fisheries, include: sandbar, bull, blacktip, spinner, porbeagle, blacknose, and finetooth sharks.

Ecological benefits of not allowing these species to be landed are variable depending upon the species. NMFS is most concerned about recreational anglers landing sandbar and dusky sharks and, therefore, wants to reduce the potential that one of these sharks could be mistakenly identified and then landed. Between 2002 and 2004, there were 5,784 sandbar sharks landed in recreational fisheries per year. Considering the stock status of sandbar sharks, the ecological impacts of further limiting the species that may be possessed in the recreational fishery

would likely be positive as it would reduce the number of sandbar sharks intentionally landed and/or landed due to confusion with species that look similar. The ecological impacts of prohibiting sandbar sharks would likely be positive for dusky sharks as well as it would reduce the number of dusky sharks that are landed because they can be mistaken for sandbar sharks. Silky sharks are easily confused with dusky sharks, therefore, prohibiting the retention of silky sharks could result in fewer dusky sharks being landed. Despite the fact that this alternative could result in positive ecological impacts, it is not expected to eliminate sandbar mortality in the recreational fisheries as there would likely continue to be some illegal landings of sandbar sharks and/or some level of post-release mortality for fish that are caught and released. NMFS will engage in outreach efforts to provide recreational anglers with updated regulations and tips for proper identification of shark species that are authorized to be possessed in order to improve compliance with these measures.

Participants in recreational shark fisheries could experience negative economic impacts as a result of reducing the number of sharks that can be legally landed. Charter/headboat (CHB) operators would be most affected as a result of these measures as they may see a reduction in the number of charters that customers are willing to hire. These impacts may be most pronounced in areas where blacktip sharks are frequently encountered, including the South Atlantic and Gulf of Mexico regions. Recreational landings data indicates that there are more landings of blacktip sharks than of any other species that could no longer be possessed as a result of this alternative. It is presumed that blacktip sharks are retained more than any other LCS because of the higher quality of their flesh and the fact that they are more abundant than other LCS in coastal waters. CHB operators specializing in sharks may see the number of charters decline because some fishermen insist on keeping blacktip or sandbar sharks. Prohibiting the other species (finetooth, silky, bull, blacknose, and porbeagle) is not expected to have adverse impacts as these species are not as frequently encountered in recreational shark fisheries.

Tournaments offering prize categories for sharks may also experience negative economic impacts as a result of prohibiting six additional species of sharks for retention in recreational fisheries. The majority of tournaments specializing in sharks are in the North

Atlantic region, specifically Rhode Island, New York, and Massachusetts. In 2005 and 2006, there were 60 tournaments per year with prize categories for pelagic sharks. Species most commonly targeted in these tournaments including common thresher, oceanic whitetip, blue, shortfin mako, and porbeagle. Of these, only porbeagle would be prohibited from retention as stocks are overfished. Tournaments are generally won by shortfin mako or common thresher, therefore, significant economic impacts as a result of prohibiting porbeagle retention in shark fishing tournaments are not anticipated.

NMFS is requesting public comment specifically on the list of species that can be easily identified. Specifically, do commenters agree that the species proposed are easy to identify? Are there other species that should be added to the list? Are there some species that should be removed from the list?

G. Impacts on Protected Resources and EFH

The proposed alternative could have positive impacts on protected resources, including sea turtles, marine mammals, and smalltooth sawfish as it is expected to reduce overall fishing effort targeting shark with gillnet and bottom longline gear while increasing the level of observer coverage on a limited number of vessels participating in a shark research program. The shark research program proposed in this alternative may also provide additional documentation of interactions with protected resources via observer reports and possibly the opportunity to collect samples from protected resources. Shark fishermen outside of the shark research program would likely reduce the number, duration, and frequency of trips targeting sharks with bottom longline and/or gillnet gear. Furthermore, soak time might also be reduced because fishermen would know that they would only be allowed to possess 22 non-sandbar LCS per vessel per trip. Fishing effort will decrease the most in the bottom longline fishery as this gear is most effective for targeting sandbar shark and most LCS species. Fishing effort in the gillnet fishery would likely decrease less than fishing effort in the BLL fishery as this fishery mainly targets small coastal sharks and non-sandbar LCS, specifically blacktip sharks. There is the possibility that some of the current fishing effort in the BLL fishery would transfer to the gillnet fishery to target species that have larger retention limits (i.e., SCS and blacktip sharks) or to other BLL fisheries. It is difficult to predict how fishing effort in

longline and gillnet fisheries would change as a result of this alternative.

Ecological impacts to EFH would likely be positive as a result of alternative 4. BLL gear is generally regarded as the HMS gear type most likely to potentially impact EFH of HMS and/or non-HMS. BLL gear may have some negative impact if gear is set in more complex habitats, such as hardbottom or coral reefs in the Caribbean or areas with gorgonians, or soft corals and sponges in the Gulf of Mexico. BLL gear set with cable groundline or heavy monofilament with weights can damage hard or soft corals and potentially become entangled in coral reefs upon retrieval, resulting in coral breakage due to line entanglement. However, the extent to which bottom longline gear is fished in areas with coral reef habitat targeting sharks has not been determined.

H. Conclusion

Overall, alternative 4 is preferred and therefor proposed because it implements quotas and retention limits necessary to allow rebuilding and prevent overfishing of shark species and maximizes scientific data acquisition by continuing a limited research fishery for sandbar shark with 100 percent observer coverage. Furthermore, by allowing some vessels to participate in the shark research fishery annually, this alternative mitigates some of the significant economic impacts (e.g., reduced retention limits) that are included in this alternative and alternatives 2, 3, and 5 and that are necessary to reduce fishing mortality and effort and rebuild overfished shark stocks. This alternative ensures that data for stock assessments and life history samples continue to be collected while allowing a small pool of individuals to continue to collect revenues from sharks. Individuals not selected to participate in the shark research program could still land 22 non-sandbar LCS per vessel per trip, which would limit the number of trips targeting non-sandbar LCS sharks, while allowing them to keep some sharks that would otherwise be discarded.

Analyses of the Other Alternatives Considered

Under the no action alternative (alternative 1), NMFS would maintain the current regulations including, but not limited to, a commercial quota of 1,017 mt dw for the LCS complex; 19 prohibited species; the mid-Atlantic shark closed area; a 4,000 lb retention limit per trip for all LCS; trimester seasons; three regions; and a recreational retention limit that allows

recreational anglers to possess the same species as commercial fishermen.

Overall, given the latest stock assessments that recommend large reductions in fishing mortality, the no action alternative would have negative ecological impacts on sandbar, dusky, and porbeagle sharks. In the short-term, the social and economic impacts would likely be neutral or slightly positive because current fishing effort would remain the same. In the long-term, if these species do not rebuild, social and economic impacts would likely be negative as the shark species, particularly the sandbar shark which is the major species for the fishery, become less abundant. Under the Magnuson-Stevens Act, management measures are needed to rebuild overfished stocks and prevent overfishing. Therefore, maintaining the LCS quota of 1,017 mt dw, would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158 mt dw for sandbar sharks in order for this species to rebuild by 2070. Because the current fishing effort under this alternative could lead to continued overfishing of sandbar, porbeagle, and dusky sharks, at a level that could potentially prevent these species from rebuilding in the recommended timeframe, NMFS does not propose this alternative.

In addition to the no action alternative (alternative 1) and the proposed alternative (alternative 4), NMFS also considered alternatives 2 and 3, which would establish the same quotas, time/area closures, seasons, regions, and recreational retention limits as the proposed alternative while changing the commercial retention limits based on the permit holders allowed under each alternative. Alternative 2 would allow only those fishermen who hold a directed shark LAP to possess sharks. Those fishermen could possess 8 sandbar sharks and 21 non-sandbar LCS per trip. Additionally, under alternative 2, dealers would be required to report sharks received within 24 hours of the sale. Under alternative 3, fishermen who hold either a directed or incidental shark LAP could possess 4 sandbar sharks and 10 non-sandbar LCS per trip.

Both alternatives 2 and 3 could have positive ecological impacts for most species of sharks, bycatch, and protected resources as a result of significantly reduced retention limits and quotas for sandbar sharks and reduced retention limits for non-sandbar LCS. These positive ecological impacts would likely be more pronounced in

alternative 3 than alternative 2 because retention limits are reduced.

Both alternatives would reduce directed fishing effort for sharks significantly, as the limited retention limits for sandbar shark or non-sandbar LCS would not correspond to revenues that would equal a fishermen's costs for a trip targeting sharks. Sandbar sharks are the most lucrative species of LCS and currently they comprise 70 percent of landings in the bottom longline fishery. Under alternative 2, because the shark fishery for incidental permit holders would be closed, sharks caught in pursuit of other species with bottom longline gear or gillnet would be discarded, possibly dead. Compared to alternative 2, alternative 3 would expand the universe of commercial shark permit holders that could possess a limited number of sharks and non-sandbar LCS to include incidental permit holders. However, reduced retention limits would more closely resemble a shark fishery that is exclusively incidental in nature, as the retention limits described in this alternative would not correspond to revenues that would equal a fishermen's costs for a trip. It is still anticipated that sharks caught in excess of the retention limit while in pursuit of other species with bottom longline gear or gillnet would be discarded, possibly dead. Furthermore, alternative 3 would set a retention limit for sandbar sharks and non-sandbar LCS that is the same for both directed and incidental permit holders, which would reduce the value of a directed shark permit.

As in the proposed alternative, eliminating regions and seasons in these alternatives represents an economic disadvantage to the North Atlantic region as sharks are not present in these waters year-round, meaning the quota may be filled in some years before sharks are present in these areas. However, as fishermen in the North Atlantic region land more pelagic sharks than LCS or SCS, NMFS does not expect eliminating regions and seasons to have a significant economic impact on the North Atlantic region. Interactions with protected resources may decrease under both alternatives as a result of less bottom longline and gillnet fishing effort targeting sharks; however, it is assumed that some of this fishing effort would be displaced to other gillnet and bottom longline fisheries in which participants are permitted.

Alternative 2 is not proposed because landings of all sharks by incidental permit holders would have to be discarded and because it would place significant reporting burden on shark dealers. Additionally, alternative 2 does

not provide as much assurance that overfishing of sandbar and dusky sharks would not continue compared to other alternatives because of increased retention limits for non-sandbar LCS and the increased likelihood that sandbars and dusky sharks would be caught incidentally and discarded dead. Thus, this alternative would not achieve National Standard 1 to rebuild overfished species or prevent overfishing (e.g., sandbar and dusky sharks) nor would this alternative achieve National Standard 9, to minimize bycatch to the extent practicable.

Alternative 3 is not proposed because it diminishes the economic and historical significance of the directed fishery and essentially makes the directed shark LAP equal in value to the incidental shark fishing permit. Furthermore, given the reduced retention limits in this alternative, the directed shark fishery would essentially be eliminated, resulting in significant economic impacts. As with alternative 2, this alternative would not achieve National Standard 1 to rebuild overfished species or prevent overfishing (e.g., sandbar and dusky sharks) nor would this alternative achieve National Standard 9, to minimize bycatch to the extent practicable. Additionally, the limited data attained on shark interactions from both alternatives 2 and 3 would compromise the ability to maintain fishery dependent data series for conducting stock assessments, which are necessary in order to have the best scientific data (National Standard 2). Preferred alternative 4, the proposed alternative, would likely accomplish the necessary reductions in quota, retention limits, and fishing effort to prevent overfishing and allow stocks to rebuild while allowing for the collection of valuable scientific data, allowing the continuation of a very limited but directed shark fishery, allowing some landings of non-sandbar LCS, and minimizing bycatch to the extent practicable.

The last alternative considered (alternative 5) would close all Atlantic shark fisheries. Under this alternative, NMFS would preclude commercial and recreational fishermen from possessing or landing any shark species. This alternative would have the most significant positive ecological impacts for sharks, protected resources, and EFH of the alternatives considered in this rulemaking. However, closing the Atlantic shark fishery would also incur the most significant economic impacts on U.S. shark fishermen, shark dealers, shark tournament operators, and others

involved in supporting industries. This alternative is not proposed at this time because it would cause severe economic and social impacts to fishing communities along the east coast and Gulf of Mexico compared to the other alternatives considered, contrary to National Standard 8 (which requires consideration of economic and social data to minimize adverse economic impacts on communities, to the extent practicable). Furthermore, by closing the shark fishery, NMFS would lose a valuable source of fishery dependent data that would influence the ability to conduct future shark stock assessments. Recent stock assessments for sandbar, dusky, and porbeagle sharks indicate that these species are overfished. The primary objective of this amendment is to reduce fishing mortality for these species and allow them the opportunity to rebuild. There are numerous species of shark that are not overfished or experiencing overfishing, and therefore, do not warrant a full closure of the Atlantic shark fishery at this time. Preferred alternative 4, the proposed alternative, would strike a balance between preventing overfishing and allowing stocks to rebuild, while considering the economic needs of the shark fishing community and the data needs of future stock assessments by allowing some retention of sharks.

Request for Comments

NMFS is requesting comments on any of the alternatives or analyses described in this proposed rule and in the draft Amendment 2. NMFS is also requesting comments on specific items related to those alternatives to clarify certain sections of the regulatory text or in analyzing potential impacts of the alternatives. Specifically, NMFS requests comments on:

(1) The proposed list of species that may be taken by recreational anglers. NMFS is proposing that only species that are easy to identify be allowed to be landed by recreational anglers. Do commenters agree that the species proposed are easy to identify? Are there other species that are easily identified that should be added? Are there some species that should be removed?;

(2) The amount of time proposed to provide notice of fishing closures. NMFS is proposing to close the shark fisheries with at least five days notice from date of filing with the Office of the **Federal Register**. Is that an adequate amount of time for fishermen to receive notice? Would a shorter timeframe (e.g., three days from date of filing, similar to the notice given for inseason actions with the bluefin tuna General Category) be more appropriate?; and,

(3) The 80 percent trigger for closing commercial shark fisheries. NMFS is proposing to close shark fisheries when dealer reports indicate that landings are at 80 percent of the available quota. NMFS is proposing this buffer given the timeframe for dealer reporting (twice a month), the time needed to announce the closure, and the need to close the fishery before the quota is reached. Eighty percent was chosen because it is close to 100 percent to allow for a limited number of trips to be completed after NMFS receives landings reports from dealers and to take action to close the fishery without resulting in overharvests. Is this buffer sufficient? Should it be larger or smaller?

Comments may be submitted via writing, email, fax, or phone (see **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). All comments must be submitted no later than 5 p.m. on October 10, 2007.

Public Hearings and Special Accommodations

As listed in the table below, NMFS will hold 10 public hearings to receive comments from fishery participants and other members of the public regarding this proposed rule and the draft HMS FMP. These hearings will be physically accessible to people with disabilities. Requests for sign language

interpretation or other auxiliary aids should be directed to Heather Halter at (301) 713-2347 at least 7 days prior to the hearing date. NMFS has requested time to present this proposed rule and the draft Amendment 2 to the five Atlantic Regional Fishery Management Councils and the Atlantic States Marine Fisheries Commission at their meetings during the public comment period. Please see their meeting notices for times and locations. NMFS also tentatively anticipates holding a meeting of the HMS Advisory Panel on October 2 - 4, 2007, in Silver Spring, Maryland. The actual dates and location will be announced in a future **Federal Register** notice.

Date	Time	Hearing Location	Hearing Address
8/8/07	6 - 8:50 p.m.	Manahawkin Public Library	129 North Main St., Manahawkin, NJ 08050
8/8/07	6 - 9 p.m.	SEFSC, Panama City Laboratory	3500 Delwood Beach Dr., Panama City, FL 32408
8/14/07	6 - 9 p.m.	Bayou Black Recreational Center	3688 Southdown Mandalay Rd., Houma, LA 70360
8/22/07	6:30 - 9:30 p.m.	City of Madeira Beach	300 Municipal Dr., Madeira Beach, FL 33708
8/23/07	5:30 - 8:30 p.m.	Fort Pierce Library	101 Melody Lane, Fort Pierce, FL 34950
8/29/07	6 - 9 p.m.	Ocean Pines Public Library	11107 Cathell Rd., Berlin, MD 21811
9/5/07	6 - 9 p.m.	University of Texas, Marine Science Institute	Visitor's Center, 750 Channel View Dr., Port Aransas, TX 78373
9/6/07	5 - 8 p.m.	Islamorada Public Library	81500 Overseas Highway, Islamorada, FL 33036
9/10/07	6 - 9 p.m.	Manteo Town Hall	407 Budleigh St., Manteo, NC 27954
9/17/07	5:30 - 8:30 p.m.	Portsmouth Public Library	175 Parrott Ave., Portsmouth, NH 03801

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the

subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* At this time, NMFS has preliminarily determined that the proposed rule and related draft Amendment 2 to the Consolidated HMS FMP are consistent with the national standards of the Magnuson-Stevens Act, other provisions of the Act, and other applicable law.

This proposed rule contains a collection-of-information requirement

subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the HMS exempted fishing permit, scientific research permit, display permit, shark research permit, and letter of authorization information collection is estimated to average 2 hours per scientific research plan; 40 minutes per application, including the shark research permit application; 15 minutes per request for amendment to the exempted fishing permit; 1 hour per interim report; 2 minutes per "no catch" report; 40 minutes per annual report; 5 minutes per departure notification regarding

collection of display animals; 10 minutes per notification call for observer coverage for the shark research fishery; and 2 minutes per tag application. These burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael Clark, the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the IRFA follows. The full IRFA is contained in Amendment 2. Copies of Amendment 2 are available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to implement management measures for the Atlantic shark fishery that address the results of the 2005/2006 large coastal shark stock assessment, the 2006 dusky shark stock assessment, and the

Canadian porbeagle shark stock assessment.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to: (1) implement rebuilding plans for sandbar, dusky, and porbeagle sharks; (2) provide an opportunity for the sustainable harvest of blacktip and other sharks, as appropriate; (3) prevent overfishing of Atlantic sharks; (4) analyze bottom longline time/area closures and take necessary action to maintain or modify the closures, as appropriate; and (5) improve, to the extent practicable, data collections or data collection programs.

Section 603(b)(3) requires Agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than \$4.0 million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The proposed rule would apply to the 529 commercial shark permit holders in the Atlantic shark fishery based on an analysis of permit holders on May 11, 2007. Of these permit holders, 231 have directed shark permits and 298 hold incidental shark permits. Not all permit holders are active in the fishery in any given year. NMFS estimates that there are 143 vessels with directed shark permits and 155 vessels with shark incidental permits that could be considered actively engaged in fishing, since they reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005.

In addition, the reporting requirements in the proposed alternatives would also apply to Federal shark dealers. As of May 22, 2007, there were a total of 269 Atlantic shark dealer permit holders. Based on NMFS understanding of HMS dealers, NMFS assumes that each of these dealers would be considered a small business with 100 or fewer employees.

The proposed measures being considered may also impact the types of services HMS CHB permit holders may provide. HMS CHB permit holders are businesses directly affected by this rule because limitations on the species that may be taken could affect the number of customers and the amount they can ask passengers to pay for a certain trip. As of April 25, 2007, there were 4,245 HMS CHB permit holders. It is unknown what

portion of these permit holders actively participate in shark fishing or market shark fishing services for recreational anglers. NMFS considers all of these permit holders to be small entities.

In addition, some businesses that hold tournaments, such as marinas or specialized tournament organizers, are also considered small entities. HMS tournaments are required to register with NMFS. As such, NMFS has estimates on the number of HMS tournaments. However, NMFS may not necessarily know the number of businesses behind the tournament name and contact. Tournaments offering prize categories for sharks may also experience negative economic impacts as a result of prohibiting six additional species of sharks for retention in recreational fisheries in alternatives suites 2 through 4, as well as alternative 5 which would allow no possession of any sharks and only allow for catch and release fishing. The majority of tournaments specializing in sharks are in the North Atlantic region, specifically Rhode Island, New York, and Massachusetts. In 2005 and 2006, there were 60 tournaments per year with prize categories for pelagic sharks. Alternative 5 would apply to all tournaments that had a prize category for sharks. There have been 79 tournaments per year that had a prize category for sharks from 2005–2006. The majority of these tournaments target pelagic sharks and are held in the North Atlantic and Gulf of Mexico regions.

Under section 603(b)(4), Agencies are required to describe any new reporting, record-keeping and other compliance requirements. The proposed alternative would require modifying existing reporting and record-keeping requirements. The research program component in this proposed rule would require modifications to the existing Exempted Fishing Permit (EFP) program and dealer reporting requirements. Other compliance requirements are described in the discussion of alternatives set forth below.

The proposed rule would modify the reporting frequency for dealers. The current requirement for dealer reports to be post-marked within 10 days after each reporting period (1st through 15th and 16th through last day of month), would be modified to state that dealer reports must be received by NMFS not later than 10 days after each reporting period (i.e., 25th and 10th of each month). Shark, swordfish, and tuna dealers would have to submit these reports in advance of the 10th and 25th of each month to ensure adequate time for delivery, depending on the means employed for report submission.

Requiring that all dealer reports are actually received by NMFS in a more timely fashion would provide more frequent reports of shark landings in order to better assess quantities of sharks landed and whether or not a closure or other management measures are warranted to prevent overfishing. Dealers would still be required to submit reports indicating that no sharks were purchased during inactive periods. Requirements for vessel logbooks and observer coverage would remain unchanged. Additional burden is not expected as a result of modifying the regulations to ensure that dealer reports are actually received within 10 days.

The proposed rule would also create a limited shark research program that would result in changes to existing reporting requirements. Entry into the proposed shark research program would require vessels to submit an application, which would add to the reporting burden for those vessels wishing to apply. Applicants selected to participate in the shark research program under this alternative would also be subject to 100 percent observer coverage as a requirement for eligibility to participate in the program. In addition, selected vessels would continue to report in their normal logbook in addition to the observer program. Vessels in the shark research program, however, would not need to report in a similar way as the other holders of EFPs even though they are being issued permits under the EFP program. For example, vessels in the research fishery would not be required to submit interim or annual reports describing their fishing activities. Rather, they would only be required to submit logbook per current regulations. Vessels outside the shark research program would still be required to carry an observer if selected and all vessels would still be required to complete logbooks within 48 hours of fishing activity and then submit the logbooks to NMFS within seven days.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS

does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Amendment 2. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed five different alternatives suites in this proposed rulemaking. The discussion below provides justification for selection of the proposed alternative to achieve the desired objective.

As described in the earlier in the preamble, the alternatives considered and analyzed have been grouped into five alternative suites. Alternative 1 would maintain the current Atlantic shark fishery (no action). Alternative 2 would allow only directed shark permit holders to land sharks whereas Alternative 3 would allow directed and incidental shark permit holders to land sandbar and non sandbar LCS as well as SCS and pelagic sharks. Alternative 4 would establish a program where vessels with directed or incidental shark permits could participate in a research fishery for sandbar sharks. Only vessels

participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks. Finally, alternative 5 would shut down the commercial Atlantic shark fishery and only allow a catch and release recreational shark fishery. The proposed alternative is suite 4.

A. Alternative Suite 1

Alternative 1, the no action alternative, would not likely result in any significant new economic impacts to small businesses in the HMS Atlantic shark fishery if the current LCS quota of 1,017 mt dw, in conjunction with the 4,000 lb LCS directed shark permit trip limit, is maintained. Under this alternative, the current fishing effort would not likely change, which could lead to economic benefits from reduced market uncertainty for fishermen and related businesses in the short term. If gross revenues for directed and incidental permit holders is averaged across the approximately 298 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$14,000. However, long term, negative economic impacts could occur if current fishing mortality of sandbar sharks, an economically important species, is not decreased as recommended by the LCS stock assessment, and this species continues to be overfished.

The no action alternative would maintain the existing closures and would not add any new closures. The three management regions would also remain unchanged. There would also be no additional reporting requirements. Alternative 1 would also maintain the trimester seasons, which provides fishermen and dealers with more open seasons. With an annual LCS quota of 1,017 mt dw, spreading the seasons out over the calendar year could potentially result in greater economic stability for fishermen and associated communities. However, if quotas are reduced to comply with the recommendations from the LCS stock assessment, trimester seasons could become less economically stable for fishermen and dealers because of the reduced amount of quota and fishing effort during the calendar year. Maintaining existing closures, reporting requirements, and management regions would likely have little to no economic impacts on effected small businesses.

Alternative 1 would also maintain the current bag limit for HMS Angling permit holders at one shark greater than 54 inches per vessel per trip as well as one sharpnose and one bonnethead

shark (both of which are in the SCS complex) per person per trip. This would likely result in no new economic impacts for businesses operating recreational fishing charter trips targeting sharks and shark fishing tournaments in the short term.

Overall, alternative 1 would likely have the lowest economic impact on small businesses. However, this alternative would likely not meet the objectives of this action. Maintaining the LCS quota of 1,017 mt dw, would be inconsistent with the Magnuson-Stevens Act and the recent LCS stock assessment that recommended a TAC of 158.3 mt dw for sandbar sharks for this species to rebuild by 2070. Current fishing effort, under the no action alternative, could lead to continued overfishing of sandbar, porbeagle and dusky sharks, which could potentially prevent these species from rebuilding in the recommended timeframe. As a result, this alternative was not selected.

B. Alternative Suite 2

Alternative 2 would allow only directed shark permit holders to land sharks. In addition, this alternative would remove sandbar sharks from the LCS complex and establish a separate category for sandbar sharks from the LCS complex. Incidental shark permit holders would be affected by alternative 2. As of 2007, there were 220 shark directed, 285 shark incidental, and 336 shark dealers permit holders. NMFS considers the 143 vessels with directed shark permits and 155 vessels with shark incidental permits that reported landing at least one shark in the Coastal Fisheries Logbook from 2003 to 2005 as active.

On average, directed permit holders landed 1,571,851 lb dw of sandbar sharks and 1,210,643 of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$3,744,032 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). If gross revenues for directed permit holders are averaged across the approximately 143 active directed shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$26,000 from shark revenues. Under alternative 2, gross revenues for directed permit holders would be estimated to be \$1,026,032 from shark fishing. This is a 73 percent overall reduction in gross revenues compared to 2003 to 2005. These reduced gross revenues averaged across the 143 active directed permit holders are just over \$7,000 per directed shark fishing vessel. This estimated reduction

in revenue from shark landings could affect the profitability and even viability of some marginal operations. Operations that have permits in other fisheries and can easily diversify are less likely to be as affected as those marginal operations. Nevertheless, the profitability of all directed shark fishing vessels would likely be reduced. Because the states of Florida, New Jersey, and North Carolina have the most directed shark permits, these states would be most negatively impacted by alternative 2.

In addition, retention of sandbar sharks on pelagic longline (PLL) gear would be prohibited under alternative 2. On average, 80,825 lb dw of sandbar sharks were reported landed on PLL gear by directed shark permit holders from 2003 to 2005 (HMS Logbook). In 2006 ex-vessel prices, this is equivalent to \$106,802 in gross revenues. Given an average of 16.7 vessels landed sandbar sharks with PLL gear from 2003 to 2005, prohibition of sandbar sharks on PLL gear could result in a loss of gross revenues of \$6,395 per vessel.

Gross revenues under the no action revenue were based on a 4,000 lb dw LCS trip limit for directed shark permit holders. The average number of sandbars and non-sandbar LCS landed per trip was 35 sandbars and 32 non-sandbar LCS for all gear types reported in the Coastal Fisheries and HMS Logbooks. Based on 2006 ex-vessel prices, this is equivalent to \$3,358 per trip. Revenue estimates on a regional trip basis were also based on species composition data attained from the BLL observer program data. Observer data indicate that between 2005 and 2006, 69 sandbar sharks and 35 non-sandbar LCS were caught per trip in the South Atlantic region, and 30 sandbar sharks and 83 non-sandbar LCS were caught per trip in the Gulf of Mexico region. Based on these numbers and 2006 ex-vessel prices, South Atlantic trips averaged \$4,743 per trip and Gulf of Mexico trips averaged \$5,853 per trip.

Under alternative 2, the retention limits would be 8 sandbar sharks per trip and 21 non-sandbar LCS per trip. Non-sandbar LCS retention limits are based on the average ratio of sandbars to non-sandbar LCS caught in the South Atlantic and Gulf of Mexico regions to limit sandbar shark discards by fishermen deploying non-selective gear. In the Gulf of Mexico, the ratio of sandbars to other LCS caught is 1:4, which based on an 8 sandbar sharks per trip retention limit, would equal 32 non-sandbar LCS per trip. However, such a high non-sandbar LCS retention limit would result in a sandbar discards in the South Atlantic (65.3 mt dw). Therefore, a 21 non-sandbar LCS per

trip retention limit was set to balance discards versus catch in the two regions. This results in approximately five sandbar sharks being caught in the Gulf of Mexico region when the non-sandbar LCS retention limit per trip is filled (and therefore, only 86.1 mt dw of the sandbar quota would be filled). Therefore, gross revenues on a trip basis are estimated to be \$1,262 of gross revenue per trip in the South Atlantic and \$1,333 of gross revenue per trip in the Gulf of Mexico. From 2003 to 2005, there were 124 vessels that averaged more than 324 lb dw (or eight sandbar sharks) of sandbar shark per trip. Therefore, these vessels would be most negatively affected by retention limits under alternative 2.

On average, 66 incidental permit holders landed 19,066 lb dw per year of sandbar sharks and 39,995 lb dw per year of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. Using 2006 ex-vessel prices, this is equivalent to gross revenues of \$80,558 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). Gross revenues averaged across the 66 vessels with incidental permits landing sharks were just over \$1,221 per vessel. Since incidental permit holders would not be able to land any sharks under alternative 2, the 66 active vessels would be most negatively affected by this alternative. The states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders as of 2007 (144, 37, 20, and 16, respectively); therefore, these states would be most negatively impacted by alternative 2.

Alternative 2 also includes increasing dealer reporting to 24 hours of when shark products were purchased. There could be economic impacts to dealers as a result of the increased reporting requirement associated with this alternative. Reporting burden would be increased significantly for Atlantic shark dealers as a result of this alternative resulting in negative economic impacts. Currently, shark dealer reports must be submitted bimonthly, regardless of whether or not the dealer actually purchased any shark products. Reporting frequency would be increased to 24 hours of when shark products were purchased. While the increased reporting burden would not impact shark dealer expenditures per se, it would result in more time spent submitting dealer reports, which represents an opportunity cost for dealers because that would be time they could not spend conducting other activities related to their business. Furthermore, in order to comply with

the requirement that dealer reports must be received by NMFS within 24 hours, it is assumed that dealers would have to submit dealer reports electronically or via fax. Dealers that do not currently possess a computer or fax machine would have to purchase one of these items. The increased reporting burden implemented in this alternative would be subject to approval under the Paperwork Reduction Act. Reporting requirements for shark vessel permit holders, including the need to take an observer if selected and the need to submit vessel logbooks within seven days of completing a fishing trip would not be modified, resulting in neutral economic impacts.

The impacts of other provisions of alternative 2 are the same as in alternative 4, discussed below, which is the proposed alternative for this proposed rule. These provisions include: maintaining the 60 mt shark display and research quota; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must remain on the shark; removal of regions and seasons; and limiting the shark species that can be landed recreationally.

This alternative was not selected for two primary reasons. First, this alternative does not address the impacts from continued incidentally caught sandbar sharks by vessels targeting other species. These vessels will likely continue to incidentally catch sandbar sharks, but then under this alternative those sharks would be required to be discarded. These discards would reduce potential revenues and possibly operating efficiency of vessels possessing incidental shark permits. Regulatory discards would likely lead to increases in mortality and slow efforts to end overfishing. Second, the 24 hour dealer reporting that would be required to effectively manage quotas would result in a significant increase in reporting burden for dealers. This alternative would therefore not minimize the economic cost to dealers in comparison to the proposed alternative.

C. Alternative Suite 3

Alternative 3 would allow directed and incidental shark permit holders to land sandbar shark and non sandbar LCS as well as SCS and pelagic sharks. Therefore, the available sandbar and non-sandbar LCS quota would be spread over a larger universe of commercial permit holders. However, unlike the no action or alternative 2, the retention

limits for sandbar sharks and non-sandbar LCS would be the same for both directed and incidental permit holders. Since directed permit holders presumably make a greater percentage of their gross revenues from shark landings, they are expected to have larger negative socioeconomic impacts compared to incidental permit holders. Since the states of Florida, New Jersey, and North Carolina have the most directed permit holders, NMFS anticipates that these states would have the largest negative socioeconomic impacts under alternative 3. As with alternative 2, shark dealers could also experience negative impacts due to the reduction in the sandbar shark and other LCS quotas and retention limits, which would reduce the overall amount of sharks being landed.

As stated under alternative 2, on average, directed permit holders landed 1,571,851 lb dw of sandbar sharks and 1,210,643 of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$3,744,032 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). However, under alternative 3, the available sandbar shark and non-sandbar LCS quota would be spread over directed and incidental permit holders. Based on past effort, it was assumed 1,108 trips could be made by directed permit holders. This is 78 percent of the total expected fishing effort. Therefore, given 105.9 mt dw (233,467 lb dw) of the sandbar shark quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota that could be landed under alternative 3, approximately 83 mt dw (183,073 lb dw) of sandbar shark quota and 180 mt dw (396,225 lb dw) of the non-sandbar LCS quota are anticipated to be landed by directed permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$793,338 gross revenues for directed permit holders. This is a 79 percent overall reduction in gross revenues compared to 2003 to 2005 (gross revenues based on current directed permit holders' landings were \$3,744,032). Again, since the states of Florida, New Jersey, and North Carolina have the most directed permit holders, NMFS anticipates that these states would experience the largest negative socioeconomic impacts under alternative 3.

As stated in alternative 2, the no action revenue was based on a 4,000 lb dw LCS trip limit for directed shark permit holders with average South Atlantic trips at \$4,743 per trip and average Gulf of Mexico trips at \$5,853

per trip. Under alternative 3, the retention limits would be 4 sandbar sharks per trip and 10 non-sandbar LCS per trip. However, since the ratio of sandbar sharks to non-sandbar LCS caught in the Gulf of Mexico is 1:4, NMFS estimates that approximately 3 sandbar sharks would be caught in the Gulf of Mexico region when the 10 non-sandbar LCS retention limit per trip is filled ($10 \text{ non-sandbar LCS} / 4 = 2.5 \text{ sandbar sharks}$). Therefore, gross revenues on a trip basis are estimated to be \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. From 2003 to 2005, there were 128 vessels that averaged more than 163 lb dw (or 4 sandbar sharks) of sandbar per trip. Therefore, these vessels would be most negatively affected by retention limits under alternative 3.

On average, incidental permit holders landed 19,066 lb dw of sandbar sharks and 39,995 lb dw of non-sandbar LCS from 2003 to 2005 in the Coastal Fisheries and HMS Logbooks. In 2006 ex-vessel prices, this is equivalent to gross revenues of \$80,558 (assuming 5 percent of the landings are fins and 95 percent of the landings are carcass weight). The available sandbar shark and non-sandbar LCS quotas would be averaged over directed and incidental permit holders under alternative 3. Based on past effort, it was assumed 305 trips could be made by incidental permit holders. This is 22 percent of the expected fishing effort. Therefore, given the 105.9 mt dw (233,467 lb dw) of the sandbar shark quota and 229.2 mt dw (505,294 lb dw) of the non-sandbar LCS quota that could be landed under alternative 3, approximately 23 mt dw (50,395 lb dw) of the sandbar shark quota and 50 mt dw (109,069 lb dw) of the non-sandbar LCS quota are anticipated to be landed by incidental permit holders. Based on 2006 ex-vessel prices, this is equivalent to \$218,383 gross revenues for incidental permit holders. This would result in gross revenues that are 2.7 times higher compared to 2003 to 2005 (gross revenues based on current incidental permit holders' landings were \$80,558).

This increase in gross revenues is due to the increase in retention limits for incidental permit holders. Under the no action alternative, incidental permit holders can retain 5 sharks from the LCS complex. However, under alternative 3, incidental permit holders would be able to retain 4 sandbar sharks and 10 non-sandbar LCS or 14 LCS total. This retention limit is almost 3 times higher than what is currently allowed under the no action. On average, incidental permit holders have been landing 2 sandbar sharks and 3 non-sandbar LCS

per trip. Based on 2006 ex-vessel prices, this is equivalent to \$248 per trip. However, under alternative 3, incidental permit holders would make equivalent gross revenues per trip as directed permit holders: \$610 per trip in the South Atlantic and \$670 per trip in the Gulf of Mexico. This would result in gross revenues for incidental permit holders that are 2 to 3 times higher than gross revenues in 2003 to 2005 depending on future fishing effort and catch composition. Therefore, there would be positive economic impacts for incidental permit holders under alternative 3. Since approximately 66 vessels with incidental permit holders landed sandbar sharks or non-sandbar LCS in 2003 to 2005 in the Coastal Fisheries and HMS Logbooks, these 66 vessels would have the largest economic benefits under alternative 3. However, if sharks become profitable for incidental permit holders under alternative 3, then more vessels with incidental permits may actively land sandbar sharks and non-sandbar LCS in the future. Finally, the states of Florida, Louisiana, New Jersey, and North Carolina had the most incidental shark permit holders in 2007. Therefore, these states would see the largest socioeconomic benefits for incidental permit holders under alternative 3.

The other provisions of alternative 3 are the same as in alternative 4, which is the proposed alternative for this proposed rule. These provisions include maintaining the 60 mt shark display and research quote; placement of porbeagle sharks on the prohibited list; quota carryover limited to 50 percent of base quota for species not overfished; no carryover for overfished, overfishing or unknown species; sharks fins must remain on the shark; dealer reports received within 10 of purchase; removal of regions and seasons; and limiting the shark species that can be landed recreationally.

This alternative was not selected as the proposed alternative primarily based on the economic impacts it would potentially result in and since it does not meet some of the ecological objectives of this rule. Despite the time per area closures, alternative 3 would have a smaller reduction in dead discards of dusky sharks compared to alternative 2 since sandbar sharks would be allowed to be retained on PLL gear under alternative 3.

Negative economic impacts under alternative 3 are expected for directed permit holders (79-percent reduction in gross revenues compared to the no action) as a result of the four sandbar per vessel per trip retention limits. Given the retention limits for sandbar

shark and non-sandbar LCS are significantly lower than the limit under the no action (91 and 69-percent reduction in sandbar and non-sandbar LCS retention limits, respectively for directed permit holders), it is anticipated that there would be no directed shark fishery as a result of alternative 3. While an observer program would still operate under alternative 3, without a directed shark fishery, it is anticipated that the fishery dependent data collection would be limited, which could compromise data collection for future stock assessments. Alternative 4 would likely accomplish the necessary reductions in quota, retention limits, and fishing effort to prevent overfishing and allow stocks to rebuild while collecting valuable scientific data for NMFS. Therefore, due to concerns over dusky discards, quota monitoring, and data collection, NMFS is not preferring alternative 3 at this time.

D. Alternative Suite 4

Alternative 4, the proposed alternative, would establish a program where a limited number of vessels with directed or incidental shark permits could participate in a small research fishery for sandbar sharks that would harvest the entire 116.6 mt dw sandbar quota. There would be 100 percent observer coverage on research vessel. Only vessels participating in this program could land sandbar sharks. Vessels not participating in the research program could land non-sandbar LCS, SCS, and pelagic sharks.

Alternative 4 was selected as the proposed alternative because it meets the objectives of this proposed rule while minimizing some of the economic impacts. As detailed in the economic analysis in Amendment 2, it is estimated that vessels in the shark research fishery could make \$490,411 in gross revenues of sandbar and non-sandbar LCS landings. Depending on the number of vessels selected for the shark research fishery, NMFS estimates that these vessels will generate higher revenues from sharks than the average vessel under the other alternatives suites. If less than 18 vessels are selected for the shark research fishery, then average gross shark revenues per vessel per year could potentially be higher under the proposed than under the other alternatives. However, the vessels operating outside of the research fishery would have an estimated 491 mt dw (1,082,459 lb dw) of non-sandbar LCS quota available to them depending on non-sandbar LCS landings in the shark research fishery. In 2006 ex-vessel prices, this is equivalent to \$1,502,994

in gross revenues. Divided by the remaining vessels (298 active directed and incidental shark permit holders - 18 = 280) it is estimated that the average gross revenues from shark per vessel would be just over \$5,000.

Under the no action alternative, NMFS estimated that if gross revenues for directed and incidental permit holders is averaged across the approximately 298 active directed and incidental shark permit holders, then the average annual gross revenues per shark fishing vessel is just over \$14,000. Using the average landing for directed permit holder from 2003 to 2005, it is estimated that the 143 active directed permit holders generated average annual gross shark revenues of just over \$26,000 from sharks. Under alternative 2, the reduced gross revenues averaged across the 143 active directed permit holders are estimated to be just over \$7,000 per directed shark fishing vessel and just \$1,221 per vessel per year for incidental permit holders that land sharks. Under alternative 3 this is reduced further to approximately \$5,500 (\$793,338 gross revenues per 143 vessel) per directed shark fishing vessel per year.

Comparing these revenues to those in alternative 4 indicates that the proposed alternative maintains the annual gross revenues per vessel for the vessel operating in the small research fishery, while allowing other vessels outside of the research fishery to generate revenues at reduced levels. Alternative 4 has less economic impacts to shark fishermen than alternatives 5, but has greater impacts in the short-run than the no action alternative. By allowing a limited number of historical participants to continue to harvest sharks under the research fishery, NMFS ensures that data for stock assessments and life history samples would continue to be collected. Alternative 4 also involves less reporting burden for dealers than would be required under alternative 2. Alternative 4 is the alternative that best meets the objectives of this rule while minimizing the economic impacts to shark permit holders.

E. Alternative Suite 5

Alternative 5 would have significant economic and social impacts on a variety of small entities, including: commercial shark permit holders, shark dealers, gear manufacturers, bait and ice suppliers, and other secondary industries dependent on the shark fishery. The level of economic impact would be directly proportional to the amount of revenues that each entity has realized from past participation in the shark fishery. Permit holders would be

impacted differently depending on the quantity of sharks landed in the past. Vessels targeting sharks (directed permit holders) landed an annual average of 1,262 mt dw of LCS, 184.5 mt dw SCS, and 29.84 mt dw pelagic sharks per year between 2003–2005. The gross revenues based on 2006 ex-vessel prices of these landings is estimated at \$3,877,003, \$593,853, and \$117,920 for LCS, SCS, and pelagic sharks, respectively. While it is assumed that few directed shark permit holders subsist entirely on revenues attained from the shark fishery, impacts would still be severe for those participants that depend on any income from participating in the directed shark fishery at certain times of the year. Because of the extensive economic impacts to shark directed permit holders as a result of this alternative, it is assumed that directed permit holders would likely pursue one of the following options as a result of closing the Atlantic shark fishery: (1) transfer fishing effort to other fisheries for which they are already permitted (snapper grouper, king and Spanish mackerel, tilefish, lobster, dolphin/wahoo, etc), (2) acquire the necessary permits to participate in other fisheries (both open access and/or limited access fisheries), or (3) relinquish all permits and leave the fishing industry.

Incidental permit holders would face negative economic and social impacts as a result of closing the Atlantic shark fishery; however, these impacts would not be as severe as those experienced by directed permit holders. It is assumed that incidental permit holders receive the majority of their fishing income from participating in other fisheries depending on the region and the type of gear predominantly fished (i.e., swordfish, tunas, snapper grouper, tilefish, dolphin/wahoo, lobster, etc.). NMFS estimates that, on average, between 2003–2005 incidental permit holders landed 26.8 mt dw LCS, 15.3 mt dw SCS, and 8.11 mt dw pelagic sharks per year. This equates in gross revenues based on 2006 ex-vessel prices for these landings of \$82,333, \$49,246, and \$32,049 for the respective species complexes. Incidental permit holders would likely have to increase effort in these other fisheries to replace lost revenues from landing sharks. Furthermore, these vessels may seek other permits (open access or limited access transferred from another vessel) or leave the fishing industry entirely.

Alternative 5 could also have negative economic and social impacts for shark dealers as they would no longer be authorized to purchase shark products from Federally permitted shark fishermen. Shark dealers also maintain

permits to purchase other regionally caught fish products. Due to the brevity of the LCS shark fishing season, which is the shark fishery that accounts for the majority of the shark product revenue due to the fin value, many dealers also get revenue from purchasing fish products other than sharks. The majority of shark dealer permit holders hold permits to purchase other fish products, including swordfish, tunas, snapper grouper, tilefish, mackerel, lobster, and dolphin/wahoo among others. It is difficult to assume, on an individual dealer basis, the quantity of revenues received exclusively from shark products.

Shark fin dealers, specializing in the purchase of shark fins from Federal and state permitted dealers, would also experience negative social and economic impacts as a result of closing the shark fishery. These dealers receive virtually all of their income from purchasing shark fins and shipping them to exporters. Exporters then transport the fins to global and domestic markets. This alternative would likely force shark fin dealers to leave the industry or focus on purchasing other fishery products, resulting in significant economic impacts to the individuals involved in this trade.

It is difficult to estimate the economic and social impacts that would be experienced by various small entities that support the shark fishery, e.g., purveyors of bait, ice, fishing gear, and fishing gear manufactures. However, these impacts would likely be negative. It is difficult to estimate these impacts as it is uncertain to what extent vessels that were fishing for sharks would redistribute their fishing effort to other fisheries, or simply cease fishing operations. If the majority of vessels affected by a shark fishery closure simply displace effort to other fisheries it is assumed that they would still be dependant on small entities for their bait, ice, and gear as these are products essential for fishing excursions targeting any species. Redistributing effort to other fisheries would mitigate negative economic impacts. However, if a significant number of vessels simply cease fishing operations or scale back considerably, then severe economic consequences would be imparted on these support industries as a result.

This alternative would increase the proportion of fishermen completing the Coastal Fisheries Logbook and then selected to report information on fish that are discarded. Currently, 20 percent of the fishermen completing this logbook are selected. This percentage would be increased to facilitate improved data available for shark

interactions with longline and gillnet gear. This information would be especially useful because sharks could no longer be landed and the existing logbook only requires fishermen to provide data on landed fish. Increasing the number of fishermen who are selected to provide this data would result in negative economic and social impacts because it would require additional paperwork to be filled out. Increased reporting burden would be subject to approval under the Paperwork Reduction Act. Vessels would no longer be required to take an observer. Shark dealers would no longer be required to submit dealer reports regarding sharks purchased.

Seasons and regions for the commercial Atlantic shark fishery would no longer apply as this alternative would close the fishery.

Closing the Atlantic recreational shark fishery would have negative economic and social impacts. These impacts would be most pronounced for CHB operators who specialize in landing sharks and operators of shark tournaments that have prize categories for landing sharks. It is difficult to estimate the number of CHB operators that specialize in shark charters as the permit covers any participant targeting swordfish, sharks, tunas, and billfish. Many CHB operators target a variety of species depending on client interests, weather, time of year, and oceanographic conditions. CHB operators specializing in shark fishing charters would have to target other HMS or non HMS species to replace revenues lost as a result of customers not being able to land sharks. However, not all customers necessarily want to land sharks. CHB operators would still be able to catch sharks, however, all sharks regardless of species would need to be released in a manner that maximizes their chances of survival. Catering business operations to clientele interested in catch and release fishing for sharks might mitigate some of the negative economic impacts. Shark tournaments that reward prizes for landing sharks would be negatively impacted as a result of this alternative. There have been 79 tournaments per year that had a prize category for sharks from 2005–2006. The majority of these tournaments target pelagic sharks and are held in the North Atlantic and Gulf of Mexico regions. These tournaments would either modify their rules to only allow points/prizes for released sharks or these tournaments would cease to exist. Economic impacts on small entities such as restaurants, hotels, gear manufacturers, retail stores selling fishing supplies, and marinas in the

vicinity of where these tournaments are held would also experience negative economic impacts.

HMS Angling permit holders would also experience negative impacts, despite the fact that they would still be able to catch and release sharks. Many anglers find pleasure in being able to land a legal limit of sharks to eat themselves or give away to friends. Landings would not be permitted by any recreational anglers as a result of this alternative.

Closing the Atlantic shark fishery would have negative economic impacts on global shark fin markets. As a result of this alternative, U.S. flagged vessels would no longer be able to contribute to the global demand for shark fins. This would disadvantage U.S. shark fishermen as global markets would likely need to purchase their shark fins from other markets. However, the United States is not a significant producer of shark products globally. Based on data from the United Nations Food and Agriculture Organization (FAO), less than one percent of global shark landings occur in the U.S. Atlantic.

While alternative 5 would meet the objectives of this rule, it would have the highest negative economic impacts of the alternatives considered. There would be significant reductions in revenues for shark dealers and fishing vessels involved with the shark fishery. Some small businesses dependent on commercial shark fishing may cease operating as a result of prohibiting the commercial harvest of shark species. Therefore, this alternative was not selected.

List of Subjects

50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 18, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.1203, paragraph (a)(9) is revised to read as follows:

§ 600.1203 Prohibitions.

(a) * * *

(9) Fail to maintain a shark in the form specified in §§ 600.1204(h) and 635.30(c) of this chapter.

* * * * *

3. In § 600.1204, paragraphs (h) and (j) are revised to read as follows:

§ 600.1204 Shark finning; possession at sea and landing of shark fins.

* * * * *

(h) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark limited access permit and who lands shark in or from the U.S. EEZ in an Atlantic coastal port must comply with regulations found at § 635.30(c) of this chapter.

* * * * *

(j) No person aboard a vessel that has been issued a Federal Atlantic commercial shark limited access permit shall possess on board shark fins without the fins being attached to the corresponding carcass(es), except that sharks may be eviscerated and the head removed from the carcass at sea.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

4. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

5. In § 635.2, the definitions of “First receiver,” “Non-sandbar LCS,” and “Shark research permit” are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

First receiver means the entity, person, or company that takes, for commercial purposes, immediate possession of the fish, or any part of the fish, as the fish are offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter.

* * * * *

Non-sandbar LCS means one of the species, or part thereof, listed in paragraph (A) of table 1 in appendix A to this part other than the sandbar shark (*Carcharhinus plumbeus*).

* * * * *

Shark research permit means a permit issued to a commercial shark vessel in order to catch and land a limited number of sharks to maintain time series for stock assessments and other scientific research purposes. These

permits may be issued only to persons who own a vessel that has been issued either a directed or incidental shark LAP. The permit is specific to that vessel.

* * * * *

6. In § 635.4, paragraphs (a)(5) and (g)(2) are revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(a) * * *

(5) *Display upon offloading.* Upon transfer of Atlantic HMS, the owner or operator of the harvesting vessel must present for inspection the vessel's HMS Charter/Headboat permit, Atlantic tunas, shark, or swordfish permit, and/or the shark research permit to the receiving dealer. The permit must be presented prior to completing any applicable landing report specified at § 635.5(a)(1), (a)(2), and (b)(2)(i).

* * * * *

(g) * * *

(2) *Shark.* A first receiver, as defined in 635.2, of Atlantic sharks must possess a valid dealer permit.

* * * * *

7. In § 635.5, paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) are revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section. All reports must be species-specific and must include all HMS landed, regardless of where harvested or whether the vessel is Federally permitted under § 635.4. As stated in § 635.4 (a)(6), failure to comply with these recordkeeping and reporting requirements could result in the existing dealer permit being revoked, suspended, or modified, and in the denial of any future applications.

(ii) Reports of Atlantic tunas, swordfish, and/or sharks received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, on the first through the 15th of each month, must be received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish, or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as

specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be received by NMFS for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for bluefin tuna.

* * * * *

(iv) The dealer may mail or fax such report to an address designated by NMFS or may hand-deliver such report to a state or Federal fishery port agent designated by NMFS. If the dealer hand-delivers the report to a port agent, the dealer must deliver such report for Atlantic tunas, swordfish, or sharks no later than the prescribed received date for the reporting period prescribed in paragraphs (b)(1)(i) and (ii) of this section.

* * * * *

8. In § 635.21, paragraphs (d)(1)(i), (d)(1)(ii), (d)(3)(ii) are revised and paragraph (d)(1)(iii) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) * * *

(1) * * *

(i) The mid-Atlantic shark closed area from January 1 through July 31 each calendar year;

(ii) The areas designated at § 622.33(a)(1) through (3) of this title, year-round; and

(iii) The areas described in paragraphs (d)(1)(iii)(A) through (H) of this section, year-round.

(A) Snowy Grouper Wreck off North Carolina in the area that is bound by the following coordinates: The northwest corner at 33° 25'N. lat., 77° 4.75'W. long.; northeast corner at 33° 34.75'N. lat., 76° 51.3'W. long.; southwest corner at 33° 15.75'N. lat., 77° W. long.; and the southeast corner at 33° 25.5'N. lat., 76° 46.5'W. long..

(B) Northern South Carolina Marine Protected Area (MPA) in the area bounded by the following coordinates: The northwest corner at 32° 53.5'N. lat., 78° 16.75'W. long.; the northeast corner at 32° 53.5'N. lat., 78° 4.75'W. long.; the southwest corner at 32° 48.5'N. lat., 78° 16.75'W. long.; and the southeast corner at 32° 48.5'N. lat., 78° 4.75'W. long..

(C) Edisto MPA in the area bounded by the following coordinates: The northwest corner at 32° 24'N. lat., 79° 6'W. long.; the northeast corner at 32° 24'N. lat., 78° 54'W. long.; the southwest corner at 32° 18.5'N. lat., 79° 6'W. long.; and the southeast corner at 32° 18.5'N. lat., 78° 54'W. long..

(D) Georgia MPA (Tilefish MPA) in the area bounded by the following coordinates: The northwest corner at 31° 43'N. lat., 79° 31'W. long.; the northeast corner at 31° 43'N. lat., 79° 21'W. long.; the southwest corner at 31° 34'N. lat., 79° 39'W. long.; and the southeast corner at 31° 34'N. lat., 79° 29'W. long..

(E) North Florida MPA in the area bounded by the following coordinates: The northwest corner at 30° 29'N. lat., 80° 14'W. long.; the northeast corner at 30° 29'N. lat., 80° 2'W. long.; the southwest corner at 30° 19'N. lat., 80° 14'W. long.; and the southeast corner at 30° 19'N. lat., 80° 2'W. long..

(F) St. Lucie Hump MPA in the area bounded by the following coordinates: The northwest corner at 27° 8'N. lat., 80° W. long.; the northeast corner at 27° 8'N. lat., 79° 58'W. long.; the southwest corner at 27° 4'N. lat., 80° W. long.; and the southeast corner at 27° 4'N. lat., 79° 58'W. long..

(G) East Hump/Un-named Hump MPA in the area bounded by the following coordinates: The northwest corner at 24° 36.5'N. lat., 80° 45.5'W. long.; the northeast corner at 24° 32'N. lat., 80° 36'W. long.; the southwest corner at 24° 32.5'N. lat., 80° 48'W. long.; and the southeast corner at 24° 27.5'N. lat., 80° 38.5'W. long..

(H) Charleston Deep Artificial Reef MPA off the Coast of South Carolina in the area identified by the following boundaries: The northwest corner at 32° 08.58'N. lat., 79° 07.82'W. long.; the northeast corner at 32° 06.06'N. lat., 79° 04.99'W. long.; the southwest corner at 32° 04.07'N. lat., 79° 12.11'W. long.; and the southeast corner at 32° 01.47'N. lat., 79° 09.28'W. long..

* * * * *

(3) * * *

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i) of this section, must be used to disengage any hooked or entangled sea turtle as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in Category (D) of Table 1 of Appendix A of this part, any hooked or entangled species of sharks that exceed the retention limits as specified in § 635.24(a), and any hooked or entangled smalltooth sawfish. In addition, if a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags. All smalltooth sawfish must be released in a manner that will ensure

maximum probability of survival, but without removing the fish from the water.

* * * * *

9. In § 635.22, paragraph (c) is revised to read as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) *Sharks.* One of the following sharks may be retained per vessel per trip, subject to the size limits described in § 635.20(e): lemon (*Negaprion brevirostris*), nurse (*Ginglymostoma cirratum*), scalloped hammerhead (*Sphyrna lewini*), smooth hammerhead (*S. zygena*), great hammerhead (*S. mokarran*), tiger (*Galeocerdo cuvieri*), blue (*Prionace glauca*), common thresher (*Alopias vulpinus*), oceanic whitetip (*C. longimanus*), and shortfin mako (*Isurus oxyrinchus*). In addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks, may be retained regardless of where harvested. The recreational retention limit for sharks applies to any person who fishes in any manner, except to persons aboard a vessel that has been issued an Atlantic incidental or directed shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks and no sale provision in paragraph (a) may be applied to persons aboard a vessel issued an Atlantic incidental or directed shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

10. In § 635.24, introductory paragraph is removed and paragraph (a) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

(a) *Sharks.* (1) A person who owns or operates a vessel issued a valid shark research permit under § 635.32(f) and who has a NMFS-approved observer on board may retain, possess, or land LCS, including sandbar sharks, in excess of the retention limits in paragraphs (a)(2) through (4) of this section. The amount of LCS that can be landed by such a person will vary as specified on the shark research permit. Only a person who owns or operates a vessel issued a

valid shark research permit with a NMFS-approved observer on board may retain, possess, or land sandbar sharks.

(2) A person who owns or operates a vessel that has been issued a directed or incidental LAP for sharks, or that has been issued a shark research permit but does not have a NMFS-approved observer on board, may retain, possess, or land no more than 22 non-sandbar LCS per vessel per trip. Such persons may not retain, possess, or land sandbar sharks.

(3) A person who owns or operates a vessel that has been issued an incidental LAP for sharks may retain, possess, or land no more than 16 SCS and pelagic sharks, combined per trip. A person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, or land SCS and pelagic sharks if the fishery is open per § 635.27 and § 635.28.

(4) A person who owns or operates a vessel that has been issued an incidental or directed LAP for sharks may not retain, possess, land, sell, or purchase prohibited sharks, including any parts or pieces of prohibited sharks, which are listed in Table 1 of Appendix A to this part under prohibited sharks.

* * * * *

11. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks*—(1) *Commercial quotas*. The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to all sharks harvested from the management unit, regardless of where harvested. Sharks taken and landed from state waters, even by fishermen without Federal shark permits, are counted against the fishery quota. Commercial quotas are specified for each of the management groups of sandbar sharks, non-sandbar LCS, SCS, pelagic sharks, and blue sharks. Any sharks landed as unclassified will be considered a sandbar shark, for the purposes of quota monitoring, and will be counted against that quota. No prohibited sharks, including parts or pieces of prohibited sharks, which are listed under heading D of Table 1 of Appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons*. The fishing season for sandbar sharks, non-sandbar LCS, small coastal sharks, and pelagic sharks will begin on January 1 and end on December 31.

(ii) *Sandbar sharks*. The base annual commercial quota for sandbar sharks is 116.6 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(iii) *Non-sandbar LCS*. The base annual commercial quota for non-sandbar LCS is 541.2 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(iv) *Small coastal sharks*. The base annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(v) *Pelagic sharks*. The base annual commercial quotas for pelagic sharks are 273 mt dw for blue sharks and 488 mt dw for pelagic sharks other than blue sharks, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(vi) *Annual adjustments*. NMFS will publish in the **Federal Register** any annual adjustments to the base annual commercial quotas. The base annual quota will not be available and the fishery will not open until such adjustments are published in the **Federal Register**.

(A) *Overharvests*. If an annual quota for sandbar sharks, non-sandbar LCS, small coastal, and pelagic sharks is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest from the following fishing season. If the blue shark quota is exceeded, NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded prior to the start of the next fishing season.

(B) *Underharvests*. If an annual quota for sandbar sharks, non-sandbar LCS, SCS, pelagic sharks, or blue sharks is not exceeded, NMFS will adjust the annual quota depending on the status of the stock. If the stock (e.g., sandbar shark, non-sandbar LCS, SCS, pelagic shark, or blue shark) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest and the following fishing year's quota will be equal to the base annual quota. If the stock is not declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will increase the following year's base annual quota by an equivalent amount of the underharvest up to 50 percent above the base annual quota.

(2) *Public display and research quota*. The base annual quota for persons who collect sharks from the non-sandbar LCS, SCS, pelagic shark, blue shark, or prohibited species under a display permit or EFP is 57.2 mt whole weight (41.2 mt dw). The base annual quota for persons who collect sandbar sharks under a display permit is 1.4 mt whole weight (1 mt dw) and under an EFP is 1.4 mt whole weight (1 mt dw). No

persons may collect dusky sharks under a display permit or EFP. All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against these quotas.

* * * * *

12. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks*—(1) If quota is available, the commercial fisheries for sandbar shark, non-sandbar LCS, SCS, pelagic sharks, and blue sharks will remain open as specified at § 635.27(b)(1).

(2) When NMFS calculates that the fishing season landings for SCS, pelagic sharks, or blue sharks has reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for that shark species group that will be effective no fewer than 5 days from date of filing. When NMFS calculates that the fishing season landings for either non-sandbar LCS or sandbar sharks has been reached or is projected to reach 80 percent of the available quota as specified in § 635.27(b)(1), NMFS will file for publication with the Office of the **Federal Register** a notice of closure for both the non-sandbar LCS and sandbar shark species groups that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces via a notice in the **Federal Register** that additional quota is available, the fishery for the shark species group is closed, even across fishing years.

(3) When the fishery for a shark species group is closed, a fishing vessel, issued an Atlantic Shark LAP pursuant to § 635.4, may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a shark dealer, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, a shark dealer, issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been

issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

* * * * *

13. In § 635.30, paragraph (c) is revised to read as follows:

§ 635.30 Possession at sea and landing.

* * * * *

(c) *Shark*—(1) Notwithstanding the regulations issued at part 600, subpart N of this chapter, a person who owns or operates a vessel issued a Federal Atlantic commercial shark LAP must maintain the shark fins and tail on the shark carcass until the shark has been offloaded from the vessel. While sharks are on board and when being offloaded, persons issued a Federal Atlantic commercial shark LAP are subject to the regulations at part 600, subpart N, of this chapter.

(2) A person who owns or operates a vessel that has a valid Federal Atlantic commercial shark LAP must maintain the shark intact through offloading except that the shark may be eviscerated and the head may be removed from the carcass. All fins, including the tail, must remain on the shark through offloading. While on the vessel, fins may be sliced so that the fin can be folded along the carcass for storage purposes as long as the fin remains attached to the carcass via a small amount of uncut skin. The fins and tails may be completely removed from the carcass once the shark has been removed from the vessel.

(3) A person who owns or operates a vessel that has been issued a Federal Atlantic commercial shark LAP and who lands shark in an Atlantic coastal port must have all fins and carcasses weighed and recorded on the weighout slips specified in § 635.5(a)(2) and in accordance with regulations at part 600, subpart N, of this chapter. Persons may not possess a shark fin on board a fishing vessel after the vessel's first point of landing.

(4) Persons aboard a vessel that does not have a commercial permit for shark must maintain a shark in or from the EEZ intact through landing with the head, tail, and all fins attached. The shark may be bled.

* * * * *

14. In § 635.31, paragraph (c)(4) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(4) Only dealers that have a valid permit for shark may purchase a shark from the owner or operator of a fishing vessel. Dealers may purchase a shark only from an owner or operator of a

vessel who has a valid commercial permit for shark issued under this part, except that dealers may purchase a shark from an owner or operator of a vessel that does not have a commercial permit for shark if that vessel fishes exclusively in state waters. Dealers may purchase a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer onboard the vessel for the trip in which the sandbar shark was collected. Dealers may purchase a shark from an owner or operator of fishing vessel that has a permit issued under this part only when the fishery for that species group has not been closed, as specified in § 635.28(b).

* * * * *

15. In § 635.32, paragraphs (a)(2), (f), and (g) are revised and paragraph (h) is added to read as follows:

§ 635.32 Specifically authorized activities.

* * * * *

(a) * * *

(2) Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS; exempted fishing and educational activities; programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks; or chartering arrangements. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, display permit, chartering permit, or shark research permit issued in response to requests for authorization under this section.

* * * * *

(f) *Shark research permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue shark research permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid shark research permit is required to fish for, take, retain, or possess Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24 (a)(2) through (4). A valid shark research permit must be on board the harvesting vessel, must be available for inspection when the shark is landed, and must be presented for inspection upon request of an authorized officer. A shark research permit is only valid for the vessel, owner, and operator(s) specified and cannot be transferred to

another vessel, owner, or operator(s). A shark research permit is only valid for the retention limits, time, area, and gear specified on the permit and only when a NMFS-approved observer is onboard. Species landed under a shark research permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the shark research permit.

(3) Regardless of the number of applicants, NMFS will issue only a limited number of shark research permits depending on available quotas as described in § 635.27, research needs for stock assessment and other scientific purposes, and the number of sharks expected to be harvested by vessels issued LAPs for sharks.

(4) Persons issued a shark research permit, and/or operators of vessels specified on the shark research permit, may be required to attend additional workshops (e.g., shark identification workshops, captain's workshops, etc.) as deemed necessary by NMFS to ensure the quality of the data collected.

(5) Issuance of a shark research permit does not guarantee that the holder will be issued a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip and may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24 (a)(2) through (4).

(6) The shark research permit may be revoked, limited, or modified at any time, does not confer any right to engage in activities beyond those permitted by the permit, and does not confer any right of compensation to the holder.

(g) *Applications and renewals.* (1) Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register**, on an annual or more frequent basis as necessary, notification of previously authorized exempted fishing, scientific research, public display, chartering, and shark research activities and to solicit public comment on anticipated EFP, SRP, LOA, public display, chartering, or shark research permit activities. Applications for EFPs, SRPs, public display permits, chartering permits, or shark research permits are required to include all reports specified in the applicant's previous permit including, if applicable, the year-end report, all delinquent reports for permits issued in prior years, and all other specified information. In situations of delinquent

reports, applications will be deemed incomplete and a permit will not be issued under this section.

(2) For the shark research permit, NMFS will publish annually in the **Federal Register** a notice describing, for the following fishing year, the expected research objectives, number of vessels needed, regions and seasons for which vessels are needed, the specific criteria for selection, and the application deadline. Complete applications, including all information requested in the **Federal Register** notice and on the application form and any previous reports required pursuant to this section and § 635.5, must be received by NMFS by the application deadline in order for the vessel to be considered. Requested information could include, but is not limited to, applicant name and address, permit information, the number of expected trips to collect sharks, when and where the trips are expected to occur, vessel(s) and gear to be used. NMFS will review all complete applications and rank vessels according to the ability of the vessel to: meet the research objectives; fish in the regions and seasons required; carry a NMFS-approved observer; and meet other criteria as published in the annual notice. Vessels that do not have recent and/or an excessive number of fishery regulation violations, as determined by the Office of Law Enforcement, will be ranked higher than vessels that do have recent and/or excessive number of fishery regulation violations. Until the number of vessels required for the research are filled, vessels that rank highest in meeting the specific criteria will be issued shark research permits. If a vessel issued a shark research permit cannot conduct the shark research tasks, for whatever reason, that permit will be revoked and, depending on the status of the research and the fishing year, the next highest ranked vessel will be issued a shark research permit.

(h) *Terms and conditions.* (1) For EFPs, SRPs, and public display permits: Written reports on fishing activities and disposition released under a permit issued under this section must be submitted to NMFS within 5 days of return to port. NMFS will provide specific conditions and requirements as needed, consistent with the Consolidated HMS Fishery Management Plan in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) For chartering permits, written reports of fishing activities must be

submitted to NMFS by a date specified, and to an address designated, in the terms and conditions of each chartering permit.

(3) An annual written summary report of all fishing activities, and disposition of all fish captured, under the permit must be submitted to NMFS for all EFPs, SRPs, Display, and Chartering Permits issued under this section within 30 days after the expiration date of the permit.

(4) For shark research permits, all owners and/or operators must comply with the recordkeeping and reporting requirements specified in § 635.5 per the requirement of holding a LAP for sharks.

(5) As stated in § 635.4 (a)(6), failure to comply with the recordkeeping and reporting requirements of this section could result in the EFP, SRP, display permit, chartering permit, or shark research permit being revoked, suspended, or modified, and in the denial of any future applications.

16. In § 635.69, the introductory language to paragraph (a) is revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances:

17. In § 635.71, paragraphs (a)(2), (a)(4), (a)(6), (d)(3), (d)(4), (d)(6) through (8), and (d)(10) are revised and paragraphs (d)(15) and (d)(16) are added to read as follows:

§ 635.71 Prohibitions.

(a) * * *

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, display permit, chartering permit, or shark research permit on board the vessel, as specified in §§ 635.4 and 635.32.

(4) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes

exclusively within the waters under the jurisdiction of any state.

* * * * *

(6) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in §§ 635.5 and 635.32 or in the terms and conditions of a permit issued under § 635.4 or an exempted fishing permit, scientific research permit, display permit, chartering permit, or shark research permit issued under § 635.32.

* * * * *

(d) * * *

(3) Retain, possess, or land a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b).

(4) Sell or purchase a shark of a species group when the fishery for that species group is closed, as specified in § 635.28(b).

* * * * *

(6) Fail to maintain a shark in its proper form, as specified in § 635.30(c).

(7) Sell or purchase shark fins that are disproportionate to the weight of shark carcasses, as specified in § 635.30(c) and § 600.1204(e) and (l) of this chapter.

(8) Fail to have shark fins and carcasses weighed and recorded, as specified in § 635.30(c).

* * * * *

(10) Retain, possess, sell, or purchase a prohibited shark, including parts or pieces of prohibited sharks, as specified under §§ 635.22(c), 635.24(a), and 635.27(b), or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d).

* * * * *

(15) Sell or transfer or attempt to sell or transfer a sandbar shark or sharks or part of a sandbar shark or sharks in excess of the retention limits specified in § 635.24(a).

(16) Purchase, receive, or transfer or attempt to purchase, receive, or transfer a sandbar shark or sharks or part of a sandbar shark or sharks landed in excess of the retention limits specified in § 635.24(a).

* * * * *

18. In Table 1 of Appendix A to part 635, remove entry for "Porbeagle, *Lamna nasus*" under heading C and add the entry "Porbeagle, *Lamna nasus*" under heading D in alphabetical order.

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Federal Register

**Friday,
July 27, 2007**

Part III

Environmental Protection Agency

**Sixtieth Report of the TSCA Interagency
Testing Committee to the Administrator
of the Environmental Protection Agency;
Receipt of Report and Request for
Comments; Notice**

ENVIRONMENTAL PROTECTION AGENCY**[EPA-HQ-OPPT-2007-0420; FRL-8137-6]****Sixtieth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its 60th ITC Report to the Administrator of EPA on June 14, 2007. In the 60th ITC Report, which is included with this notice, the ITC is revising the TSCA section 4(e) *Priority Testing List* by adding "lead and lead compounds" to the *Priority Testing List* so that EPA may expeditiously obtain unpublished health and safety studies that relate to the lead content of consumer products that are intended for use by children.

DATES: Comments must be received on or before August 27, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0420, by one of the following methods:

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

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2007-0420. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2007-0420. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be

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FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

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

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 and 32411. Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding 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 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:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under TSCA section 4(a) requiring testing of chemicals and chemical groups in order to develop data relevant to determining the risks that such chemicals and chemical groups may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical groups to the Administrator of EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise

the TSCA section 4(e) *Priority Testing List* at least every 6 months.

You may access additional information about the ITC at <http://www.epa.gov/opptintr/itc>.

A. The ITC's 60th Report

The ITC is revising the TSCA section 4(e) *Priority Testing List* by adding "lead and lead compounds" to the *Priority Testing List* so that EPA may expeditiously obtain unpublished health and safety studies that relate to the lead content of consumer products that are intended for use by children.

B. Status of the Priority Testing List

The *Priority Testing List* includes 2 alkylphenols, 5 tungsten compounds, 12 lead compounds, 16 chemicals with insufficient dermal absorption rate data, and 243 High Production Volume (HPV) Challenge Program orphan chemicals.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: July 23, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Sixtieth Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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Summary

The ITC is revising the Toxic Substances Control Act (TSCA) section 4(e) *Priority Testing List* by adding "lead and lead compounds" to the *Priority Testing List* so that EPA may expeditiously obtain unpublished health and safety studies that relate to the lead content of consumer products that are intended for use by children.

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1.—TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2007)

ITC Report	Date	Chemical Name/Group	Action
31	January 1993	2 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	10 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	Branched 4-nonylphenol (mixed isomers)	Recommended
41	November 1997	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	Recommended
53	November 2003	5 Tungsten compounds	Recommended
55	December 2004	238 High Production Volume (HPV) Challenge Program orphan chemicals	Recommended
56	August 2005	5 HPV Challenge Program orphan chemicals	Recommended
60	May 2007	Lead and lead compounds	Recommended

I. Background

The ITC was established by TSCA section 4(e) "to make recommendations

to the Administrator respecting the chemical substances and mixtures to which the Administrator should give

priority consideration for the promulgation of rules for testing under section 4(a).... At least every six months

..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). ITC reports are available from the ITC's website (<http://www.epa.gov/oppt/itc>) within a few days of submission to the EPA Administrator and from EPA's website (<http://www.epa.gov/fedrgstr>) after publication in the **Federal Register**. The ITC produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC staff, ITC members, and their U.S. Government organizations, and contract support provided by EPA. ITC members and staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) may add the chemicals from the revised *Priority Testing List* to the TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule (40 CFR part 712) and/or the TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rule (40 CFR part 716). The PAIR rule requires manufacturers (including importers) of chemicals added to the *Priority Testing List* to submit to EPA certain production and exposure information (<http://www.epa.gov/oppt/chemtest/pubs/pairform.pdf>). The HaSDR rule requires manufacturers (including importers) of chemicals added to the *Priority Testing List* to submit unpublished health and safety studies to EPA.

B. ITC's Use of TSCA Section 8 and Other Information

ITC's use of TSCA section 8 and other information is described in the 52nd ITC Report (<http://www.epa.gov/opptintr/itc/rptmain.htm>).

C. New Requests to Add Chemicals to the TSCA Section 8(d) HaSDR Rule

ITC is requesting that EPA add lead and lead compounds to the TSCA section 8(d) HaSDR rule. The lead and lead compounds are discussed in Unit IV. of this report.

III. ITC's Activities During this Reporting Period (December 2006 to May 2007)

During this reporting period, the ITC discussed:

- Lead and lead compounds.
- Alkylphenols.

- Brominated flame retardants.
- Flavoring agents that cause airway obstruction during occupational exposures.

Lead and lead compounds are discussed in Unit IV. of this report.

1. *Alkylphenols*. As noted in the 59th ITC Report, the ITC is leaving phenol, 4-(1,1,3,3-tetramethylbutyl)- (CAS No. 140-66-9) and phenol, 4-nonyl-, branched (CAS No. 84852-15-3) on the *Priority Testing List* (Ref. 1). The ITC made this decision because it needed time to:

i. Determine if the existing fish reproductive effects data are sufficient to meet the ITC's data needs.

ii. Determine if phenol, 4-(1,1,3,3-tetramethylbutyl)- or phenol, 4-nonyl-, branched should be tested for avian reproductive effects.

While the ITC is considering whether phenol, 4-(1,1,3,3-tetramethylbutyl)- or phenol, 4-nonyl-, branched should be tested for avian reproductive effects, it has determined that existing fish reproductive effects data are sufficient to meet the ITC's data needs (Tables 2 and 3 of this unit).

TABLE 2.—FISH REPRODUCTIVE EFFECTS AND DEVELOPMENTAL TOXICITY STUDIES FOR PHENOL, 4-NONYL-, BRANCHED (CAS No. 84852-15-3)

Study
91-Day early life stage test with Rainbow Trout embryos and fry (Ref. 2). Nearly all larvae were abnormal at ≥ 53.09 micrograms/Liter ($\mu\text{g/L}$). Based on growth, the No Observed Effect Concentration (NOEC) and Lowest Observed Effect Concentration (LOEC) were 6.0 and ≥ 10.3 $\mu\text{g/L}$, respectively.
33-Day early life stage test with Fathead Minnow embryos and larvae (Ref. 3). Embryos exposed to nonylphenol (NP) began hatching on day 4; control embryos hatched on day 3. Based on survival, the NOEC and LOEC were 7.4 $\mu\text{g/L}$ and 14.0 $\mu\text{g/L}$, respectively.

TABLE 3.—FISH REPRODUCTIVE EFFECTS AND DEVELOPMENTAL TOXICITY STUDIES FOR PHENOL, 4-(1,1,3,3-TETRAMETHYLBUTYL)- (CAS No. 140-66-9)

Study Name
60-Day early life stage test with Rainbow Trout embryos and Trout fry (Ref. 4). Based on fry growth, the NOEC and LOEC were 6.1 $\mu\text{g/L}$ and 11.0 $\mu\text{g/L}$, respectively.

TABLE 3.—FISH REPRODUCTIVE EFFECTS AND DEVELOPMENTAL TOXICITY STUDIES FOR PHENOL, 4-(1,1,3,3-TETRAMETHYLBUTYL)- (CAS No. 140-66-9)—Continued

Study Name
1.5-Generation test with Medaka (Ref. 5). Based on growth, the NOEC and LOEC were 20.0 $\mu\text{g/L}$ and 50.0 $\mu\text{g/L}$, respectively. Based on survival during mating trials of exposed females and unexposed males, the NOEC and LOEC were 2.0 $\mu\text{g/L}$ and 20.0 $\mu\text{g/L}$, respectively.
185-Day life-cycle test with Zebra Fish (Ref. 6). EC_{50} (fertilization success) = 28 $\mu\text{g/L}$.
185-Day life-cycle test with Zebra Fish (Ref. 7). Based on growth, time to first spawn, egg production, and fertilization success on fish maturing from fry to breeding adults, the NOEC and LOEC were 12.0 and 35.0 $\mu\text{g/L}$, respectively.

2. *Brominated flame retardants*. During discussions with the American Chemistry Council's Brominated Flame Retardants Industry Panel (BFRIP), Canadian Wildlife Service, and McGill University scientists, the ITC learned that the BFRIP will be sponsoring avian reproductive testing of 1,2,5,6,9,10-hexabromocyclododecane (CAS No. 3194-55-6) or hexabromocyclododecane (CAS No. 25637-99-4) using American Kestrels. The BFRIP provided the ITC with the International Uniform Chemical Information Database (IUCLID) data set for hexabromocyclododecane (CAS No. 25637-99-4) as well as the IUCLID data set and Voluntary Children's Chemical Evaluation Program (VCCEP) Tier I and II data summary for decabromodiphenyl ether (DBDE) (CAS No. 1163-19-5). In addition, the ITC discussed the National Institute of Standards and Technology's (NIST) ongoing work with the National Oceanic and Atmospheric Administration (NOAA), including the collaboration with the National Marine Fisheries Service (NMFS) via cooperation with the Marine Mammal Health and Stranding Response Program. The ITC also discussed the NOAA/NMFS Dolphin Health Assessments, and the Seabird Tissue Archival and Monitoring Project to measure persistent bioaccumulative contaminants, including brominated flame retardants.

3. *Flavoring agents that cause airway obstruction during occupational exposures*. The ITC discussed the National Institute for Occupational Safety and Health (NIOSH) alert,

“Preventing Lung Disease in Workers Who Use or Make Flavorings” (<http://www.cdc.gov/niosh/docs/2004-110>), because of concerns related to occupational exposures to flavoring agents that may be respiratory irritants.

IV. Revisions to the TSCA Section 4(e) Priority Testing List: Chemicals Added to the Priority Testing List: Lead and Lead Compounds

1. *Recommendation.* EPA requests that the ITC add the category “lead and lead compounds” to the *Priority Testing List* (Table 4 of this unit).

TABLE 4.—EXAMPLES OF COMPOUNDS IN THE LEAD AND LEAD COMPOUNDS CATEGORY BEING ADDED TO THE PRIORITY TESTING LIST

CAS No.	Chemical Name
301-04-2	Acetic acid, lead(2+) salt
598-63-0	Carbonic acid, lead(2+) salt (1:1)
1309-60-0	Lead oxide (PbO ₂)
1314-87-0	Lead sulfide (PbS)
7428-48-0	Octadecanoic acid, lead salt (1:?)
7439-92-1	Lead
7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
7758-95-4	Lead chloride (PbCl ₂)
7758-97-6	Chromic acid (H ₂ CrO ₄), lead(2+) salt (1:1)
13814-96-5	Borate (1-), tetrafluoro-, lead(2+) (2:1)
53466-66-3	Silicic acid, lead salt, basic
63653-42-9	Sulfuric acid, lead salt (1:?), basic

EPA is making this request to obtain unpublished health and safety studies that relate to the lead content of consumer products that are “intended for use by children (as that term is

defined at 40 CFR 710.43)¹ (excluding children’s metal jewelry) and studies that assess children’s exposure to lead from such products (including studies of bioavailability).

2. *Rationale for recommendation.* In pursuit of the Federal goal of eliminating childhood lead poisoning by 2010 (Ref. 8), EPA is looking beyond paint-related sources in an effort to address risks from other potentially significant sources. Although the Consumer Product Safety Commission (CPSC) has an effort underway to address risks from children’s metal jewelry containing lead (Ref. 9), there is less information available on the lead content of, and exposure to lead from, other children’s products. CPSC is currently addressing lead containing children’s metal jewelry, but has not yet established a definition of these products. Thus, EPA recommends that the ITC include the category listing for lead and lead compounds described in Unit IV.1. Information obtained on this category may assist both EPA and CPSC in taking further action as appropriate to protect children from lead poisoning due to lead in products. It should be noted that for the purposes of regulating products by CPSC, products intended for children might not be defined in the same manner as for actions by EPA under TSCA.

3. *Supporting information.* EPA has a long-standing interest in limiting human and environmental exposure to lead and lead compounds, with special concern for exposures to children. In the context of its Toxic Release Inventory (TRI) Program, EPA has classified lead as a “persistent, bioaccumulative, toxic chemical,” (TRI Lead Rule published in the **Federal Register** of January 17, 2001 (66 FR 4500) (FRL-6722-4)) and in past

¹ For the purposes of this recommendation, “*Intended for use by children*” has the meaning provided in 40 CFR 710.43 of the TSCA section 8(a) Inventory Update Rule. The definition was originally intended for a different audience (those submitting information under the Inventory Update Rule) but the same concepts can apply to the products at issue here. The definition reads as follows:

Intended for use by children means the chemical substance or mixture is used in or on a product that is specifically intended for use by children age 14 or younger. A chemical substance or mixture is intended for use by children when the submitter answers “yes” to at least one of the following questions for the product into which the submitter’s chemical substance or mixture is incorporated:

(1) Is the product commonly recognized (i.e., by a reasonable person) as being intended for children age 14 or younger?

(2) Does the manufacturer of the product state through product labeling or other written materials that the product is intended for or will be used by children age 14 or younger?

(3) Is the advertising, promotion, or marketing of the product aimed at children age 14 or younger?

actions has presented evidence that lead can cause significant deleterious health effects, particularly in children (e.g., Identification of Dangerous Levels of Lead; Proposed Rule published in the **Federal Register** of June 3, 1998 (63 FR 30301) (FRL-5791-9)). A major focus of EPA has been on lead and lead compounds in paint, with a particular emphasis to limit lead exposures from paint following enactment of the “Residential Lead-Based Paint Hazard Reduction Act of 1992.” Public Law 102-550. In that Act, Congress emphasized its concerns about children’s exposure to lead.

CPSC recently published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** of January 9, 2007 (72 FR 920) addressing certain products beyond paint; CPSC is considering whether there may be a need to ban children’s metal jewelry containing more than 0.06% lead by weight in metal components. In addition to children’s metal jewelry products, EPA also believes there may be potential risks to children’s health from exposure to other products intended for use by children that contain lead or lead compounds. However, information regarding such products is currently incomplete.

4. *Information needs.* EPA is interested in health and safety studies that relate to the lead content of consumer products that are “intended for use by children” (as defined at 40 CFR 710.43), but excluding “children’s metal jewelry” as described by the CPSC in its ANPRM of January 9, 2007.

For all lead and lead compounds, EPA needs the following information to assess the extent and degree of exposure and potential hazard associated with these substances:

- Studies that relate to the lead content of consumer products that are intended for use by children (includes studies showing any measurable lead content), and/or

- Studies that assess children’s exposure to lead from such products (including studies of bioavailability).

With regards to grade or purity, studies showing any measurable lead content in such products are of interest.

V. References

1. ITC. 2007. Fifty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments. **Federal Register** (72 FR 2756, January 22, 2007) (FRL-8110-2). Available on-line at: <http://www.epa.gov/fedrgstr>.

2. Brooke, L.T. 1993. Acute and chronic toxicity of nonylphenol to ten

species of aquatic organisms. Report to the U.S. EPA for Work Assignment No. 02 of Contract No. 68-C1-0034. Lake Superior Research Institute, University of Wisconsin-Superior, Superior, WI. March 24, 1993. Amended October 18, 2005.

3. Ward, T.J. and Boeri, R.L. 1991. Early life stage toxicity of nonylphenol to the fathead minnow, *Pimephales promelas*. Study Number 8979 CMA. EnviroSystems, Hampton, NH.

4. Analytical Bio-Chemistry (ABC) Laboratories, Inc. 1986. Early life stage toxicity of *para-tert* octylphenol to Rainbow trout (*salmo gairdneri*). Report 34452. Columbia, MO.

5. Knorr, S. and Braunbeck, T. 2002. Decline in reproductive success, sex reversal, and developmental alterations in Japanese medaka (*Oryzias latipes*) after continuous exposure to octylphenol. *Ecotoxicology and Environmental Safety Journal*. 51:187-196.

6. Segner, H.; Navas, J. M.; Schafers, C.; and Wenzel, A. 2003. Potencies of estrogenic compounds in *in vitro* screening assays and in life cycle tests with zebrafish *in vitro*. *Ecotoxicology and Environmental Safety Journal*. 54:315-322.

7. Wenzel, A.; Schafers, C.; Vollmer, G., et al. 2001. Research efforts towards the development and validation of a test method for the identification of endocrine disrupting chemicals. Final Report of European Commission Contract B6-7920/98/000015. Schmallerberg, Germany.

8. President's Task Force on Environmental Health Risks and Safety Risks to Children. 2000. Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards. Available on-line at: <http://www.epa.gov/oppt/lead/pubs/fedstrategy2000.pdf>.

9. CPSC. Children's Jewelry Containing Lead; Advanced Notice of Proposed Rulemaking; Request for Comments and Information. **Federal Register** (72 FR 920, January 9, 2007). Available on-line at: <http://www.cpsc.gov/businfo/frnotices/fr07/leadjewelry.pdf>.

VI. The TSCA Interagency Testing Committee

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Council on Environmental Quality
Vacant

Department of Commerce

National Institute of Standards and Technology
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National Oceanographic and Atmospheric Administration
Tony Pait, Member

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National Toxicology Program
NIEHS, FDA, and NIOSH, Members

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Carol Savage, Administrative Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; e-mail address: savage.carol@epa.gov; url: <http://www.epa.gov/opptintr/itc>.

[FR Doc. E7-14575 Filed 7-26-07; 8:45 am]

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Federal Register

**Friday,
July 27, 2007**

Part IV

The President

**Proclamation 8163—Anniversary of the
Americans With Disabilities Act, 2007**

Presidential Documents

Title 3—

Proclamation 8163 of July 24, 2007

The President

Anniversary of the Americans With Disabilities Act, 2007

By the President of the United States of America

A Proclamation

On the anniversary of the Americans with Disabilities Act (ADA), we celebrate our progress towards an America where individuals with disabilities are recognized for their talents and contributions to our society. We also underscore our commitment to extend the full liberties and freedoms of our great country to all Americans.

Seventeen years ago, President George H. W. Bush signed the ADA into law. This legislation became one of the most successful and compassionate reforms in our Nation's history, helping to ensure that individuals with disabilities are better able to develop meaningful skills, engage in productive work, and participate fully in the life of our Nation.

My Administration continues our work to build on this landmark legislation. In 2001, I announced the New Freedom Initiative to promote the full participation of people with disabilities in all areas of society by improving educational and employment opportunities, increasing access to assistive technologies, expanding transportation options, and promoting homeownership and integration into daily community life. The New Freedom Initiative and the ADA provide children with disabilities the tools they need to succeed in schools and communities. Working men and women living with disabilities contribute to our strong economy, and the "Ticket to Work" program and services at One-Stop Career Centers help expand employment opportunities. The DisabilityInfo.gov website connects individuals with disabilities and their families to vital information that helps more Americans share in the promises of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 26, 2007, as a day in celebration of the 17th Anniversary of the Americans with Disabilities Act. I call on all Americans to celebrate the vital contributions of individuals with disabilities as we work towards fulfilling the promise of the ADA to give all our citizens the opportunity to live with dignity, work productively, and achieve their dreams.

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

A handwritten signature in black ink, appearing to be "GWB", written in a cursive style.

[FR Doc. 07-3709

Filed 7-26-07; 9:33 am]

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Mushroom promotion, research, and consumer information order; published 6-27-07

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
Gypsy moth; published 7-27-07

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chlorthalonil; published 7-27-07

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Organization, functions, and authority delegations:
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RULES GOING INTO EFFECT JULY 28, 2007**HOMELAND SECURITY DEPARTMENT****Coast Guard**

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RULES GOING INTO EFFECT JULY 29, 2007**HOMELAND SECURITY DEPARTMENT****Coast Guard**

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws

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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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