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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 214

[CIS No. 2424–07; DHS Docket No. USCIS–2007–0052]

RIN 1615–AB63

New Classification for Victims of Criminal Activity; Eligibility for ''U'' Nonimmigrant Status; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule; correction.

SUMMARY: This document contains corrections to the interim rule published in the **Federal Register** on September 17, 2007. The rule established the requirements and procedures for aliens seeking U nonimmigrant status. A review of the interim rule after publication identified erroneous references to filing fees for Form I–918, ''Petition for U Nonimmigrant Status,'' and Form I–918, Supplement A.

DATES: Effective Date: October 17, 2007.

FOR FURTHER INFORMATION CONTACT: Laura Dawkins, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Room 2304, Washington, DC 20529, telephone: (202) 272–8350.

SUPPLEMENTARY INFORMATION:

Need for Correction

On September 17, 2007, U.S. Citizenship and Immigration Services (USCIS) published an interim rule at 72 FR 53014 establishing the requirements and procedures for aliens seeking U nonimmigrant status. The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the interim rule made contradictory statements regarding whether there is a filing fee for Form I–918, ''Petition for U Nonimmigrant Status,'' and Form I–918, Supplement A. The regulation text itself contained an amendment to 8 CFR 103.7(b)(1) and language in new 8 CFR 214.14(c) reflecting that USCIS would charge a filing fee for Form I–918 and Form I–918, Supplement A. As correctly stated in the Supplementary Information (page 53031, third column, paragraph D.), USCIS will charge no fee for Forms I–918 and I–918, Supplement A, but will charge the established fee for biometric services for each person ages 14 through 79 inclusive with each U nonimmigrant status petition.

Correction of Publication

■ Accordingly, the publication on September 17, 2007 (72 FR 53014) of the interim rule that was the subject of FR Doc. E7–17807 is corrected as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

§ 103.7 [Corrected]

■ 1. On page 53035, in the first column, remove the part heading ''PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS''.

■ 2. On page 53035, in the first column, remove the regulatory changes to part 103, by removing amendments 1 and 2.

PART 214—NONIMMIGRANT CLASSES

§ 214.14 [Corrected]

■ 3. On page 53037, in the second column, in paragraph (c)(1) introductory text, in the eighth line, the phrase ''applicable fees'' should read ''applicable biometric fee''.

Dated: September 24, 2007.

Richard Sloan,

Chief, Regulatory Management Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services.

[FR Doc. E7–19085 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective September 27, 2007. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to decrease by 50 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 5.75 percent to 5.25 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 6.25 percent to 5.75 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 50-basis-point decrease in the primary credit rate was associated with a similar decrease in the target for the federal funds rate (from 5.25 percent to 4.75 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

Economic growth was moderate during the first half of the year, but the tightening of

credit conditions has the potential to intensify the housing correction and to restrain economic growth more generally. Today's action is intended to help forestall some of the adverse effects on the broader economy that might otherwise arise from the disruptions in financial markets and to promote moderate growth over time.

Readings on core inflation have improved modestly this year. However, the Committee judges that some inflation risks remain, and it will continue to monitor inflation developments carefully.

Developments in financial markets since the Committee's last regular meeting have increased the uncertainty surrounding the economic outlook. The Committee will continue to assess the effects of these and other developments on economic prospects and will act as needed to foster price stability and sustainable economic growth.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.25	September 18, 2007.
New York	5.25	September 18, 2007.
Philadelphia	5.25	September 20, 2007.
Cleveland	5.25	September 18, 2007.
Richmond	5.25	September 19, 2007.
Atlanta	5.25	September 19, 2007.
Chicago	5.25	September 20, 2007.
St. Louis	5.25	September 19, 2007.
Minneapolis	5.25	September 18, 2007.
Kansas City	5.25	September 18, 2007.
Dallas	5.25	September 19, 2007.
San Francisco	5.25	September 18, 2007.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	5.75	September 18, 2007.
New York	5.75	September 18, 2007.
Philadelphia	5.75	September 20, 2007.
Cleveland	5.75	September 18, 2007.
Richmond	5.75	September 19, 2007.
Atlanta	5.75	September 19, 2007.
Chicago	5.75	September 20, 2007.
St. Louis	5.75	September 19, 2007.
Minneapolis	5.75	September 18, 2007.
Kansas City	5.75	September 18, 2007.
Dallas	6.75	September 19, 2007.
San Francisco	6.75	September 18, 2007.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 21, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–19062 Filed 9–26–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28235; Airspace Docket No. 07–ANM–9]

Establishment of Class E Airspace; Hulett, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Hulett, WY. Additional Class E airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedure (IAP) at Hulett Municipal Airport. This will improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS IAP at Hulett Municipal Airport, Hulett, WY. Also, this action makes a minor correction to the airport description.

DATES: *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

History

On July 3, 2007, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Hulett, WY, (72 FR 36397). This action would improve the safety of IFR aircraft executing this new RNAV GPS IAP at Hulett Municipal Airport, Hulett, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Hulett, WY. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) IAP at Hulett Municipal Airport, Hulett, WY.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Hulett Municipal Airport, Hulett, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY, E5 Hulett, WY [New]

Hulett Municipal Airport, WY
(Lat. 44°39′46″ N., long. 104°34′04″ W.)
Newcastle VOR, WY
(Lat. 43°52′52″ N., long. 104°18′28″ W.)

That airspace extending upward from 700 feet above the surface within 8.0-mile radius of Hulett Municipal Airport that airspace extending upward from 1,200 feet above the surface beginning at Lat. 44°50′00″ N., long. 105°00′00″ W.; thence to Lat. 44°50′00″ N., long. 104°00′00″ W.; thence south along long. 104°00′00″ W., to V–536; thence west along V–536 to Newcastle VOR; thence west on V–536 to Lat. 44°09′00″ N., long. 105°00′00″ W.; thence to beginning.

* * * * *

Issued in Seattle, Washington, on August 30, 2007.

Clark Desing,

Manager, System Support Group, Western Service Center.

[FR Doc. E7–18930 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 119

[Docket No. FAA–2007–29313 (formerly 28154); Amendment No. 119–12]

RIN 2120–AF62

Commuter Operations and General Certification and Operations Requirements; Qualifications for Director of Maintenance for Part 135 Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making a minor technical change to a final rule, Commuter Operations and General Certification and Operations Requirements. This final rule established the requirements for certain management officials for certificate holders. In the final rule the FAA unintentionally included an incorrect experience requirement for the Director of Maintenance for commuter and on-demand operators. This amendment corrects that experience requirement.

DATES: Effective on September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Kim A. Barnette, Flight Standards Service (AFS–350), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC; phone (202) 493–4922; e-mail *Kim.A.Barnette@faa.gov*.

SUPPLEMENTARY INFORMATION: On December 20, 1995 (60 FR 65832), the FAA published a final rule in the **Federal Register**, better known as ''the commuter rule'', that established the requirements for certain management officials in parts 121 and 135. Although the FAA clearly stated in the preamble to this final rule that ''In addition to other requirements, these candidates will have to have three years of experience (within their respective fields) within the past six years to be eligible for a Director position,'' the specific years of experience in the rule language in part 135 was incorrect. The part 121 experience requirement of § 119.67 correctly states this ''3 years within 6 years'' experience requirement; however the part 135 requirement in § 119.71 was incorrectly stated as ''3 years within 3 years.''

By petition for rulemaking dated September 5, 2007, the Regional Air Cargo Carriers Association (RACCA) asked the FAA to correct this technical error. The RACCA correctly pointed out that it makes no sense to have an experience requirement in part 135 that is more stringent than the same requirement in part 121.

Technical Amendment

This technical amendment will correct an unintentional error in the years of experience requirement in § 119.71 to make it consistent with § 119.67.

Justification for Immediate Adoption

Because this action corrects an unintentional error in rule language for § 119.71, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

List of Subjects in 14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the FAA amends 14 CFR chapter I as follows:

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend § 119.71 by revising paragraphs (e)(1) and (2) to read as follows:

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

* * * * *

(e) * * *

(1) Have 3 years of experience within the past 6 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 6 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

* * * * *

Issued in Washington, DC, on September 19, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–19056 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1211

Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is amending 16 CFR part 1211, Safety Standard for Automatic Residential Garage Door Operators, to reflect changes made by Underwriters Laboratories, Inc. in its standard UL 325.

DATES: This rule is effective on February 21, 2008, except for § 1211.14(b)(2) which is effective September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Renae Rauchschwalbe, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland, 20814–4408, telephone 301–504–7664 or e-mail: *rrauchschwalbe@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The Commission is amending its garage door operator standard, 16 CFR part 1211, to incorporate changes made to Underwriter Laboratories, Inc. (''UL'') standard UL 325, third edition, ''Door, Drapery, Louver and Window Operators and Systems.'' In 1991, Congress mandated the entrapment protection provisions of the UL 325 standard as a consumer product safety standard. Sec 203 of Public Law 101–608. Congress also required the Commission to incorporate into part 1211 any revisions that UL proposed to the entrapment protection requirements of UL 325, unless the Commission notified UL that the revision does not carry out the purposes of Public Law 101–608.

Recently, UL revised some provisions of UL 325 to address the hazard of children becoming entrapped if a child becomes stuck under a partially open door and the door moves down when a bystander presses the wall control button. The Commission determined that the entrapment related revisions incorporated into the UL standard do carry out the purposes of Public Law 101–608. On January 18, 2007, the Commission issued a notice of proposed rulemaking (''NPR'') to revise part 1211 to reflect the changes UL made to UL 325. 72 FR 2217. The Commission received no comments on the proposal and is now making the revisions final.

UL set an effective date of February 21, 2008 for the changes to the entrapment protection requirements in the UL standard. The Commission is specifying the same effective date for these provisions in the CPSC standard.

UL also added to its standard a requirement that the statement ''Never go under a stopped partially open door'' be added to garage door operator instruction manuals. The Commission is making this change in the CPSC standard as well. UL set an effective date of September 14, 2004 for this provision in UL 325. The instruction manual provision in the CPSC standard would become effective when published as a final rule in the **Federal Register**.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), in the NPR the Commission certified that this rule will not have a significant impact on a substantial number of small entities. The Commission also certified in the NPR that this rule will have no environmental impact.

Public Law 101–608 contains a preemption provision. It states: ''those provisions of laws of States or political subdivisions which relate to the labeling of automatic residential garage door openers and those provisions which do not provide at least the equivalent degree of protection from the risk of injury associated with automatic residential garage door openers as the consumer product safety rule'' are subject to preemption under 15 U.S.C. 2075. Public Law 101–608, section 203(f).

List of Subjects in 16 CFR Part 1211

Consumer protection, Imports, Labeling, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 1211 is amended as follows:

PART 1211—SAFETY STANDARDS FOR AUTOMATIC RESIDENTIAL GARAGE DOOR OPERATORS

■ 1. The authority citation for part 1211 continues to read as follows:

Authority: Sec. 203 of Pub. L. 101–608, 104 Stat. 3110; 15 U.S.C. 2063 and 2065.

■ 2. Section 1211.7 is amended by revising paragraphs (a), (b), (f) and (g) to read as follows:

§ 1211.7 Inherent entrapment protection requirements.

(a)(1) Other than for the first 1 foot (305mm) of door travel from the full upmost position both with and without any external entrapment protection device functional, the operator of a downward moving residential garage door shall initiate reversal of the door within 2 seconds of contact with the obstruction as specified in paragraph (b) of this section. After reversing the door, the operator shall return the door to, and stop at, the full upmost position. Compliance shall be determined in accordance with paragraphs (b) through (i) of this section.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when the operator senses a second obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(b)(1) A solid object is to be placed on the floor of the test installation and at various heights under the edge of the door and located in line with the driving point of the operator. When tested on the floor, the object shall be 1 inch (25.4 mm) high. In the test installation, the bottom edge of the door under the driving force of the operator is to be against the floor when the door is fully closed.

(2) For operators other than those attached to the door, a solid object is not required to be located in line with the driving point of the operator. The solid object is to be located at points at the center, and within 1 foot of each end of the door.

(3) To test operators for compliance with requirements in paragraphs (a)(3), (f)(3), and (g)(3) of this section, § 1211.10(a)(6)(iii), and § 1211.13(c), a solid rectangular object measuring 4 inches (102 mm) high by 6 inches (152 mm) wide by a minimum of 6 inches (152 mm)long is to be placed on the floor of the test installation to provide a 4-inch (102 mm) high obstruction when operated from a partially open position.

* * * * *

(f)(1) An operator, using an inherent entrapment protection system that monitors the actual position of the door, shall initiate reversal of the door and shall return the door to, and stop the door at, the full upmost position in the event the inherent door operating ''profile'' of the door differs from the originally set parameters. The entrapment protection system shall monitor the position of the door at increments not greater than 1 inch (25.4 mm).

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm).

(g)(1) An operator, using an inherent entrapment protection system that does not monitor the actual position of the door, shall initiate reversal of the door and shall return the door to and stop the door at the full upmost position, when the lower limiting device is not actuated in 30 seconds or less following the initiation of the close cycle.

(2) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel. When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

(3) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator reverses the door a minimum of 2 inches (50.8 mm). When the door is stopped manually during its descent, the 30 seconds shall be measured from the resumption of the close cycle.

■ 3. Section 1211.10 is amended by revising paragraph (a)(1) and adding a new paragraph (a)(6) to read as follows:

§ 1211.10 Requirements for all entrapment protection devices.

(a) General requirements. (1) An external entrapment protection device shall perform its intended function when tested in accordance with paragraphs (a)(2) through (4) and (6) of this section.

* * * * *

(6)(i) An operator using an external entrapment protection device, upon detecting a fault or an obstruction in the path of a downward moving door, shall initiate reversal and shall return the door to, and stop the door at, the full upmost position.

(ii) The door operator is not required to return the door to, and stop the door at, the full upmost position when an inherent entrapment circuit senses an obstruction during the upward travel.

(iii) The door operator is not required to return the door to, and stop the door at, the full upmost position when a control is actuated to stop the door during the upward travel—but the door can not be moved downward until the operator has reversed the door a minimum of 2 inches (50.8 mm).

■ 4. Section 1211.13 is amended by adding a new paragraph (c) to read as follows:

§ 1211.13 Inherent force activated secondary door sensors.

(a) * * *

(b) * * *

(c) Obstruction test. For a door traveling in the downward direction, when an inherent secondary entrapment protection device senses an obstruction and initiates a reversal, a control activation shall not move the door

downward until the operator reverses the door a minimum of 2 inches (50.8 mm). The test is to be performed as described in § 1211.7(b)(3).

§ 1211.14 [Amended]

■ 5. Section 1211.14 is amended by revising paragraph (b)(2) to read as follows:

(a) * * *

(b) Specific required instructions.

(1) * * *

(2) The User Instructions shall include the following instructions:

Important Safety Instructions

Warning—To reduce the risk of severe injury or death:

1. Read and follow all instructions.

2. Never let children operate, or play with door controls. Keep the remote control away from children.

3. Always keep the moving door in sight and away from people and objects until it is completely closed. No one should cross the path of the moving door.

4. NEVER GO UNDER A STOPPED PARTIALLY OPEN DOOR.

5. Test door opener monthly. The garage door MUST reverse on contact with a 1½ inch object (or a 2 by 4 board laid flat) on the floor. After adjusting either the force or the limit of travel, retest the door opener. Failure to adjust the opener properly may cause severe injury or death.

6. For products requiring an emergency release, if possible, use the emergency release only when the door is closed. Use caution when using this release with the door open. Weak or broken springs may allow the door to fall rapidly, causing injury or death.

7. Keep garage door properly balanced. See owner's manual. An improperly balanced door could cause severe injury or death. Have a qualified service person make repairs to cables, spring assemblies and other hardware.

8. Save these Instructions.

Dated: September 18, 2007.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E7–18846 Filed 9–26–07; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM06–7–002; Order No. 686–B]

Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates

Issued September 20, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; order on rehearing.

SUMMARY: On June 22, 2007, the Commission issued an Order on Rehearing and Clarification in response to motions seeking rehearing and clarification of an October 19, 2006 Final Rule. The Final Rule expanded the scope and scale of activities that may be undertaken pursuant to blanket certificate authority and clarified Commission rate policy. The revised regulations allow interstate natural gas pipelines to employ the streamlined blanket certificate procedures for larger projects and for a wider variety of projects, thereby increasing efficiencies, and decreasing the time and cost associated with the construction and maintenance of the nation's natural gas infrastructure. This order grants a request for rehearing of the June 22, 2007 Order.

DATES: *Effective Date:* This final rule will become effective October 29, 2007.

FOR FURTHER INFORMATION CONTACT:

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *gordon.wagner@ferc.gov,* (202) 502–8947.

Michael McGehee, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *michael.mcgehee@ferc.gov,* (202) 502–8962.

Lonnie Lister, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *lonnie.lister@ferc.gov,* 202–502–8587.

SUPPLEMENTARY INFORMATION:

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

Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates; Order on Rehearing

I. Introduction

1. On October 19, 2006, the Federal Energy Regulatory Commission (Commission) issued a Final Rule in Order No. 686 [1] amending Part 157, Subpart F, of its regulations to expand the scope and scale of activities that may be undertaken pursuant to blanket certificate authority by (1) Broadening the types of natural gas projects permitted under blanket certificate authority to include certain mainline, storage, and liquefied natural gas (LNG) and synthetic gas pipeline facilities, and (2) increasing the blanket certificate project cost limits from $8,200,000 to $9,600,000 for automatic authorization projects and from $22,700,000 to $27,400,000 for prior notice projects.[2] In addition, Order No. 686 clarified that a natural gas company is not necessarily engaged in an unduly discriminatory practice if it charges different customers different rates for the same service when those customers commit to service on different dates. The revised blanket certificate regulations are intended to allow interstate natural gas companies to employ the streamlined blanket certificate procedures for larger projects and additional types of projects, thereby increasing efficiencies and decreasing the time and cost associated with the construction and maintenance of the nation's natural gas infrastructure. On June 22, 2007, the Commission issued an order in response to motions seeking rehearing and clarification of the October 2006 Final Rule.[3] In this order, for the reasons discussed below, the Commission grants a request for rehearing of the June 2007 Order.

II. Request for Rehearing

2. New § 157.210 permits companies to rely on blanket certificate authority to ''acquire, construct, modify, replace, and operate natural gas mainline facilities, including compression and

[1] Order No. 686, *Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates,* 71 FR 63680 (October 31, 2006), FERC Stats & Regs ¶ 31,231 (2006). This rulemaking proceeding was initiated in response to a petition submitted under 18 CFR 385.207(a) (2007) of the Commission's regulations by the Interstate Natural Gas Association of America jointly with the Natural Gas Supply Association.

[2] These cost limits now stand at $9,900,000 for an automatic authorization project and $28,200,000 for a prior notice project. *See Natural Gas Pipelines; Project Cost and Annual Limits,* 72 FR 5614 (Feb. 7, 2007).

[3] Order No. 686–A, *Order on Rehearing and Clarification,* 72 FR 37431 (July 10, 2007), FERC Statutes and Regulations ¶ 31,249 (2007) (June 2007 Order).

looping.'' Revised § 157.216(b)(2) provides for the abandonment of such facilities. The Interstate Natural Gas Association of America (INGAA) asked the Commission to clarify whether the Final Rule's revised § 157.216(b)(2) abandonment provisions would apply exclusively to mainline facilities put in place under the new § 157.210 or would also apply to mainline facilities already in place.

3. In its June 2007 Order, the Commission stated that facilities which were constructed under case-specific certificate authorization, but which would have met the criteria for construction under the current blanket certificate program, may be abandoned pursuant to the provisions § 157.216(b). The Commission stated that in considering whether existing facilities would have met the criteria for blanket certificate authorization, ''the facilities must have been installed subsequent to the Commission's implementation of the blanket certificate program and the facilities' original cost must have met the § 157.208 project cost cap in effect at the time of their construction.''

4. INGAA requests rehearing of the June 2007 Order to ask the Commission to remove this qualification because it precludes § 157.216 abandonment of facilities put in place prior to 1982, *i.e.*, the year the blanket certificate program was initiated. INGAA notes that the Commission did not impose the qualification that the project cost not exceed the blanket certificate cost cap in effect at the time of construction with respect to its 1999 expansion of the blanket certificate abandonment provisions to cover gas supply facilities and services.[4] INGAA contends rather than comparing the per project cost cap in effect at the time a facility was constructed with the facility's actual original cost, to determine whether the blanket certificate abandonment provisions might apply to an existing facility, the Commission should compare the per project cost cap currently in effect with the estimated cost to duplicate the facility today. INGAA states this approach will permit facilities put in place prior to the 1982 initiation of the blanket certificate program to qualify for abandonment under the blanket program.

5. The Commission will grant INGAA's request for rehearing. Instead of restricting § 157.216 abandonments to facilities put in place after the effective date of the blanket certificate program and comparing a facility's original cost to the cost cap in effect at the time the facility was placed in service, companies will be required to compare the estimated current cost to replicate an existing facility to the current § 157.208(d) per project cost cap. This will permit companies to employ blanket certificate authority to abandon a facility put in place under case-specific authority, provided the existing facility could qualify for authorization under the current blanket program

6. To effect this expansion of abandonment authority, the Commission will revise § 157.216(c)(1) and (d)(1) to specify that a company seeking to rely on its blanket certificate to abandon a facility which was not initially constructed or acquired under blanket certificate authority must estimate the current cost to replicate the facility. Provided the estimated current cost to replicate the facility would not exceed the currently-effective § 157.208(d) project cost cap, and provided the existing facility would qualify for authorization under the currently-effective blanket regulations, the company may rely on abandonment authority under § 157.216. Note that in calculating an estimated cost, the Commission anticipates a company will account for the current values of a facility's various component costs, such as land acquisition, public outreach, agency involvement, materials, labor, and environmental mitigation and remediation.[5] In addition, the Commission will revise § 157.216(a)(2) and (b)(2) to clarify that any existing facility that could be constructed or acquired under the currently-effective blanket certificate program criteria can be abandoned under blanket certificate authority, provided that, as is currently the case, the blanket certificate holder obtains the written consent of each customer served using the facility during the past 12 months.

7. In view of the above described revisions to the June 2007 order and blanket certificate abandonment regulations, INGAA's request for rehearing is granted.

III. Information Collection Statement

8. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[6] The Final Rule's revisions to the information collection requirements for blanket certificate projects were approved under OMB Control Nos. 1902–0128 and 1902–0060. While this order on rehearing clarifies aspects of the existing information collection requirements for the blanket certificate program, it does not add to these requirements. Accordingly, a copy of this order will be sent to OMB for informational purposes only.

IV. Document Availability

9. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and print the contents of this document via the Internet through FERC's Web site (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. User assistance is available for FERC's Web site during normal business hours (8:30 a.m. to 5 p.m. Eastern time, Monday to Friday) from FERC's Online Support at 202–502–6652, toll free at 1–866–208–3676, or by e-mail at *ferconlinesupport@ferc.gov*, and from the Public Reference Room at 202–502–8371, TTY at 202–502–8659, or by e-mail at *public.referenceroom@ferc.gov*.

V. Effective Date and Congressional Notification

10. The modifications made in this request for rehearing will become effective October 29, 2007. The provisions of 5 U.S.C. 801 regarding Congressional review of rulemaking do not apply to this order on rehearing, since it clarifies agency procedure and practice.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

[4] *See* Order No. 603, *Revision of Existing Regulations under the Natural Gas Act,* 64 FR 26572 (May 14, 1999), FERC Stats. & Regs. ¶ 31,073 (1999); Order No. 603–A, 64 FR 54522 at 54532–34 (Oct. 7, 1999), FERC Stats. & Regs. ¶ 31,081 at 30,936 (1999), adopting a similar approach with respect to automatic abandonments under 18 CFR 157.216(a) (2007).

[5] See, *e.g.*, the reporting requirements for describing a project's costs in 18 CFR 157.208(e)(3) (2007). The Commission suggests a blanket certificate holder contemplating action under 18 CFR 157.216 review the record in this proceeding, which includes comments on past and present project cost comparisons.

[6] 5 CFR 1320.11 (2007).

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

■ 2. In § 157.216, paragraphs (a)(2), (b)(2), (c)(1), and (d)(1) are revised to read as follows:

§ 157.216 Abandonment.

(a) * * *

(2) A facility that did or could now qualify for automatic authorization as described in § 157.203(b), provided the certificate holder obtains the written consent of each customer served using the facility during the past 12 months.

(b) * * *

(2) Any other facility that did or could now qualify for prior notice authorization as described in § 157.203(c), provided the certificate holder obtains the written consent of each customer served using the facility during the past 12 months.

(c) * * *

(1) The location, type, size, and length of the subject facilities. For facilities not constructed or acquired under blanket certificate authority, an estimate of the current cost to replicate such facilities;

* * * * *

(d) * * *

(1) A description of the facilities abandoned under this section. For facilities not constructed or acquired under blanket certificate authority, an estimate of the current cost to replicate such facilities;

* * * * *

[FR Doc. E7–18904 Filed 9–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9360]

RIN 1545–BC37

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of the temporary regulations.

SUMMARY: This document contains final regulations that provide certain elections for taxpayers that continue to be subject to the PFIC excess distribution regime of section 1291 of the Internal Revenue Code even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(a) or (e) of the Code. The regulations are necessary to provide guidance about purging the PFIC taint for such foreign corporations. The regulations will affect U.S. persons that hold stock in a PFIC.

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

Applicability Date: For dates of applicability, see §§ 1.1291–9(k), 1.1297–3(f), 1.1298–3(f).

FOR FURTHER INFORMATION CONTACT: Paul J. Carlino at (202) 622–3840 (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 of 1995 (44 U.S.C. 3507(d)) under control number 1545–1965.

The collection of information in these final regulations is in § 1.1297–3(c)(5)(ii). This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or is claiming the correct amount of losses, deductions or credits from that taxpayer's interest in the foreign corporation.

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.

Books or records relating to a collection of information must be retained as long as their contents might 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

On December 8, 2005, the IRS and the Treasury Department published final regulations under section 1298(b)(1) and removal of temporary regulations (TD 9231) in the **Federal Register** (70 FR 72914). The final regulations provided rules for a shareholder of a former PFIC (as defined in § 1.1291–9(j)(2)(iv)) to make a deemed dividend or deemed sale election to purge the PFIC taint of the stock of the foreign corporation (that is, to end treatment of the stock of the foreign corporation as PFIC stock with respect to the shareholder). On December 8, 2005, the Internal Revenue Service and the Treasury Department also published temporary regulations (TD 9232) under sections 1291(d)(2), 1297(e) and 1298(b)(1) in the **Federal Register** (70 FR 72908). A notice of proposed rulemaking (REG–133446–03) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (70 FR 72952). The temporary and proposed regulations provided guidance to shareholders of section 1297(e) PFICs (as defined in § 1.1291–9(j)(2)(v)) on making a deemed sale or deemed dividend election to purge the PFIC taint of the stock of the foreign corporation. The temporary and proposed regulations also provided guidance to shareholders of section 1297(e) PFICs and shareholders of former PFICs on making late purging elections (provided certain requirements are met).

No public hearing was requested or held. A comment responding to the notice of proposed rulemaking was received. After consideration of the comment, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The comment and revision is discussed in this preamble.

Summary of Comments and Explanation of Revisions

1. Multiple Purging Elections

Sections 1.1297–3 and 1.1298–3 provide guidance for a shareholder of a section 1297(e) PFIC and a shareholder of a former PFIC, respectively, to make a deemed sale or a deemed dividend election to purge the PFIC taint of the stock of the foreign corporation. A *section 1297(e) PFIC* is a foreign corporation that qualifies as a PFIC under section 1297(a) on the first day of the qualified portion of the shareholder's holding period under section 1297(e), and is treated as a PFIC with respect to the shareholder under section 1298(b)(1) because at any time during the shareholder's holding period of the stock, other than the qualified portion, the foreign corporation was a PFIC that was not a qualified electing fund (QEF) under section 1295. (The ''qualified portion'' is the portion of the shareholder's holding period which is after December 31, 1997, and during which the shareholder is a U.S. shareholder (as defined in section 951(b)) and the foreign corporation is a controlled foreign corporation.) A *former PFIC* is a foreign corporation that

satisfies neither the income nor the asset test of section 1297(a), but whose stock held by a shareholder is treated as stock of a PFIC, pursuant to section 1298(b)(1), because the corporation was a PFIC that was not a QEF at some time during the shareholder's holding period of the stock.

Sections 1.1297–3(e) and 1.1298–3(e) provide rules for making late purging elections when the time prescribed for making timely purging elections under §§ 1.1297–3(b)(3) or (c)(4) and 1.1298–3(b)(3) or (c)(4) has elapsed.

One commentator requested that the final regulations clarify whether multiple late purging elections can be made under §§ 1.1297–3(e) and 1.1298–3(e). The IRS and the Treasury Department believe that multiple late purging elections should be allowed to the same extent such multiple purging elections could have been made if filed timely. The final regulations are amended to clarify this rule.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations affect only U.S. persons with stock ownership in a PFIC. There are not a substantial number of U.S. persons that are small entities that own stock in a PFIC. Further, the economic costs necessary to comply with the rule for the small entities that may be impacted are not significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this final regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Paul J. Carlino of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are 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 1.1291–9 is amended by revising paragraphs (i), (j)(2)(v) and (k) to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(i) *Election inapplicable to shareholder of a former PFIC or of a section 1297(e) PFIC.* A shareholder may not make the section 1295 and deemed dividend elections if the foreign corporation is a former PFIC (as defined in paragraph (j)(2)(iv) of this section) or a section 1297(e) PFIC (as defined in paragraph (j)(2)(v) of this section) with respect to the shareholder. For the rules regarding the election by a shareholder of a former PFIC, see § 1.1298–3. For the rules regarding the election by a shareholder of a section 1297(e) PFIC, see § 1.1297–3.

(j) * * *

(2) * * *

(v) *Section 1297(e) PFIC.* A foreign corporation is a section 1297(e) PFIC with respect to a shareholder (as defined in paragraph (j)(3) of this section) if—

(A) The foreign corporation qualifies as a PFIC under section 1297(a) on the first day on which the qualified portion of the shareholder's holding period in the foreign corporation begins, as determined under section 1297(e)(2); and

(B) The stock of the foreign corporation held by the shareholder is treated as stock of a PFIC, pursuant to section 1298(b)(1), because, at any time during the shareholder's holding period of the stock, other than the qualified portion, the corporation was a PFIC that was not a QEF.

(k) *Effective/applicability date.* (1) The rules of this section, except for paragraph (j)(2)(v) of this section, are applicable as of April 1, 1995.

(2) The rules of paragraph (j)(2)(v) of this section are applicable as of December 8, 2005.

§ 1.1291–9T [Removed]

■ **Par. 3**. Section 1.1291–9T is removed.

■ **Par. 4**. Section 1.1297–0 is revised to read as follows:

§ 1.1297–0 Table of contents.

This section contains a listing of the headings for § 1.1297–3.

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC.

(a) In general.

(b) Application of deemed sale election rules.

(1) Eligibility to make the deemed sale election.

(2) Effect of the deemed sale election.

(3) Time for making the deemed sale election.

(4) Manner of making the deemed sale election.

(5) Adjustments to basis.

(6) Treatment of holding period.

(c) Application of deemed dividend election rules.

(1) Eligibility to make the deemed dividend election.

(2) Effect of the deemed dividend election.

(3) Post-1986 earnings and profits defined.

(4) Time for making the deemed dividend election.

(5) Manner of making the deemed dividend election.

(6) Adjustments to basis.

(7) Treatment of holding period.

(8) Coordination with section 959(e).

(d) CFC qualification date.

(e) Late purging elections requiring special consent.

(1) In general.

(2) Prejudice to the interests of the U.S. government.

(3) Procedural requirements.

(4) Time and manner of making late election.

(5) Multiple late elections.

(f) Effective/applicability date.

§ 1.1297–0T [Removed]

■ **Par. 5**. Section 1.1297–0T is removed.

■ **Par. 6**. Section 1.1297–3 is added to read as follows:

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC.

(a) *In general.* A shareholder (as defined in § 1.1291–9(j)(3)) of a foreign corporation that is a section 1297(e) passive foreign investment company (PFIC) (as defined in § 1.1291–9(j)(2)(v)) with respect to such shareholder, shall be treated for tax purposes as holding stock in a PFIC and therefore continues to be subject to taxation under section 1291 unless the shareholder makes a purging election under section 1298(b)(1). A purging election under section 1298(b)(1) is made under rules similar to the rules of section 1291(d)(2). Section 1291(d)(2) allows a shareholder to purge the continuing PFIC taint by either making a deemed sale election or a deemed dividend election.

(b) *Application of deemed sale election rules*—(1) *Eligibility to make the deemed sale election.* A shareholder

of a foreign corporation that is a section 1297(e) PFIC with respect to such shareholder may make a deemed sale election under section 1298(b)(1) by applying the rules of this paragraph (b).

(2) *Effect of the deemed sale election.* A shareholder making the deemed sale election with respect to a section 1297(e) PFIC shall be treated as having sold all of its stock in the section 1297(e) PFIC for its fair market value on the controlled foreign corporation (CFC) qualification date, as defined in paragraph (d) of this section. A deemed sale under this section is treated as a disposition subject to taxation under section 1291. Thus, the gain from the deemed sale is taxed as an excess distribution received on the CFC qualification date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. After the deemed sale election, the shareholder's stock with respect to which the election was made under this paragraph (b) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Time for making the deemed sale election.* Except as provided in paragraph (e) of this section, a shareholder shall make the deemed sale election under this paragraph (b) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed sale election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(4) *Manner of making the deemed sale election.* A shareholder makes the deemed sale election under this paragraph (b) by filing Form 8621, ''Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'', with the return of the shareholder for the election year, reporting the gain as an excess distribution pursuant to section 1291(a) as if such sale occurred under section 1291(d)(2), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(5) *Adjustments to basis.* A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Internal Revenue Code (Code) and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the basis of any stock with respect to which the shareholder realized a loss on the deemed sale, which loss is not recognized under paragraph (b)(2) of this section.

(6) *Treatment of holding period.* If a shareholder of a foreign corporation has made a deemed sale election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed sale, the shareholder's holding period in the stock of the foreign corporation begins on the CFC qualification date, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(c) *Application of deemed dividend election rules*—(1) *Eligibility to make the deemed dividend election.* A shareholder of a foreign corporation that is a section 1297(e) PFIC with respect to such shareholder may make the deemed dividend election under the rules of this paragraph (c). A deemed dividend election may be made by a shareholder whose pro rata share of the post-1986 earnings and profits of the PFIC attributable to the PFIC stock held on the CFC qualification date is zero.

(2) *Effect of the deemed dividend election.* A shareholder making the deemed dividend election with respect to a section 1297(e) PFIC shall include in income as a dividend its pro rata share of the post-1986 earnings and profits of the PFIC attributable to all of the stock it held, directly or indirectly on the CFC qualification date, as defined in paragraph (d) of this section. The deemed dividend is taxed under section 1291 as an excess distribution received on the CFC qualification date. The excess distribution determined under this paragraph (c) is allocated under section 1291(a)(1)(A) only to each day of the shareholder's holding period of the stock during which the foreign corporation qualified as a PFIC. For purposes of the preceding sentence, the shareholder's holding period of the PFIC stock ends on the day before the CFC qualification date. After the deemed dividend election, the shareholder's stock with respect to which the election was made under this paragraph (c) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Post-1986 earnings and profits defined*—(i) *In general*—(A) *General rule.* For purposes of this section, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the day before the CFC qualification date, that were accumulated and not distributed in taxable years of the PFIC beginning after 1986 and during which it was a PFIC, without regard to whether the earnings related to a period during which the PFIC was a CFC.

(B) *Special rule.* If the CFC qualification date is a day that is after the first day of the taxable year, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the close of the taxable year that includes the CFC qualification date. For purposes of this computation, only earnings and profits accumulated in taxable years during which the foreign corporation was a PFIC shall be taken into account, but without regard to whether the earnings related to a period during which the PFIC was a CFC.

(ii) *Pro rata share of post-1986 earnings and profits attributable to shareholder's stock*—(A) *In general.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC

attributable to the stock held by the shareholder on the CFC qualification date is the amount of post-1986 earnings and profits of the PFIC accumulated during any portion of the shareholder's holding period ending at the close of the day before the CFC qualification date and attributable, under the principles of section 1248 and the regulations under that section, to the PFIC stock held on the CFC qualification date.

(B) *Reduction for previously taxed amounts.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC does not include any amount that the shareholder demonstrates to the satisfaction of the Commissioner (in the manner provided in paragraph (c)(5)(ii) of this section) was, pursuant to another provision of the law, previously included in the income of the shareholder, or of another U.S. person if the shareholder's holding period of the PFIC stock includes the period during which the stock was held by that other U.S. person.

(4) *Time for making the deemed dividend election.* Except as provided in paragraph (e) of this section, the shareholder shall make the deemed dividend election under this paragraph (c) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed dividend election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(5) *Manner of making the deemed dividend election*—(i) *In general.* A shareholder makes the deemed dividend election by filing Form 8621 and the attachment to Form 8621 described in paragraph (c)(5)(ii) of this section with the return of the shareholder for the election year, reporting the deemed dividend as an excess distribution pursuant to section 1291(a)(1), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year.

(ii) *Attachment to Form 8621.* The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the CFC qualification date, pursuant to this paragraph (c). If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(A) The name, address and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of law, pursuant to which the amount was previously included in income, and the taxable year or years of inclusion of each amount.

(B) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provision of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(6) *Adjustments to basis.* A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(7) *Treatment of holding period.* If the shareholder of a foreign corporation has made a deemed dividend election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed dividend, the shareholder's holding period of the stock of the foreign corporation begins on the CFC qualification date. For other purposes of the Code and regulations, this holding period rule does not apply.

(8) *Coordination with section 959(e).* For purposes of section 959(e), the entire deemed dividend is treated as having been included in gross income under section 1248(a).

(d) *CFC qualification date.* For purposes of this section, the CFC qualification date is the first day on which the qualified portion of the shareholder's holding period in the section 1297(e) PFIC begins, as determined under section 1297(e).

(e) *Late purging elections requiring special consent*—(1) *In general.* This section prescribes the exclusive rules under which a shareholder of a section 1297(e) PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(3) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including § 301.9100–3 of this chapter. A shareholder may request the consent of the Commissioner to make a late deemed sale or deemed dividend election for the taxable year of the shareholder that includes the CFC qualification date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if—

(i) In a case where the shareholder is requesting consent under this paragraph (e) after December 31, 2005, the shareholder requests such consent before a representative of the Internal Revenue Service (IRS) raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the CFC qualification date falls or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) *Prejudice to the interests of the U.S. government.* The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability (other than by a de minimis amount), taking into account applicable interest charges, for the taxable year that includes the CFC qualification date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a

position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) *Procedural requirements*—(i) *In general.* The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, pursuant to section 6601, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the CFC qualification date falls and ending on the date the late purging election is filed with the IRS.

(ii) *Filing instructions.* A late purging election is made by filing a completed Form 8621–A, ''Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.''

(4) *Time and manner of making late election*—(i) *Time for making a late purging election.* A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) *Manner of making a late purging election.* A shareholder makes a late purging election by completing Form 8621–A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621–A, Ogden, UT 84201.

(5) *Multiple late elections*—(i) *General rule.* A shareholder of a foreign corporation may make multiple late purging elections under the rules of this paragraph (e) or § 1.1298–3(e) to the same extent such multiple purging elections could have been made if those purging elections had been filed within the time prescribed under paragraph (b)(3) or (c)(4) of this section or § 1.1298–3(b)(3) or (c)(4).

(ii) *Example.* The rule of this paragraph (e)(5) is illustrated by the following example:

Example. (i) In 1991, X, a U.S. person, acquired a five percent interest in the stock of FC, a controlled foreign corporation, as defined in section 957(a). In years 1991, 1992, 1995, 1996 and 1997, FC satisfied either the income test or the asset test of section 1297(a). X did not make a QEF election with regard to FC. In years 1993 and 1994, FC did not satisfy either the income or the asset test of section 1291(a). In 1998, X acquired additional stock in FC such that X was a U.S. shareholder (as defined in section 951(b)) of FC.

(ii) Because FC qualified as a PFIC in 1991, FC will be treated as a PFIC with respect to all of the stock held by X, under the ''once a PFIC always a PFIC'' rule of section 1298(b)(1), unless X makes an election to purge the PFIC taint. Because X ceased to satisfy either the income or asset test in 1993, X could have made an election under § 1.1298–3 to purge the PFIC taint of FC for that year if X had filed such an election within the time prescribed under § 1.1298–3(b)(3) or (c)(4). If X had done so, the stock X held in FC would not be treated as stock in a PFIC for the years 1993 and 1994. Because X became a U.S. shareholder of FC in 1998, X then could have made a deemed sale or deemed dividend election under this section to purge the PFIC taint of FC for the years 1995 through 1997 if X had filed within the time prescribed under paragraph (b)(3) or (c)(4) of this section. Accordingly, X may make a late purging election to purge the PFIC taint of FC for the years 1991 and 1992 under the rules of § 1.1298–3(e) and may also make a late purging election to purge the PFIC taint of FC for the years 1995 through 1997 under the rules of this paragraph (e).

(f) *Effective/applicability date.* The rules of this section are applicable as of December 8, 2005.

§ 1.1297–3T [Removed]

■ **Par. 7**. Section 1.1297–3T is removed.

■ **Par. 8**. Section 1.1298–0 is revised to read as follows:

§ 1.1298–0 Table of contents.

This section contains a listing of the paragraph headings for § 1.1298–3.

§ 1.1298–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

(a) In general.
(b) Application of deemed sale election rules.
(1) Eligibility to make the deemed sale election.
(2) Effect of the deemed sale election.
(3) Time for making the deemed sale election.
(4) Manner of making the deemed sale election.
(5) Adjustments to basis.
(6) Treatment of holding period.
(c) Application of deemed dividend election rules.
(1) Eligibility to make the deemed dividend election.
(2) Effect of the deemed dividend election.
(3) Post-1986 earnings and profits defined.
(4) Time for making the deemed dividend election.
(5) Manner of making the deemed dividend election.
(6) Adjustments to basis.
(7) Treatment of holding period.
(8) Coordination with section 959(e).
(d) Termination date.
(e) Late purging elections requiring special consent.
(1) In general.
(2) Prejudice to the interests of the U.S. government.
(3) Procedural requirements.
(4) Time and manner of making late election.
(5) Multiple late elections.
(f) Effective/applicability date.

§ 1.1298–0T [Removed]

■ **Par. 9**. Section 1.1298–0T is removed.

■ **Par. 10**. Section 1.1298–3 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.1298–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

* * * * *

(e) *Late purging elections requiring special consent*—(1) *In general.* This section prescribes the exclusive rules under which a shareholder of a former PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(3) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including § 301.9100–3 of this chapter. A shareholder may request the consent of the Commissioner to make a late purging election for the taxable year of the shareholder that includes the termination date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if—

(i) In a case where the shareholder is requesting consent under this paragraph (e) after December 31, 2005, the shareholder requests such consent before a representative of the Internal Revenue Service raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the termination date falls or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) *Prejudice to the interests of the U.S. government.* The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability

(other than by a *de minimis* amount), taking into account applicable interest charges, for the taxable year that includes the termination date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) *Procedural requirements*—(i) *In general.* The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, pursuant to section 6601, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the termination date falls and ending on the date the late purging election is filed with the IRS.

(ii) *Filing instructions.* A late purging election is made by filing a completed Form 8621–A, ''Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.''

(4) *Time and manner of making late election*—(i) *Time for making a late purging election.* A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) *Manner of making a late purging election.* A shareholder makes a late purging election by completing Form 8621–A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621–A, Ogden, UT 84201.

(5) *Multiple late elections.* For rules regarding the circumstances under which a shareholder of a foreign corporation may make multiple late purging elections under this paragraph (e) or § 1.1297–3(e), see § 1.1297–3(e)(5).

(f) *Effective/applicability date.* The rules of this section are applicable as of December 8, 2005.

§ 1.1298–3T [Removed]

■ **Par. 11**. Section 1.1298–3T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12**. The authority citation of part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 13**. In § 602.101, paragraph (b) is amended by removing the entry for ''1.1297–3T'' from the table.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: September 17, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–18988 Filed 9–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR PART 16

[AAG/A Order No. 032–2007]

Privacy Act of 1974: Implementation

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (c)(3) and (4), (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g), pursuant to 5 U.S.C. 552a (j) and (k). The Privacy Act system of records is the ''El Paso Intelligence Center (EPIC) Seizure System, (JUSTICE/DEA–022).'' The exemptions are necessary to prevent the compromise of ongoing investigative efforts, to help ensure the integrity of law enforcement and investigatory information, to ensure third party privacy, and to protect the physical safety of sources of information and law enforcement personnel.

DATES: *Effective Date:* This final rule is effective September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Joo Chung, Counsel, Privacy and Civil Liberties Office, 202–514–4921.

SUPPLEMENTARY INFORMATION: On June 26, 2006 (71 FR 36294), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received. This final rule contains corrections to typographic errors appearing in the proposed rule and a revised justification for the exemption claimed from subsection (e)(3), found at (h)(6). The revised justification more specifically addresses the Privacy Act's notice requirement of subsection (e)(3) and, therefore increases the accuracy and clarity of the final rule.

This rule relates to individuals rather than to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.98 is amended by adding paragraphs (g) and (h) to read as follows:

§ 16.98 Exemption of Drug Enforcement Administration Systems—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): El Paso Intelligence Center (EPIC) Seizure System (ESS) (JUSTICE/DEA–022). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement and counter-drug purposes of this system, and the overall law enforcement process, the applicable exemption may be waived by the DEA in its sole discretion.

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would potentially reveal any investigative interest in the individual. Revealing this information would permit the subject of an

investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants. Similarly, disclosing this information could reasonably be expected to compromise ongoing investigatory efforts by notifying the record subject that he/she is under investigation. This information could also permit the record subject to take measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid or impede the investigation.

(2) From subsection (c)(4) because this system is exempt from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3), and (4) because these provisions concern individual access to and amendment of records contained in this system, which consists of counter-drug and criminal investigatory records. Compliance with these provisions could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation; endanger the physical safety of witnesses or informants; or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary to complete an identity comparison between the individual being screened and a known or suspected criminal or terrorist. Also, it may not always be known what information will be relevant to law enforcement for the purpose of conducting an operational response or on-going investigation.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement and counter-drug efforts in that it would put the subject of an investigation, study or analysis on notice of that fact, thereby permitting the subject to engage in conduct designed to frustrate or impede that activity. The nature of counter-drug investigations is such that vital information about an individual frequently can be obtained only from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because the requirements thereof would constitute a serious impediment to law enforcement in that they could compromise the existence of an actual or potential confidential investigation and/or permit the record subject to speculate on the identity of a potential confidential source, and endanger the life, health or physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic record systems and therefore it is not possible for the DEA and EPIC to vouch for their compliance with this provision. In addition, EPIC supports but does not conduct investigations; therefore, it must be able to collect information related to illegal drug and other criminal activities and encounters for distribution to law enforcement and intelligence agencies that do conduct counter-drug investigations. In the collection of information for law enforcement and counter-drug purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. EPIC has, however, implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. ESS is also exempt from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the ESS. ESS records are exempt from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of investigations. Exempting ESS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under subsection (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DEA and EPIC and could alert the subjects of counter-drug, counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known. Additionally, compliance could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: September 20, 2007.

Lee J. Lofthus,

Assistant Attorney General for Administration.

[FR Doc. E7–19129 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. OSHA–2007–0068]

RIN 1218–AC18

Notice of Availability of the Regulatory Flexibility Act Review of the Occupational Safety Standard for Lead in Construction

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of availability.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has completed a review of its Lead in Construction Standard pursuant to section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. OSHA issued its Lead in Construction Standard in 1993 pursuant to a statutory directive to protect construction workers from lead related

diseases such as neurological and kidney disease and negative cardiovascular effects. The review found that the standard has reduced blood lead levels in construction workers thereby reducing lead-related disease. It also found that the standard has not had a negative economic impact on business, including small businesses in virtually all sectors affected, is not overly complex and does not conflict with other regulations. OSHA concludes it is necessary to retain the standard but will consider improving outreach materials and increasing their dissemination, and will consult with HUD and EPA about developing a unified training curriculum and further integrate initial assessment interpretations to reduce cost and simplify requirements for small businesses.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888: Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, New Docket No. OSHA–2007–0068, Old Docket No. H–023 Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210: telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA's Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST. The main text of the report, this **Federal Register** Notice and any news release will become available on the OSHA Web page at *http://www.OSHA.gov.* Electronic copies of this **Federal Register** Document, the full text of the report, comments and referenced documents are or will become available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: General Information: Joanna Dizikes Friedrich, OSHA Directorate of Evaluation and Analysis, Room N–36412, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1939. Technical inquiries about the Lead in Construction Standard: Maureen Ruskin, OSHA, Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210: telephone (202) 693–1955. Press inquiries: Kevin Ropp, OSHA Office of Communications, N–3637, 200 Constitution Avenue, NW., Washington DC 20210; telephone (202) 693–1999.

SUMMARY: In 1993, in response to a statutory mandate (Sections 1031 and 1032 of the Housing and Community Development Act of 1992, Pub. L. 102–550), OSHA promulgated the Lead in Construction standard (29 CFR 1926.62) as an interim final rule. Elevated blood lead levels (BLLs) can produce irreversible adverse health effects, and studies had shown lead disease in construction employees. The goal of the standard is to protect construction employees from lead-related diseases, which can result from exposure to lead dust or fumes.

Construction employees are exposed to lead primarily when they remove lead-based paint (LBP) from structural steel bridges or buildings, engage in demolition of structures with LBP, engage in the removal of lead from buildings, or prepare some old residential units for painting or remodeling these units. A relatively small number of construction employees are exposed to lead when using molten lead to seal cables, lead-containing mortar, lead sheeting, repairing old plumbing, and performing work on older structures, as well as on shielding for ionizing radiation, radioactive materials, and X-rays. In 1978, LBP was banned for use on residences or other buildings where consumers could be exposed; industrial use of LBP was phased out in the same period. Lead solder for water pipes was banned in 1988.

The statute very specifically mandated the provisions in the standard. OSHA recognized, as it had when it adopted the general industry lead standard, that exposure patterns would vary widely among the different types of construction employees. Since the interim final rule was published, a number of studies have been conducted that document exposure levels and blood lead levels among construction employees. Based on the availability of more data and public recommendations, OSHA decided to conduct a review of 29 CFR 1926.62 to determine whether the standard should continue unchanged or whether it is possible to revise the standard to reduce the burden without reducing employee protection.

The risks posed by exposure to lead are well documented. The 2005 Agency for Toxic Substances and Disease Registry (ASTDR) Draft Toxicological Profile for Lead adds to the wealth of information by confirming the known health effects of lead and documenting new research, such as on the effects of lead when in combination with other metals and other toxic substances. Other research, such as the NIOSH studies of exposure pathways that can be as significant as inhalation thereby furthering employee exposures, indicate that we are continuing to uncover evidence that employees need protection from exposure to lead. Similarly, the comments identified a number of studies of exposure of employees in a variety of workplaces demonstrating the continuing need for the protection that the Lead in Construction standard provides. Based on the findings in this report and the evidence produced during this review process, OSHA concludes that for the hazards associated with lead in the construction industry, a mandatory standard remains necessary to adequately protect employees.

During this study, no evidence has been presented to OSHA suggesting that employers are having difficulty or are not capable of complying with the Lead in Construction standard during most operations most of the time. Technologies needed to comply with the standard are readily and widely available. This look back study also concludes that the Lead in Construction standard has not had a negative economic impact on business, including small businesses, in virtually all sectors affected. The construction sector overall is growing in terms of profits, revenues and employment. OSHA finds that the Lead in Construction standard remains economically feasible.

This regulatory review of the Lead in Construction standard meets the requirements of both Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order (EO) 12866. Under Section 610, this review examines whether the standard should be continued without change, rescinded, or amended to minimize any significant impact on a substantial number of small entities, taking into consideration the continued need for the rule, comments and complaints received regarding the rule, the complexity of the rule, whether the rule is duplicative and changes in technology and economic conditions since the issuance of the rule. Under Section 5 of EO 12866, this review examines whether the standard has become unjustified or unnecessary as a result of changed circumstances, and whether the standard is compatible with other regulations or is duplicative or inappropriately burdensome in the aggregate. This review also ensures that the regulation is consistent with the priorities and the principles set forth in EO 12866 within applicable law, and examines whether the effectiveness of the standard can be improved. To assist OSHA in this review, OSHA requested public comments on these issues on June 6, 2005 (70 FR 32739).

Please note this report uses the phrase ''industrial construction,'' ''industrial painting,'' and similar terminology.

These phrases refer to construction work at industrial facilities and other non-building construction, such as bridges, pipelines, tunnels, tanks, etc. The phrases do not include employees in general industry, who are not covered by the Lead in Construction standard.

This review of the Lead in Construction standard under Regulatory Flexibility Act section 610 finds the following:

In 1993, OSHA estimated that 937,000 employees were exposed to lead in the construction industry. That included employees exposed below levels that would trigger the standard. OSHA estimates that, as of 2003, there were 649,000 employees exposed at levels that may trigger application of the standard.

OSHA regularly enforces the lead standard in the construction industry. Between 1993 and 2003, Federal OSHA and State-Plan States made a total of 4,384 inspections in construction that covered lead exposure and issued 12,556 citations.

Less than 25 percent of housing units have lead paint on any element. This represents about 20 million housing units. It is not known how many commercial and industrial buildings have lead paint, but the age distribution of those buildings is similar to that of residential buildings. There are about 225,000 structural steel highway and railroad bridges in the U.S., and it is estimated that 90,000 have lead paint. Other industrial structures, such as tanks, may have lead paint. Older plumbing may use lead pipes or lead solder. Lead solder still has some uses; lead containing mortar is used in tanks containing acid; lead is used for some electric cable splicing, radiation shields, and for some other purposes. Construction employees may be exposed to lead in these areas.

There is a continued need for the Occupational Safety and Health Administration (OSHA) Lead in Construction standard. This standard, mandated by statute, remains both justified and necessary to implement the statute's intent; that is, to reduce both lead exposures in construction employees and disease resulting from these lead exposures. The standard has reduced blood lead levels (BLLs) of exposed employees. Retention of the standard is necessary to continue to achieve that goal because the study revealed that certain construction jobs still have high airborne lead exposures, and compliance data indicate that there are still instances of non-compliance with the standard.

Studies continue to show that elevated BLLs are associated with neurological effects, including reduced intelligence, changes in brain function, fatigue, impotence, and reductions in nerve conductivity. There are also systemic effects from lead exposures, such as changes in the level of circulating thyroid hormones and changes in immune system parameters. Other effects from lead exposures include reduced kidney function, increased blood pressure, gastrointestinal effects, cardiovascular effects, and anemia. There is evidence that lead is a reproductive toxin. The U.S. Department of Health and Human Services (DHHS) has determined that lead and lead compounds are reasonably anticipated to be human carcinogens, and the U.S. Environmental Protection Agency (EPA) has determined that lead is a probable human carcinogen. Furthermore, a recently published study of the general, U.S. adult population reports increases in both cardiovascular deaths and deaths from all causes at BLLs substantially lower than previously reported [i.e., an increase in mortality at BLLs >0.10 µimo1/L (≥2µg/dL)].

A number of jobs in the construction industry create high airborne levels of lead. These include bridge repainting and repair, lead remediation, remodeling and renovation of older housing and commercial buildings, preparation for repainting of residences and other structures, repairs of older plumbing, and other jobs. Exposures to employees in bridge repainting can be in the 1000's of µg/m,^{3} of lead, and paint preparation exposures can be in the 100's of µg/m,^{3} of lead. National Adult Blood Lead Epidemiology and Surveillance (ABLES) data and other studies show that some construction employees still have relatively high blood lead levels which may be indicative of disease. These data show that the standard has resulted in lower blood lead levels for construction employees. Although one study indicates that high airborne exposures did not lead to high blood lead levels for a group of residential painters, other studies indicate high blood lead levels in residential painters. No studies contradict Congress' conclusion that this standard is needed to protect construction employees.

The evidence indicates that the Lead in Construction standard has not had a negative economic impact on business, including small businesses, in virtually all sectors affected. The construction sector overall is growing in terms of profits, revenues and employment. Small businesses are retaining their share of the business. Bridge painting is generally paid for by governmental entities that usually require bidders to meet the OSHA standard. Larger projects need to meet EPA requirements requiring experienced contractors who follow OSHA requirements. Lead remediation projects follow HUD requirements which require compliance with the OSHA requirements. Renovation and remodeling of older buildings containing lead are usually big enough jobs so that the costs of following the OSHA standard are relatively small in comparison to total costs.

In addition to potential exposure to lead in bridge painting projects, lead paint is still used in some municipalities for traffic paints. However, studies have shown that exposures are minimal because of the nature of the equipment used. Substitutes are available and widely used through the United States; in fact, several jurisdictions prohibit the use of lead chromate paint. Therefore, OSHA expects the economic impact to be negligible.

Residential repainting presents a more complex picture. Lead paint was banned after 1978; therefore, the standard has no impact on painting new units or repainting units built after 1978. There is relatively little lead paint on units built from 1941 to 1978; for most repainting jobs on units built between 1941 and 1978, an initial assessment that lead exposures are low is all that would be required, and therefore, the costs are manageable for small painting contractors. For some units built before 1941 and a few built from 1941 to 1978 lead exposure levels were high during preparation for repainting. In these cases, the standard would impose costs to reduce the hazards to which the painters and their families were exposed. For larger and better quality jobs, the costs to comply with the standard are manageable for small painting contractors. However, for smaller, low quality jobs, a self-employed painter not covered by the standard could underbid a contractor who followed the standard, and for this limited category of jobs, there could be a negative economic impact.

On Jan. 10, 2006, EPA proposed regulations for all rental properties and owner-occupied housing containing children under 6 to protect the residents from lead exposure. The practical effect of those regulations will be to encourage the hiring of painting contractors who obey the OSHA standard, and therefore, those small painting contractors who comply with the OSHA Standard will then be more likely to be hired. Steps OSHA will be taking to further reduce economic impacts are discussed below.

The standard is not overly complex. It follows the format and principles of other OSHA health standards. However, OSHA will review its compliance assistance and guidance materials to determine the need for enhancements. OSHA also will review the adequacy of how these materials are disseminated and additional means for reaching affected populations.

The OSHA Lead in Construction standard does not conflict with other regulations. Both EPA and HUD have major regulations regarding lead, the EPA to reduce lead in the environment and HUD to reduce lead exposure in residences, especially to children. The OSHA and HUD regulations tend to be complementary. Following OSHA regulations will reduce lead dust in residences which both protects the painter or remodeller and the children who live in that unit. The relationship with EPA regulations is more complex. For example, EPA requires the use of enclosures on bridge painting to prevent the spread of lead to the environment. This tends to increase airborne exposures in the employee's breathing zone, making rigorous adherence to the OSHA standard crucial for protecting the employee.

Though the HUD and EPA regulations do not conflict with OSHA's standard, commenters made two suggestions which OSHA will seriously consider and discuss with EPA, HUD, and NIOSH. First, many of the commenters suggested that the agencies develop a joint training program which would cover the requirements of each of the agencies. Second, some commenters suggested that OSHA consider modifying its initial assessment monitoring to be more integrated with HUD and EPA approaches.

Several technological changes will make it easier to comply with the standard. The reduced use of lead in paint, piping, solder and elsewhere will in the long term reduce employee exposure to lead. Low-volume/high-velocity exhaust systems adapted to portable hand tools can increase their effectiveness and reduce their cost of operation. Small volumes of air at relatively high velocities are used to control dust. Portable trailers with showers and clean change facilities have become more available and cheaper to rent, reducing the likelihood that employees will contaminate ''clean areas'' of the project (including non-lead areas, and sanitary/eating/drinking facilities), themselves, and other employees, and reducing the chance that lead would be tracked home.

OSHA received a number of extensive comments which are summarized in Chapter 8. Commenters representing NIOSH, HUD, state EPAs, the Building and Construction Trades Division of the AFL–CIO, the New York State Occupational Health Clinic Network, and a number of public interest and environmental protection professional groups stressed the need for the standard, the studies demonstrating the negative health effects of lead, and the high levels that construction employees can be exposed to if they are not properly protected. They suggested ways that the standard should be strengthened and expressed how important it is that the OSHA, HUD, and EPA regulations all work together.

The National Association of Home Builders, U.S. Chamber of Commerce, and U.S. Small Business Administration suggested that OSHA have a rulemaking to reconsider the data and make the standard more cost-effective. Congress not only directed OSHA to issue the Lead in Construction standard, it also specified in considerable detail what should be included in this standard in response to lead poisoning of construction employees. Congress did not specifically direct OSHA to engage in further rulemaking like it did when it directed OSHA to issue the Hazardous Waste standard. The health studies and exposure information since the standard was issued do not indicate any less need for the standard, and the standard is consistent with other health standards. Therefore, a very large-scale, OSHA resource-intensive rulemaking for lead in construction, which would most likely result in a rule very similar to the rule we have now, does not appear to be a wise use of OSHA's limited rulemaking resources.

Many commenters made suggestions intended to make the standard more effective in protecting employees and more cost-effective. These include: issuing more extensive outreach and guidance materials, including materials in Spanish and other relevant languages; developing a joint training curriculum covering OSHA, HUD, and EPA requirements; developing a clearer initial assessment approach, to be better integrated with HUD and EPA requirements; reducing any duplication between regulations; and making the standard more cost-effective for small businesses, by encouraging the development of less costly ways to meet industrial hygiene requirements, so that lead will not contaminate the employees, clean areas of the project (including, for example, non-lead areas, sanitary/eating/drinking facilities, etc.) and reducing the chance that lead would be tracked home. OSHA will review these suggestions for possible implementation.

The Executive Order 12866 review of the Lead in Construction standard indicates that:

The Lead in Construction standard, mandated by statute, remains both justified and necessary to implement the statute's intent; that is, to reduce both lead exposures in construction employees and disease resulting from these lead exposures. The standard has reduced blood lead levels of exposed employees. Its retention is necessary to continue to achieve that goal because construction jobs still have high airborne lead exposures, and compliance data indicate that there are continuing violations of the standard. Therefore, the standard is consistent with EO 12866.

The standard is consistent with other OSHA standards. Also, it is not in conflict with and is generally consistent with EPA regulations to reduce environmental exposures and with HUD regulations to reduce lead exposures in children. Indeed, the OSHA standard is often complementary to those regulations. As discussed, OSHA will review initial assessment requirements to see if a more unified and cost-effective approach can be developed.

The standard is not inappropriately burdensome in the aggregate. The one narrow area discussed above where there may be some burden (i.e., house painters exposed to lead while performing small jobs) will be ameliorated by better outreach materials, better guidance on initial assessment, and the finalization of new EPA regulations.

The effectiveness of the Standard could be improved by making outreach materials available in Spanish and other relevant languages. Also, after consultation with EPA and HUD, OSHA will consider the development of unified training materials and exploring a more unified approach to initial assessment.

Conclusions and Recommendations

Conclusions

OSHA concludes that the Lead in Construction standard is necessary to protect construction employees from lead disease. Studies continue to demonstrate that elevated lead exposures result in disease and that some construction jobs involve high airborne lead exposures. The standard has resulted in reduced blood lead levels for construction employees.

The Lead in Construction standard is also consistent with the Presidential priority ''to eliminate childhood lead

poisoning in the United States as a major public health problem by the year 2010,'' because the standard ''also benefits the children of those workers who may have been placed at risk via take-home exposures (such as lead dust on work clothing).''

Recommendations

As a result of this look back review and the comments received from participants, OSHA is considering the following actions to improve the effectiveness of the standard and make it more cost-effective:

OSHA will review its compliance assistance materials to determine the need for updates. OSHA also will review the adequacy of how these materials are disseminated and additional means for reaching affected populations.

OSHA will consult with EPA and HUD to determine the value of a unified training curriculum and whether a course can be developed to meet the requirements of all three agencies. OSHA also will attempt to develop interpretations for its initial assessment requirements [29 CFR 1926.62(d)], in order to integrate them better with HUD and EPA requirements, reduce duplication, and make better use of historical data; these interpretations should help reduce costs and simplify the standard's requirements for small businesses.

Signed at Washington, DC, this 24th day of September, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–19096 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[Docket No. MS–021–FOR]

Mississippi Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of abandoned mine land reclamation plan.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving Mississippi's abandoned mine land reclamation plan (Mississippi Plan) submitted to us under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The purpose of the plan is to demonstrate the State's intent and capability to assume responsibility for administering the abandoned mine land reclamation (AML) program established by Title IV of SMCRA. As part of the plan, Mississippi submitted policies and procedures to be followed in conducting reclamation of abandoned coal mine lands in Mississippi. These policies and procedures, along with the State's AML statutes that we approved on August 25, 2006, constitute the complete Mississippi plan.

DATES: *Effective Date:* September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the AML Program and Mississippi's Plan
II. Submission of the Mississippi Plan Policies and Procedures
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the AML Program and Mississippi's Plan

The AML Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands. In order to assume this responsibility, the States or Indian Tribes must develop and submit to the Secretary of the Interior (Secretary) for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. The Federal regulations at 30 CFR part 884 specify the content requirements of the State reclamation plan and the criteria for plan approval. Under these regulations, the Director of the Office of Surface Mining Reclamation and Enforcement is required to review the plan and solicit and consider comments of other Federal agencies and the public. If the State plan is not approved, the State may submit a revised reclamation plan at any time. If the Secretary determines that a State has developed and submitted a program for the reclamation of abandoned mine lands and has the ability and necessary State legislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive authority to implement the provisions of the approved program. The Mississippi Plan can be approved if:

1. The public has been given adequate notice and opportunity to comment and the record does not reflect major unresolved controversies.

2. The views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies, and administrative structure to carry out the plan.

4. The plan meets all the requirements of our AML program provisions.

5. The State has an approved regulatory program.

6. The plan is in compliance with all applicable State and Federal laws and regulations.

Upon approval of the State reclamation plan, the State may submit to us on an annual basis an application for funds to be expended in that State on specific reclamation projects which are necessary to implement the State's reclamation plan as approved. Such annual requests are reviewed and approved by us in compliance with the requirements of 30 CFR Part 886.

By letter dated April 5, 2006 (Administrative Record No. MS–0402), Mississippi sent us its AML plan statutes. Mississippi revised and added statutes to the Mississippi Surface Coal Mining and Reclamation Law at Sections 53–9–3, 53–9–7, 53–9–89, 53–9–89(1)(c), 53–9–89(1)(c)(i) through (v), 53–9–101, 53–9–103, 53–9–105, 53–9–107, 53–9–109, 53–9–111, 53–9–113, 53–9–115, 53–9–117, 53–9–119, 53–9–121, 53–9–123. We approved Mississippi's revised and added statutes on August 25, 2006, thereby, granting partial approval of its AML plan (71 FR 50339).

Mississippi's current AML plan submission addresses the policies and procedures the State will follow in administering the Mississippi Plan.

II. Submission of the Mississippi Plan Policies and Procedures

By letter dated June 11, 2007 (Administrative Record Nos. MS–0417–01 through MS–0417–06), and at its own initiative, Mississippi sent us the proposed policies and procedures of the Mississippi Plan under SMCRA (30 U.S.C. 1201 *et seq.*).

We announced receipt of the submission in the July 24, 2007, **Federal Register** (72 FR 40266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the plan. The public comment period closed on August 23, 2007. Because no one requested a public hearing or meeting,

we did not hold one. We received comments from one Federal and one State agency.

III. OSM's Findings

1. In accordance with section 405 of SMCRA and the Federal regulations at 30 CFR 884.14, we find that Mississippi has submitted a plan for reclamation of abandoned mine lands and we have determined that:

(a) The public has been given adequate notice and opportunity to comment and the record does not reflect any unresolved controversies.

(b) The views of other Federal agencies having an interest in the plan have been solicited and considered. These agencies include the U.S. Forest Service, the U.S. Fish and Wild Life Services, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Advisory Council on Historic Preservation, the Bureau of Land Management, the National Park Service, the Natural Resources Conservation Service, and the Mine Safety and Health Administration.

(c) The Mississippi Department of Environmental Quality, Office of Geology has the legal authority, policies, and administrative structure to implement the plan.

(d) The Mississippi Plan meets all the requirements of 30 CFR Chapter VII, Subchapter R.

(e) Mississippi has an approved State regulatory program under Title V of SMCRA.

(g) The Mississippi Plan is in compliance with all applicable State and Federal laws and regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the Mississippi Plan, but did not receive any.

Federal Agency Comments

On July 6, 2007, under 30 CFR 884.14(a)(2), we requested comments from various Federal agencies with an actual or potential interest in the Mississippi Plan (Administrative Record No. MS–0417–10). We received a comment from the U.S. Forest Service stating that it had no comments (Administrative Record No. MS–0417–16). We also received a comment from the Mississippi Department of Archives and History stating that Mississippi's proposed reclamation plan will have no effect on cultural resources (Administrative Record No. MS–0417–17).

V. OSM's Decision

Based on the above findings, we approve the Mississippi Plan policies and procedures sent to us on June 11, 2007, and as revised on July 31, 2007. Furthermore, this approval, together with our approval of Mississippi's AML statutes on August 25, 2006 (71 FR 50339), constitute the final and full approval of the Mississippi Plan.

To implement this decision, we are amending the Federal regulations at 30 CFR part 924, which codify decisions concerning the Mississippi program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Mississippi program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Mississippi program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 2007.

Brent Wahlquist,

Director, Office of Surface Mining Reclamation and Enforcement.

■ For the reasons set out in the preamble, 30 CFR part 924 is amended as set forth below:

PART 924—MISSISSIPPI

■ 1. The authority citation for part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 924.20 is revised to read as follows:

§ 924.20 Approval of Mississippi abandoned mine land reclamation plans.

The Mississippi abandoned mine land reclamation plan as submitted on April 5, 2006, and June 11, 2007, and as revised is approved. Copies of the approved plan are available at:

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209

Mississippi Department of Environmental Quality, Office of Geology, 2380 Highway 80 West, Jackson, Mississippi 39289–1307

[FR Doc. E7–19147 Filed 9–26–07; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2007–27373]

RIN 1625–AA08

Regattas and Marine Parades; Great Lake Annual Marine Events.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending special local regulations for annual regattas and marine parades in the Captain of the Port Lake Michigan zone. This rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This rule will establish restrictions upon, and control the movement of, vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

DATES: This rule is effective October 29, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2007–27373 and are available for inspection or copying at the Docket Management Facility at the U.S. Department of Transportation:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

(3) *Fax:* (202) 493–2251.

(4) *Delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; (414) 747–7154. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2007, we published a notice of proposed rule making (NPRM) entitled Regattas and Marine Parades; Great Lake Annual Marine Events in the **Federal Register** (72 FR 17062). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

This rule will remove the specific entries from table 1 found in 33 CFR 100.901, Great Lakes annual marine events that apply to regattas and marines parades in the Captain of the Port Lake Michigan zone and list each regatta or marine parade as a subpart. This rule will also add several regattas and marine parades not previously listed in 33 CFR Part 100 and remove several events that no longer occur annually or are not regattas or marine parades.

This rule is necessary to ensure the safety of vessels and spectators from hazards associated with regattas and marine parades. Based on accidents that have occurred in other Captain of the Port zones, the Captain of the Port Lake

Michigan has determined that regattas and marine parades pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, and alcohol use could easily result in serious injuries or fatalities. Restricting and controlling vessel movement around the regattas and marine parades will help ensure the safety of persons and property at these events, and help minimize the associated risks.

Discussion of Comments and Changes

No comments were received regarding this rule.

Regulatory Evaluation

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

The Coast Guard's use of these special local regulations will be periodic, of short duration, and designed to minimize the impact on navigable waters. These special local regulations will only be enforced immediately before, during, and immediately after the time the marine events occur. Furthermore, these special local regulations have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the special local regulations. The Coast Guard expects insignificant adverse impact to mariners from the activation of these special local regulations.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated in special local regulations in this rule during the dates and times the special local regulations are being enforced.

These special local regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. The special local regulations in this rule would be in effect for short periods of time and only once per year. The special local regulations have been designed to allow traffic to pass safely around the zone whenever possible, and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

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

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

§ 100.901 [Amended]

■ 2. Amend § 100.901 Table 1 as follows:

■ a. Under entry for ''Sector Sault Ste. Marie, MI'' remove the entries: National Cherry Festival Blue Angels Air Demonstration and Venetian Festival Yacht Parade;

■ b. Remove the entry for ''Field Office Grand Haven, MI''; and

■ c. Remove the entry ''Group Sector Lake Michigan, WI''.

■ 3. Add § 100.903 to read as follows:

§ 100.903 Harborfest Dragon Boat Race; South Haven, MI.

(a) Regulated Area. A regulated area is established to include all waters of the Black River from approximately 250 yards upriver to 200 yards downriver of the entrance to the South Haven Municipal Marina within the following coordinates starting at 42°24′13.6″ N, 086°16′41″ W; then southeast 42°24′12.6″ N, 086°16′40″ W; then northeast to 42°24′19.2″ N, 086°16′26.5″ W; then northwest to 42°24′20.22″ N, 086°16′27.4″ W; then back to point of origin. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third Saturday of June, from 7 a.m. until 7 p.m.

■ 4. Add § 100.904 to read as follows:

§ 100.904 Celebrate Americafest, Green Bay, WI.

(a) Regulated Area. A regulated area is established to include all waters of the Fox River located between the Main Street Bridge at position 44°31′06″ N, 088°0′56″ W and the Walnut Street Bridge at position 44°30′25″ N, 088°01′06″ W. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the first weekend of July; 2 p.m. to 5 p.m.

■ 5. Add § 100.905 to read as follows:

§ 100.905 Door County Triathlon; Door County, WI.

(a) Regulated Area. A regulated area is established to include all waters of Green Bay within a 2000-yard radius from the northwestern point of Horseshoe Point near Frank E. Murphy County Park in position 45°00′46″ N, 087°20′30″ W. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective July 22, 2007, July 26 and 27, 2008, July 25 and 26, 2009, July 24 and 25, 2010, July 23 and 24, 2011; from 7 a.m. to 10 a.m.

■ 6. Add § 100.906 to read as follows:

§ 100.906 Grand Haven Coast Guard Festival Waterski Show, Grand Haven, MI.

(a) Regulated Area. All waters of the Grand River at Waterfront Stadium from approximately 350 yards upriver to 150 yards downriver of Grand River Lighted Buoy 3A (Lightlist number 19000) within the following coordinates: 43°04′ N, 086°14′12″ W; then east to 43°03′56″ N, 086°14′4″ W; then south to 43°03′45″ N, 086°14′10″ W; then west to 43°03′48″ N, 086°14′17″ W; then back to the point of origin. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually August 1st; 7 p.m. to 9 p.m.

■ 7. Add § 100.907 to read as follows:

§ 100.907 Milwaukee River Challenge; Milwaukee, WI.

(a) Regulated Area. All waters of the Milwaukee River from the junction with the Menomonee River at position 43°01′55″ N, 087°54′40″ W to the Humboldt Avenue Bridge at position 43°03′25″ N, 087°53′53″ W. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third or fourth Saturday of September; from 9 a.m. to 5 p.m. A Local Notice to Mariners will be published and a Broadcast Notice to Mariners will announce which date is being enforced.

■ 8. Add § 100.908 to read as follows:

§ 100.908 Charlevoix Venetian Night Boat Parade; Charlevoix, MI.

(a) Regulated Area. All waters of Round Lake, Charlevoix, MI.

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the fourth Saturday of July; from 9 p.m. to 11 p.m.

■ 9. Add § 100.909 to read as follows:

§ 100.909 Chinatown Chamber of Commerce Dragon Boat Race; Chicago, IL.

(a) Regulated Area. All waters of the South Branch of the Chicago River from the 18th Street Bridge at position 41°51′28″ N, 087°38′06″ W to the Amtrak Bridge at position 41°51′20″ N, 087°38′13″ W. (DATUM: NAD 83).

(b) Special Local Regulations. The regulations of § 100.901 apply. No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) Effective Date. These regulations are effective annually on the third Friday of July from 11:30 a.m. to 5 p.m. and on the third Saturday of July from 9 a.m. to 5 p.m.

Dated: September 10, 2007.

John E. Crowley, Jr.,

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

[FR Doc. E7–18933 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–07–091]

RIN 1625–AA09

Drawbridge Operation Regulations; Quinnipiac River, New Haven, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operating regulations governing the operation of the Ferry Street Bridge, across the Quinnipiac River, mile 0.7, at New Haven, Connecticut. This temporary final rule allows the bridge owner to keep one of the two moveable bascule spans in the closed position at all times from September 28, 2007 through April 30, 2008. This rule is necessary to facilitate scheduled bridge maintenance.

DATES: This temporary rule is effective from September 28, 2007 through April 30, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–07–091) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 21, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Quinnipiac River, Connecticut, in the **Federal Register** (72 FR 46586). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The bridge repairs scheduled to begin on September 28, 2007, are necessary repairs that must be performed with all due speed to assure the continued safe and reliable operation of the bridge. Any delay in making this rule effective would not be in the best interest of public safety and the marine interests that use the Quinnipiac River.

The recreational vessels that normally use this waterway are small enough in size that they can either pass under the spans without a bridge opening or safely pass through the bridge with a single span opening.

Background and Purpose

The Street Bridge, across the Quinnipiac River, mile 0.7, at New Haven, Connecticut, has a vertical clearance in the closed position of 25 feet at mean high water and 31 feet at mean low water. The existing regulations are listed at 33 CFR 117.213.

In early 2007, the Connecticut Department of Transportation requested a temporary deviation to facilitate scheduled structural repairs and bridge painting at the Ferry Street Bridge at New Haven, Connecticut. In order to perform the structural repairs, one bascule bridge span had to remain in the closed position while the other span could remain in the full open position at all times for the passage of vessel traffic.

As a result of the above request, the Coast Guard published a temporary deviation from the drawbridge operation regulations in the **Federal Register** (72 FR 18884), on April 16, 2007, in effect from April 16, 2007 through September 27, 2007.

On June 22, 2007, the Coast Guard was notified that the scheduled repairs authorized under the temporary deviation listed above would not be completed by the end of the effective period scheduled to end on September 27, 2007.

As a result of the above information, Connecticut Department of Transportation requested a temporary regulation to allow the repair work to continue at the bridge through April 30, 2008, in order to complete the remaining work.

Under this temporary final rule, in effect from September 28, 2007 through April 30, 2008, the Ferry Street Bridge across the Quinnipiac River, mile 0.7, at New Haven, Connecticut, will keep one of the two bascule bridge spans in the closed position at all times while keeping the second bascule span in the fully open position for the passage of vessel traffic at all times.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this temporary final rule.

Regulatory Evaluation

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single moveable span which is sufficient for the present needs of navigation.

Small Entities

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

dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single moveable span which is sufficient for the present needs of navigation.

Assistance for Small Entities

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

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation considering that it relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e), of the instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. From September 28, 2007 through April 30, 2008, § 117.213 is amended by suspending paragraph (a) and adding a temporary paragraph (g) to read as follows:

§ 117.213 Connecticut River.

* * * * *

(g) The draws shall open on signal; except as follows:

(1) From 7:30 a.m. to 8:30 a.m., noon to 12:15 p.m., 12:45 p.m. to 1 p.m., and

4:45 p.m. to 5:45 p.m., the draws need not be opened.

(2) The draw of the Ferry Street Bridge, mile 0.7, at New Haven, shall maintain one of the two moveable bascule bridge spans in the full open position at all times for the passage of vessel traffic. The second moveable bascule bridge span may remain in the closed position at all times.

(3) From 11 p.m. to 7 a.m., the draw of the Grand Avenue Bridge, Quinnipiac River, shall open on signal if at least one hour notice is given to the tender at the Ferry Street Bridge. In the event that the tender is at the Chapel Street Bridge, a delay of up to an additional hour may be expected.

(4) From 9 p.m. to 5 a.m., the draw of the Chapel Street Bridge, Mill River, shall open on signal if at least one hour notice is given to the tender at Ferry Street Bridge. In the event the tender is at the Grand Avenue Bridge, a delay of up to an additional hour may be expected.

Dated: September 21, 2007.

Timothy V. Skuby,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. E7–19109 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–016]

RIN 1625–AA00

Safety Zone; Marine City Maritime Festival Fireworks, St. Clair River, Marine City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Clair River, Marine City, Michigan. This safety zone is intended to restrict vessels from portions of the St. Clair River during the Marine City Maritime Festival Fireworks Display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9:30 p.m. on September 22, 2007 to 11:30 p.m. on September 23, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–07–016 and are available for inspection or copying at: U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 15, 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Marine City Maritime Festival Fireworks, St. Clair River, Marine City, MI, in the **Federal Register** (72 FR 33184) and received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazards of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Comments

There were no comments received with regards to this rule.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Marine City Maritime Festival Fireworks display. The fireworks display will occur between 9:30 p.m. and 11:30 p.m., September 22, 2007. If this event does not take place at the scheduled time and date due to adverse weather, the fireworks display will occur between 9:30 p.m. and 11:30 p.m., September 23, 2007.

The safety zone for the fireworks will encompass all waters of the St. Clair River enclosed by a line connecting the following points: 42–42–51.5N/082–29–13.97W; 42–43–07.55N/082–29–08.12W; 42–43–04.93N/082–28–54.11W; 42–42–48.58N/082–29–00.81W. This safety zone is located in the St. Clair River, east of the lighthouse in Marine City, MI, near the center of the river. (DATUM: NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

This determination is based on the minimal time that vessels will be restricted from the safety zone and the safety zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the safety zone's activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River from 9:30 p.m. to 11:30 p.m. on September 22, 2007. If this event does not take place at the scheduled time and date due to adverse weather, this rule will affect the owners or operators of vessels intending to transit or anchor in a portion of the St. Clair River from 9:30 p.m. to 11:30 p.m. on September 23, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only 2 hours; vessel traffic can pass safely around the safety zone; and in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. There were no comments received for this section.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble. There were no comments received for this section.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. There were no comments received for this section.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. There were no comments received for this section.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. There were no comments received for this section.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these special local regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**. There were no comments received for this section.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. There were no comments received for this section.

Technical Standards

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

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. There were no comments received for this section.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction.

Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–016 to read as follows:

§ 165.T09–016 Safety Zone; Marine City Maritime Festival Fireworks, St. Clair River, Marine City, MI.

(a) *Location*. The following area is a temporary safety zone: All waters of the St. Clair River, off of Marine City, MI, bounded by straight lines connecting the following points: 42–42–51.5N/082–29–13.97W; 42–43–07.55N/082–29–08.12W; 42–43–04.93N/082–28–54.11W; 42–42–48.58N/082–29–00.81W (NAD 83). This safety zone is located in the St. Clair River, east of the lighthouse in Marine City, MI, near the center of the river and encompasses an 840-foot diameter around the fireworks barge location.

(b) *Enforcement Period*. This rule will be enforced from 9:30 p.m. to 11:30 p.m. on September 22, 2007. In the event that the fireworks are cancelled due to inclement weather on September 22, then the rule will be enforced from 9:30 p.m. to 11:30 p.m. on September 23, 2007.

(c) *Regulations*. (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: September 5, 2007.

P.W. Brennan,

Captain, U.S. Coast Guard, Commander, Coast Guard Sector Detroit.

[FR Doc. E7–19061 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–119]

RIN 1625–AA00

Safety Zone; Schoenith Family Foundation Fireworks, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Detroit River, Detroit, MI. This safety zone is intended to restrict vessels from a portion of the Detroit River during the September 23, 2007 Schoenith Family Foundation Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 7:30 p.m. to 9 p.m. on September 23, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are parts of docket CGD09–07–119 and are available for inspection or copying at U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI 48207; (313)-568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. This temporary safety zone should have minimal negative impact on the public and navigation because it will be enforced for only a one and one half hour period on one day. In addition, the area restricted by the safety zone is minimal, allowing vessels to transit around the safety zone to pass.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on accidents that have occurred in other Captain of the Port zones, and the explosive hazards of fireworks, the Captain of the Port Detroit has determined that fireworks launches proximate to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Schoenith Family Foundation Fireworks. The fireworks display will occur between 8 p.m. and 8:30 p.m. on September 23, 2007.

The safety zone for the fireworks will encompass all waters of the Detroit River within a 210' radius of the fireworks launch site located at position 42°21.2′ N; 82°58.4′ W. (DATUM: NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Detroit River near Detroit, MI between 7:30 p.m. and 9 p.m. on September 23, 2007.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only one and one half hours for one event; vessel traffic can safely pass outside the safety zone during the event; and in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

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

A final ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–119 is added as follows:

§ 165.T09–119 Safety zone; Schoenith Family Foundation Fireworks, Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: All waters of the Detroit River, Detroit, MI, within a two hundred ten foot radius of the fireworks launch site located at position 42°21.2′ N; 82°58.4′ W. (DATUM: NAD 83). This position is located in the Detroit River directly in front of the Roostertail restaurant at 100 Marquette in Detroit, MI.

(b) *Enforcement period.* This regulation will be enforced from 7:30 p.m. to 9 p.m. on September 23, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: September 5, 2007.

P.W. Brennan,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E7–19059 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD40

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

AGENCY: National Park Service, Interior.

ACTION: Final rule.

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

DATES: This regulation becomes effective October 29, 2007.

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

SUPPLEMENTARY INFORMATION:

Background

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

Parking spaces on parkland are limited in number and are intended to provide visitors with safe, convenient, and legal areas to park while they visit the parks. In urbanized areas of parks in the National Capital Region, violation notices have been dismissed because the operator has not been identified. This is a concern as the U.S. Park Police have documented instances of operators repeatedly parking illegally without consequence, which denies others the ability to legally use the parking places.

Description of Rulemaking

In response to this problem, the National Park Service is amending the

National Capital Region special regulations to establish an enforcement process for parking violation notices issued under 36 CFR 4.12. The rule:

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

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

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

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

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

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

Notice of Proposed Rulemaking

On March 21, 2007 the National Park Service published a Notice of Proposed Rulemaking (NPRM) governing parking violations in the National Capital Region (72 FR 13224). The comment period was open for 60 days. No public comments were received.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

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

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary purpose of this rule is to establish consistency between the parking laws already existing in the local jurisdictions, and the parking laws in adjoining parklands administered by the National Park Service in the National Capital Region. This rule will not change the ability of United States based enterprises to compete in any way.

Unfunded Mandates Reform Act

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

Takings (Executive Order 12630)

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

Federalism (Executive Order 13132)

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

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

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

National Environmental Policy Act

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

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

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

(c) Conflict with adjacent ownerships or land uses.

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

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

Clarity of Rule

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

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

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

List of Subjects in 36 CFR Part 7

District of Columbia, National parks.

■ For reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

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

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

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

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

§ 7.96 National Capital Region.

* * * * *

(f) * * *

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

* * * * *

Dated: September 7, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–18940 Filed 9–26–07; 8:45 am]

BILLING CODE 4312–JK–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0544; FRL–8470–7]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request from Ohio to amend its State Implementation Plan (SIP) emission statement reporting regulation. The request to revise Ohio's SIP was submitted by the Division of Air Pollution Control on May 1, 2006, and supplemented on May 22, 2007. Ohio held a public hearing on these revisions on September 8, 2005. The SIP revision concurrently rescinds and revises portions of Ohio Administrative Code Chapter 3745–24 to be consistent with the Clean Air Act (CAA) emission statement program reporting requirements for stationary sources. The revision makes the rule more general to apply to all counties designated nonattainment for ozone, and not to a specific list of counties. The rationale for approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective November 26, 2007, unless EPA receives adverse comments by October 29, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0544, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0544. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information
II. What Is Required by the Clean Air Act and How Does It Apply to Ohio?
III. What Change Is Ohio Requesting?
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

This action applies to all stationary sources located in areas designated nonattainment for ozone.

II. What Is Required by the Clean Air Act and How Does It Apply to Ohio?

Emission Statements (Annual Reporting)

Section 182(a)(3)(B) of the CAA requires each state to submit revisions to its SIP to require that the owner or operator of each stationary source of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), in areas designated nonattainment of the National Ambient Air Quality Standard (NAAQS) for ozone, prepare and submit emission statements each year showing actual emissions of those pollutants. This requirement applies to all ozone nonattainment areas covered under subpart 2 of part D of Title I of the Act, regardless of classification (marginal, moderate, etc.) In such nonattainment areas, facilities which emit VOCs or NO_X (on a plant-wide basis) in amounts of 25 tons per year or more into the ambient air must submit an emission statement to the State.

On April 30, 2004, EPA published its Phase 1 rule to implement the 8-hour ozone NAAQS (69 FR 23951). On this same date, EPA set forth nonattainment and attainment designations for the 8-hour ozone NAAQS (69 FR 23858).

EPA has determined that the emission statement program requirements previously applicable for the 1-hour ozone NAAQS apply in the same manner for the 8-hour NAAQS. See May 3, 2006, memorandum from Thomas C. Curran, Director, Air Quality Assessment Division, to Regional Air Division Directors, entitled ''Emission Statement Requirement Under 8-hour Ozone NAAQS implementation.'' Thus,

the requirement for emission statements under section 182(a)(3)(B) applies to newly-designated subpart 2 nonattainment areas. Also, those areas designated nonattainment for ozone under the 1-hour ozone NAAQS and then designated nonattainment under the 8-hour ozone NAAQS, regardless of classification under subpart 2 of part D of Title I of the Act, remain subject to the emission statement requirement of section 182(a)(3)(B).

Ohio's Current SIP

On October 13, 1994, EPA approved several rules in Chapter 3745–24 of the Ohio Administrative Code (OAC) as meeting the ''Emission Statement'' program requirements of section 182(a)(3)(B) of the CAA. Chapter 3745–24 of the OAC included rules 3745–24–01 to 3745–24–04.

Rule 3745–24–01 (Definitions)

The first section of the rule, 3745–24–01, is entitled ''Definitions.'' Unless otherwise provided in this rule, definitions in rule 3745–24–01 apply.

Rule 3745–24–02 (Applicability)

The second section of the rule, 3745–24–02, which is entitled ''Applicability,'' states that the requirements of this chapter apply to stationary sources, specifically, located in the Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties) area designated ozone nonattainment. Facilities emitting 25 tons per year VOCs or NO_X (on a plant-wide basis) during any calendar year are required to submit an emission statement. This requirement started with calendar year 1992. Sources in counties redesignated to attainment for ozone are exempt from reporting.

Under 3745–24–02, stationary sources located in a total of 24 counties designated nonattainment for ozone covered under subpart 2 of part D of Title I of the Act were required to submit emission statements. See 59 FR 51863. Subsequently, EPA redesignated a number of counties subject to the emission statement program to attainment for the 1-hour ozone standard. See, e.g., 60 FR 22289 (Dayton-Springfield Area), 60 FR 39115 (Toledo Area), 61 FR 3319 (Canton, and Youngstown-Warren-Sharon Areas), 61 FR 3591, and 61 FR 20458 (Cleveland-Akron-Lorain Area). On March 23, 1998, EPA approved a revision to rule 3745–24–02 to reflect these changes. See 63 FR 13787. As a result, the emission statement program requirements applied to stationary sources only in the Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties) ozone nonattainment area.

Rule 3745–24–03 (Deadlines for the Submission of the Emissions Statements)

Section 3745–24–03, which is entitled ''Deadlines for the submission of the emissions statements,'' requires that the 1992 emissions statements be submitted by July 1, 1994. For calendar year 1993 and beyond, emission statements are due by November 15th of the following calendar year.

Rule 3745–24–04 (Emission Statement Requirements)

Rule 3745–24–04, entitled ''Emission statement requirements,'' requires affected owners that meet the applicability requirements specified in rule 3745–24–02 to submit emissions statements to Ohio EPA by the required deadline specified in rule 3745–24–03, and certification of accuracy of the statement. The certification of accuracy of the information must be submitted by an appropriate facility official.

III. What Change Is Ohio Requesting?

Ohio is requesting that EPA approve several revisions to its existing emission reporting rules contained in Chapter 3745–24 of the OAC to be consistent with the emission statement program requirements for stationary sources in section 182(a)(3)(B) of the CAA. Because the revisions to OAC 3745–24 are necessary, and change or eliminate over half of each rule, to satisfy the requirements of section 119.032 of the Ohio Revised Code (5-Year Rule Review), Ohio EPA rescinded OAC rule 3745–24–01 (Definitions), 3745–24–02 (Applicability), and 3745–24–03 (Deadline for the submission of the emission statements), and promulgated them as new rules. The rule revisions are as follows:

3745–24–01 (Definitions)

In section 3745–24–01 (Definitions), Ohio EPA is requesting approval of the removal of several definitions. Certain definitions are provided in the instructions accompanying the emission statement form to be filed as prescribed by the Director of Ohio EPA. Thus, the revision to this rule would allow enough flexibility for the emission statement form to change so long as the data needed is collected. The emission statement requirements are outlined in OAC rule 3745–24–04.

3745–24–02 (Applicability)

In section 3745–24–02 (Applicability), Ohio EPA is requesting approval to make the applicability of the rule more general, rather than area specific, to include any county designated nonattainment of the NAAQS for ozone. Currently, the rule specifies that the emission statement requirements apply to stationary sources located in the Cincinnati-Hamilton (Butler, Clermont, Hamilton and Warren Counties) ozone nonattainment area. The revision would provide Ohio EPA more flexibility to apply the emission statement program to develop a complete and accurate emission inventory for air quality planning purposes at the State, and also meet EPA's emission reporting requirements for all counties designated nonattainment of the NAAQS for ozone.

3745–24–03 (Deadlines for the Submission of the Emissions Statements)

In section 3745–24–03 (Deadlines for the submission of the emissions statements), Ohio EPA is requesting approval to change the due date for the emission statements to be the same as for Ohio's emission fee report, April 15, following the year covered by the reporting period. Thus, to align the reporting due dates for both the emission statement and fee emission, the rule revision would streamline reporting of emissions and provide more timely reporting than the previous SIP-approved rules.

IV. What Action Is EPA Taking?

EPA is approving the State's request that concurrently rescinds and revises portions of the Ohio Administrative Code Chapter 3745–24 [rule 3745–24–01 (Definitions), 3745–24–02 (Applicability), and 3745–24–03 (Deadline for the submission of the emission statements)] to be consistent with the CAA emission statement program reporting requirements for stationary sources. EPA has determined that the Ohio emission statement program contains the necessary applicability, and reporting provisions to meet the requirements for an emission statement program as part of the SIP. The revision makes the rule more general to apply to all counties designated nonattainment for ozone, and not to a specific list of counties.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 26, 2007 without further notice unless we receive relevant

adverse written comments by October 29, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 26, 2007.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' 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).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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. 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.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 26, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(139) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(139) On May 1, 2006, and supplemented on May 22, 2007, Ohio submitted final adopted state implementation plan revisions which concurrently rescinds and revises portions of the Ohio Administrative Code Chapter 3745–24 to be consistent with the Clean Air Act emission

statement program reporting requirements for stationary sources. This revision includes amendments to the emission reporting regulation approved on October 13, 1994, and March 23, 1998, codified in paragraphs (c)(100) and (c)(117) of this section. The revision makes the rule more general to apply to all counties designated nonattainment for ozone, and not to a specific list of counties.

(i) *Incorporation by reference.* The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC Rule Chapter 3745–24–01: ''Definitions'', effective on December 16, 2005.

(B) OAC Rule Chapter 3745–24–02: ''Applicability'', effective on December 16, 2005.

(C) OAC Rule Chapter 3745–24–03: ''Deadlines for the submission of the emission statements'', effective on December 16, 2005.

[FR Doc. E7–18894 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[WT Docket No. 02–55, ET Docket No. 00–258; ET Docket No. 95–18; RM–9498; RM–10024—FCC 07–102]

Improving Public Safety Communications in the 800 MHz Band, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of July 20, 2007 (72 FR 39756), a summary of the Commission's Second Memorandum Opinion and Order resolving various petitions for reconsideration in the 800 MHz rebanding proceeding, WT Docket 02–55. The summary contained inconsistent language concerning the deadline for the submission of the proposed Puerto Rico band plan that the 800 MHz Transition Administrator must file with the Commission. This document corrects that inconsistency.

DATES: Effective on August 20, 2007.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Public Safety and Homeland Security Bureau, (202) 418–0848, or via the Internet at *John.Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of July 20, 2007, (72 FR 39756). That document summarized the Second Memorandum Opinion and Order in WT Docket No. 02–55, adopted on May 24, 2007, and released on May 30, 2007. The Second Memorandum Opinion and Order included inconsistent language regarding the deadline for the submission of the Puerto Rico band plan that the 800 MHz Transition Administrator must file with the Commission. This inconsistency was reflected in the summary of the order published in the **Federal Register** on July 20, 2007. On July 26, 2007, the Commission published an erratum correcting the inconsistency, and confirming that the deadline for submission of the Puerto Rico band plan is 60 days from the effective date of the Second Memorandum Opinion and Order. Today's document corrects the inconsistency contained in the **Federal Register** summary of the Second Memorandum Opinion and Order published on July 20, 2007. In rule FR Doc. E7–14099 published on July 20, 2007 (72 FR 39756) make the following correction on page 39758, in the first column paragraph number 8, fifth sentence correct to read as follows:

Accordingly we provide the 800 MHz Transition Administrator (TA) with specific criteria and direct the TA to propose an alternative band plan within 60 days of the effective date of this order, including, if necessary, a pro rata distribution of ESMR spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18868 Filed 9–26–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2007–29271]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal motor vehicle safety standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is contained in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2006, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.–certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made ''on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].'' The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notice of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR Part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually

revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid.*

Regulatory Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements but to provide a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. The agency believes that this impact is minimal and does not warrant the preparation of a regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act. The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

D. Executive Order 13132, Federalism

E.O. 13132 requires NHTSA 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.'' E.O. 13132 defines the term ''Policies that have federalism implications'' 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.'' Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the regulation.

This rule will have no direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule will not result in additional expenditures by State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not impose any new collection of information requirements for which a 5 CFR Part 1320 clearance must be obtained. DOT previously submitted to OMB and OMB approved the collection of information associated with the vehicle importation program in OMB Clearance No. 2127–0002.

G. Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule has any retroactive effect. We conclude that it will not have such an effect.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you wish to do so, please comment on the extent to which this final rule effectively uses plain language principles.

I. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives

or activities determined by the agencies and departments.'' This rule does not require the use of any technical standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

K. Executive Order 13045, Economically Significant Rules Disproportionately Affecting Children

This rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under E.O. 12866, and does not concern an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

L. Notice and Comment

NHTSA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this action does not impose any regulatory requirements. This rule merely revises the list of vehicles not originally manufactured to conform to the FMVSS that NHTSA has decided to be eligible for importation into the United States since the last list was published in September, 2006.

In addition, so that the list of vehicles for which import eligibility decisions have been made may be included in the next edition of 49 CFR Parts 400 to 599, which is due for revision on October 1, 2007, good cause exists to dispense with the requirement in 5 U.S.C. 553(d) for the effective date of the rule to be delayed for at least 30 days following its publication.

List of Subjects in 49 CFR Part 593

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 593 of Title 49 of the Code of Federal Regulations, *Determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation,* is amended as follows:

PART 593—[AMENDED]

■ 1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

■ 2. Appendix A to part 593 is revised to read as follows:

Appendix A to Part 593—List of Vehicles Determined to be Eligible for Importation.

(a) Each vehicle on the following list is preceded by a vehicle eligibility number. The importer of a vehicle admissible under any eligibility decision must enter that number on the HS–7 Declaration Form accompanying entry to indicate that the vehicle is eligible for importation.

(1) ''VSA'' eligibility numbers are assigned to all vehicles that are decided to be eligible for importation on the initiative of the Administrator under Sec. 593.8.

(2) ''VSP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(1), which establishes that a substantially similar U.S.-certified vehicle exists.

(3) ''VCP'' eligibility numbers are assigned to vehicles that are decided to be eligible under Sec. 593.7(f), based on a petition from a manufacturer or registered importer submitted under Sec. 593.5(a)(2), which establishes that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

(b) Vehicles for which eligibility decisions have been made are listed alphabetically, first by make and then by model.

(c) All hyphens used in the Model Year column mean ''through'' (for example, ''1982–1989'' means ''1982 through 1989'').

(d) The initials ''MC'' used in the Manufacturer column mean ''Motorcycle.''

(e) The initials ''SWB'' used in the Model Type column mean ''Short Wheel Base.''

(f) The initials ''LWB'' used in the Model Type column mean ''Long Wheel Base.''

(g) For vehicles with a European country of origin, the term ''Model Year'' ordinarily means calendar year in which the vehicle was produced.

(h) All vehicles are left-hand-drive (LHD) vehicles unless noted as RHD. The initials ''RHD'' used in the Model Type column mean ''Right-Hand-Drive.''

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS

VSA–80 ...	(a) All passenger cars less than 25 years old that were manufactured before September 1, 1989; (b) All passenger cars manufactured on or after September 1, 1989, and before September 1, 1996, that, as originally manufactured, are equipped with an automatic restraint system that complies with Federal Motor Vehicle Safety Standard (FMVSS) No. 208; (c) All passenger cars manufactured on or after September 1, 1996, and before September 1, 2002, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS No. 214; (d) All passenger cars manufactured on or after September 1, 2002, and before September 1, 2007, that, as originally manufactured, are equipped with an automatic restraint system that complies with FMVSS No. 208, and that comply with FMVSS Nos. 201, 214, 225, and 401; (e) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401; (f) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401; (g) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401.
VSA–81 ...	(a) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that are less than 25 years old and that were manufactured before September 1, 1991; (b) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on and after September 1, 1991, and before September 1, 1993 and that, as originally manufactured, comply with FMVSS Nos. 202 and 208; (c) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1993, and before September 1, 1998, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, and 216; (d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 1998, and before September 1, 2002, and that, as originally manufactured, comply with FMVSS Nos. 202, 208, 214, and 216;

VEHICLES CERTIFIED BY THEIR ORIGINAL MANUFACTURER AS COMPLYING WITH ALL APPLICABLE CANADIAN MOTOR VEHICLE SAFETY STANDARDS—Continued

	(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less that were manufactured on or after September 1, 2002, and before September 1, 2007, and that, as originally manufactured, comply with FMVSS Nos. 201, 202, 208, 214, and 216, and, insofar as it is applicable, with FMVSS No. 225; (f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (g) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; (h) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.
VSA–82 ...	All multipurpose passenger vehicles, trucks, and buses with a GVWR greater than 4,536 kg (10,000 lb) that are less than 25 years old.
VSA–83 ...	All trailers and motorcycles less than 25 years old.

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Acura	Legend		1988	51		
Acura	Legend		1989	77		
Acura	Legend		1990–1992	305		
Alfa Romeo	164		1989	196		
Alfa Romeo	164		1991	76		
Alfa Romeo	164		1994	156		
Alfa Romeo	GTV		1985	124		
Alfa Romeo	Spider		1987	70		
Aston Martin	Vanquish		2002–2004	430		
Audi	80		1988–1989	223		
Audi	100		1989	93		
Audi	100		1993	244		
Audi	100		1990–1992	317		
Audi	200 Quattro		1985	160		
Audi	A4		1996–2000	352		
Audi	A4, RS4, S4	8D	2000–2001	400		
Audi	A6		1998–1999	332		
Audi	A8		2000	424		
Audi	A8		1997–2000	337		
Audi	A8 Avant Quattro		1996	238		
Audi	RS6 & RS Avant		2003	443		
Audi	S6		1996	428		
Audi	S8		2000	424		
Audi	TT		2000–2001	364		
Bentley	Arnage (manufactured 1/1/01–12/31/01)		2001	473		
Bentley	Azure (LHD & RHD)		1998	485		
Bimota (MC)	DB4		2000	397		
Bimota (MC)	SB8		1999–2000	397		
BMW	316		1986	25		
BMW	316		1982		66	
BMW	3 Series		1998	462		
BMW	3 Series		1999	379		
BMW	3 Series		2000	356		
BMW	3 Series		2001	379		
BMW	3 Series		1995–1997	248		
BMW	3 Series		2003–2004	487		
BMW	318i, 318iA		1983		23	
BMW	318i, 318iA		1986		23	
BMW	318i, 318iA		1982		23	
BMW	318i, 318iA		1984–1985		23	
BMW	318i, 318iA		1987–1989		23	
BMW	320, 320i, 320iA		1984–1985		16	
BMW	320i		1990–1991	283		
BMW	320i & 320iA		1982–1983		16	
BMW	323i		1982–1985		67	
BMW	325, 325i, 325iA, 325E		1985–1986		30	
BMW	325e, 325eA		1984–1987		24	
BMW	325i		1991	96		
BMW	325i		1992–1996	197		
BMW	325i, 325iA		1987–1989		30	
BMW	325iS, 325iSA		1987–1989		31	
BMW	325iX		1990	205		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
BMW	325iX, 325iXA		1988–1989		33	
BMW	5 Series		2000	345		
BMW	5 Series		1990–1995	194		
BMW	5 Series		1995–1997	249		
BMW	5 Series		1998–1999	314		
BMW	5 Series		2000–2002	414		
BMW	5 Series		2003–2004	450		
BMW	518i		1986	4		
BMW	520, 520i		1982–1983		68	
BMW	520iA		1989	9		
BMW	524tdA		1985–1986		26	
BMW	525, 525i		1982		69	
BMW	525i		1989	5		
BMW	528e, 528eA		1982–1988		21	
BMW	528i, 528iA		1982–1984		20	
BMW	533i, 533iA		1983–1984		22	
BMW	535i, 535iA		1985–1989		25	
BMW	633CSi, 630CSiA		1982–1984		18	
BMW	635, 635CSi, 635CSiA		1982–1984		27	
BMW	635CSi, 635CSiA		1985–1989		27	
BMW	7 Series		1992	232		
BMW	7 Series		1990–1991	299		
BMW	7 Series		1993–1994	299		
BMW	7 Series		1995–1999	313		
BMW	7 Series		1999–2001	366		
BMW	728, 728i		1982–1985		70	
BMW	728i		1986	14		
BMW	730iA		1988	6		
BMW	732i		1982–1984		72	
BMW	733i, 733iA		1982–1984		19	
BMW	735, 735i, 735iA		1982–1984		28	
BMW	735i, 735iA		1985–1989		28	
BMW	745i		1982–1986		73	
BMW	8 Series		1991–1995	361		
BMW	850 Series		1997	396		
BMW	850i		1990	10		
BMW	All other passenger car models except those in the M1 and Z1 series.		1982–1989		78	
BMW	L7		1986–1987		29	
BMW	M3		1988–1989		35	
BMW	M5		1988		34	
BMW	M6		1987–1988		32	
BMW	X5 (manufactured 1/1/03–12/31/04)		2003–2004	459		
BMW	Z3		1996–1998	260		
BMW	Z3 (European market)		1999	483		
BMW	Z8		2002	406		
BMW	Z8		2000–2001	350		
BMW (MC)	K1		1990–1993	228		
BMW (MC)	K100		1984–1992	285		
BMW (MC)	K1100, K1200		1993–1998	303		
BMW (MC)	K75		1996			36
BMW (MC)	K75S		1987–1995	229		
BMW (MC)	R1100		1994–1997	231		
BMW (MC)	R1100		1998–2001	368		
BMW (MC)	R1100RS		1994	177		
BMW (MC)	R1150GS		2000	453		
BMW (MC)	R1200C		1998–2001	359		
BMW (MC)	R80, R100		1986–1995	295		
Buell (MC)	All Models		1995–2002	399		
Cadillac	DeVille		1994–1999	300		
Cadillac	DeVille (manufactured 8/1/99–12/31/00)		2000	448		
Cadillac	Seville		1991	375		
Cagiva	Gran Canyon 900 motorcycle		1999	444		
Carrocerias	Cimarron trailer		2006–2007			37
Chevrolet	400SS		1995	150		
Chevrolet	Astro Van		1997	298		
Chevrolet	Blazer		1986	405		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		1997	349		
Chevrolet	Blazer (plant code of "K" or "2" in the 11th position of the VIN).		2001	461		
Chevrolet	Camaro		1999	435		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Chevrolet	Cavalier		1997	369		
Chevrolet	Corvette		1992	365		
Chevrolet	Corvette Coupe		1999	419		
Chevrolet	Suburban		1989–1991	242		
Chrysler	Daytona		1992	344		
Chrysler	Grand Voyager		1998	373		
Chrysler	LHS (Mexican market)		1996	276		
Chrysler	Shadow (Middle Eastern market)		1989	216		
Chrysler	Town and Country		1993	273		
Citroen	XM		1990–1992			1
Daimler	Limousine (LHD & RHD)		1985	12		
Dodge	Ram		1994–1995	135		
Ducati (MC)	748		1999–2003	421		
Ducati (MC)	900		2001	452		
Ducati (MC)	916		1999–2003	421		
Ducati (MC)	600SS		1992–1996	241		
Ducati (MC)	748 Biposto		1996–1997	220		
Ducati (MC)	900SS		1991–1996	201		
Ducati (MC)	996 Biposto		1999–2001	475		
Ducati (MC)	996R		2001–2002	398		
Ducati (MC)	Monster 600		2001	407		
Ducati (MC)	ST4S		1999–2005	474		
Eagle	Vision		1994	323		
Ferrari	360		2001	376		
Ferrari	456		1995	256		
Ferrari	550		2001	377		
Ferrari	575		2002–2003	415		
Ferrari	208, 208 Turbo (all models)		1982–1988		76	
Ferrari	308 (all models)		1982–1985		36	
Ferrari	328 (all models)		1985		37	
Ferrari	328 (all models)		1988–1989		37	
Ferrari	328 GTS		1986–1987		37	
Ferrari	348 TB		1992	86		
Ferrari	348 TS		1992	161		
Ferrari	360 (manufactured after 9/31/02)		2002	433		
Ferrari	360 (manufactured before 9/1/02)		2002	402		
Ferrari	360 Modena		1999–2000	327		
Ferrari	360 Series		2004	446		
Ferrari	360 Spider & Coupe		2003	410		
Ferrari	456 GT & GTA		1999	445		
Ferrari	456 GT & GTA		1997–1998	408		
Ferrari	512 TR		1993	173		
Ferrari	550 Marinello		1997–1999	292		
Ferrari	Enzo		2003–2004	436		
Ferrari	F355		1995	259		
Ferrari	F355		1999	391		
Ferrari	F355		1996–1998	355		
Ferrari	F430 (manufactured prior to 9/1/06)		2005–2006	479		
Ferrari	F50		1995	226		
Ferrari	GTO		1985		38	
Ferrari	Mondial (all models)		1982–1989		74	
Ferrari	Testarossa		1989		39	
Ferrari	Testarossa		1987–1988		39	
Ford	Bronco (manufactured in Venezuela)		1995–1996	265		
Ford	Escort (Nicaraguan market)		1996	322		
Ford	Escort RS Cosworth		1994–1995			9
Ford	Explorer (manufactured in Venezuela)		1991–1998	268		
Ford	F150		2000	425		
Ford	Mustang		1993	367		
Ford	Mustang		1997	471		
Ford	Windstar		1995–1998	250		
Freightliner	FLD12064ST		1991–1996	179		
Freightliner	FTLD112064SD		1991–1996	178		
GMC	Suburban		1992–1994	134		
Harley Davidson (MC)	FX, FL & XL		2006	491		
Harley Davidson (MC)	FX, FL, XL Series		1998	253		
Harley Davidson (MC)	FX, FL, XL Series		1999	281		
Harley Davidson (MC)	FX, FL, XL Series		2000	321		
Harley Davidson (MC)	FX, FL, XL Series		2001	362		
Harley Davidson (MC)	FX, FL, XL Series		2002	372		
Harley Davidson (MC)	FX, FL, XL Series		2003	393		
Harley Davidson (MC)	FX, FL, XL Series		2004	422		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Harley Davidson (MC)	FX, FL, XL Series		2005	472		
Harley Davidson (MC)	FX, FL, XL Series		1982–1997	202		
Harley Davidson (MC)	VRSCA		2002	374		
Harley Davidson (MC)	VRSCA		2003	394		
Harley Davidson (MC)	VRSCA		2004	422		
Hatty	45 ft double axle trailer		1999–2000			38
Heku	750 KG boat trailer		2005			33
Hobby	Exclusive 650 KMFE Trailer		2002–2003			29
Hobson	Horse Trailer		1985			8
Honda	Accord		1991	280		
Honda	Accord		1992–1999	319		
Honda	Accord (sedan & wagon (RHD))		1994–1997	451		
Honda	Civic DX Hatchback		1989	128		
Honda	CRV		2002	447		
Honda	CR-V		2005	489		
Honda	Prelude		1989	191		
Honda	Prelude		1994–1997	309		
Honda (MC)	CB 750 (CB750F2T)		1996	440		
Honda (MC)	CB1000F		1988	106		
Honda (MC)	CBR 250		1989–1994			22
Honda (MC)	CMX250C		1982–1987	348		
Honda (MC)	CP450SC		1986	174		
Honda (MC)	RVF 400		1994–2000	358		
Honda (MC)	VF750		1994–1998	290		
Honda (MC)	VFR 400		1994–2000	358		
Honda (MC)	VFR 400, RVF 400		1989–1993			24
Honda (MC)	VFR750		1990	34		
Honda (MC)	VFR750		1991–1997	315		
Honda (MC)	VFR800		1998–1999	315		
Honda (MC)	VT600		1991–1998	294		
Hyundai	Elantra		1992–1995	269		
Hyundai	XG350		2004	494		
Jaguar	Sovereign		1993	78		
Jaguar	S-Type		2000–2002	411		
Jaguar	XJ6		1984		41	
Jaguar	XJ6		1987	47		
Jaguar	XJ6		1982–1983		41	
Jaguar	XJ6		1985–1986		41	
Jaguar	XJ6 Sovereign		1988	215		
Jaguar	XJS		1991	175		
Jaguar	XJS		1992	129		
Jaguar	XJS		1982–1985		40	
Jaguar	XJS		1986–1987		40	
Jaguar	XJS		1994–1996	195		
Jaguar	XJS, XJ6		1988–1990	336		
Jaguar	XK–8		1998	330		
Jeep	Cherokee		1993	254		
Jeep	Cherokee (European market)		1991	211		
Jeep	Cherokee (LHD & RHD)		1994	493		
Jeep	Cherokee (LHD & RHD)		1995	180		
Jeep	Cherokee (LHD & RHD)		1996	493		
Jeep	Cherokee (Venezuelan market)		1992	164		
Jeep	Grand Cherokee		1994	404		
Jeep	Grand Cherokee		1997	431		
Jeep	Grand Cherokee		2001	382		
Jeep	Grand Cherokee (LHD—Japanese market)		1997	389		
Jeep	Liberty		2002	466		
Jeep	Liberty (Mexican market)		2004	457		
Jeep	Wrangler		1993	217		
Jeep	Wrangler		1995	255		
Jeep	Wrangler		1998	341		
Kawasaki (MC)	EL250		1992–1994	233		
Kawasaki (MC)	KZ550B		1982	190		
Kawasaki (MC)	VN1500–P1/P2 series		2003	492		
Kawasaki (MC)	ZX1000–B1		1988	182		
Kawasaki (MC)	ZX400		1987–1997	222		
Kawasaki (MC)	ZX6, ZX7, ZX9, ZX10, ZX11		1987–1999	312		
Kawasaki (MC)	ZX600		1985–1998	288		
Kawasaki (MC)	ZZR1100		1993–1998	247		
Ken-Mex	T800		1990–1996	187		
Kenworth	T800		1992	115		
Komet	Standard, Classic & Eurolite trailer		2000–2005	477		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
KTM (MC)	Duke II		1995–2000	363		
Lamborghini	Diablo (except 1997 coupe)		1996–1997	416		
Lamborghini	Diablo Coupe		1997			26
Lamborghini	Gallardo (manufactured 1/1/04–12/31/04)		2004	458		
Lamborghini	Murcielago	Roadster	2005	476		
Land Rover	Defender 110		1993	212		
Land Rover	Defender 90 (manufactured before 9/1/97) VIN "SALDV224*VA" or "SALDV324*VA".		1997	432		
Land Rover	Discovery		1994–1998	338		
Land Rover	Discovery (II)		2000	437		
Lexus	GS300		1998	460		
Lexus	GS300		1993–1996	293		
Lexus	RX300		1998–1999	307		
Lexus	SC300		1991–1996	225		
Lexus	SC400		1991–1996	225		
Lincoln	Mark VII		1992	144		
Magni (MC)	Australia, Sfida		1996–1999	264		
Maserati	Bi-Turbo		1985	155		
Mazda	MPV		2000	413		
Mazda	MX–5 Miata		1990–1993	184		
Mazda	RX–7		1986	199		
Mazda	RX–7		1987–1995	279		
Mazda	Xedos 9		1995–2000	351		
Mercedes Benz	190	201.022	1984		54	
Mercedes Benz	200	124.020	1985		55	
Mercedes Benz	200	123.220	1982–1985		52	
Mercedes Benz	230	123.023	1982–1985		52	
Mercedes Benz	250	123.026	1982–1983		52	
Mercedes Benz	250	123.026	1984–1985		52	
Mercedes Benz	280	123.030	1982–1985		52	
Mercedes Benz	190 D	201.126	1984–1989		54	
Mercedes Benz	190 D (2.2)	201.122	1984–1989		54	
Mercedes Benz	190 E	201.024	1983		54	
Mercedes Benz	190 E	201.029	1986		54	
Mercedes Benz	190 E	201.024	1990	22		
Mercedes Benz	190 E	201.024	1991	45		
Mercedes Benz	190 E	201.028	1992	71		
Mercedes Benz	190 E	201.018	1992	126		
Mercedes Benz	190 E		1993	454		
Mercedes Benz	190 E	201.034	1984–1985		54	
Mercedes Benz	190 E	201.028	1986–1989		54	
Mercedes Benz	190 E (2.3)	201.024	1984–1989		54	
Mercedes Benz	190 E (2.6)	201.029	1987–1989		54	
Mercedes Benz	190 E (2.6) 16	201.034	1986–1989		54	
Mercedes Benz	200 D	124.120	1986	17		
Mercedes Benz	200 D	123.120	1982		52	
Mercedes Benz	200 E	124.021	1989	11		
Mercedes Benz	200 E	124.012	1991	109		
Mercedes Benz	200 E	124.019	1993	75		
Mercedes Benz	200 TE	124.081	1989	3		
Mercedes Benz	220 E		1993	168		
Mercedes Benz	220 TE Station Wagon		1993–1996	167		
Mercedes Benz	230 CE	124.043	1991	84		
Mercedes Benz	230 CE	123.043	1992	203		
Mercedes Benz	230 CE	123.243	1982–1984		52	
Mercedes Benz	230 E	124.023	1988	1		
Mercedes Benz	230 E	124.023	1989	20		
Mercedes Benz	230 E	124.023	1990	19		
Mercedes Benz	230 E	124.023	1991	74		
Mercedes Benz	230 E	124.023	1993	127		
Mercedes Benz	230 E	123.223	1982–1985		52	
Mercedes Benz	230 E	124.023	1985–1987		55	
Mercedes Benz	230 T	123.083	1982–1985		52	
Mercedes Benz	230 TE	124.083	1985		55	
Mercedes Benz	230 TE	124.083	1989	2		
Mercedes Benz	230 TE	123.283	1982–1985		52	
Mercedes Benz	240 D	123.123	1982–1985		52	
Mercedes Benz	240 TD	123.183	1982–1985		52	
Mercedes Benz	250 D		1992	172		
Mercedes Benz	250 E		1990–1993	245		
Mercedes Benz	260 E	124.026	1985		55	
Mercedes Benz	260 E	124.026	1986		55	

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	260 E	124.026	1992	105		
Mercedes Benz	260 E	124.026	1987–1989		55	
Mercedes Benz	260 SE	126.020	1986	18		
Mercedes Benz	260 SE	126.020	1989	28		
Mercedes Benz	280 CE	123.053	1982–1985		52	
Mercedes Benz	280 E		1993	166		
Mercedes Benz	280 E	123.033	1982–1985		52	
Mercedes Benz	280 S	126.021	1982–1983		53	
Mercedes Benz	280 SE	126.022	1982–1985		53	
Mercedes Benz	280 SE	116.024	1982–1988		51	
Mercedes Benz	280 SEL	126.023	1982–1985		53	
Mercedes Benz	280 SL	107.042	1982–1985		44	
Mercedes Benz	280 TE	123.093	1982–1985		52	
Mercedes Benz	300 CD	123.150	1982–1985		52	
Mercedes Benz	300 CD	123.153	1982–1985		52	
Mercedes Benz	300 CE	124.051	1990	64		
Mercedes Benz	300 CE	124.051	1991	83		
Mercedes Benz	300 CE	124.050	1992	117		
Mercedes Benz	300 CE	124.061	1993	94		
Mercedes Benz	300 CE	124.050	1988–1989		55	
Mercedes Benz	300 D	123.133	1982–1985		52	
Mercedes Benz	300 D	123.130	1982–1985		52	
Mercedes Benz	300 D	124.130	1985–1986		55	
Mercedes Benz	300 D Turbo	124.133	1985		55	
Mercedes Benz	300 D Turbo	124.193	1986		55	
Mercedes Benz	300 D Turbo	124.193	1987–1989		55	
Mercedes Benz	300 DT	124.133	1986–1989		55	
Mercedes Benz	300 E	124.030	1985		55	
Mercedes Benz	300 E	124.031	1992	114		
Mercedes Benz	300 E	124.030	1986–1989		55	
Mercedes Benz	300 E 4–Matic		1990–1993	192		
Mercedes Benz	300 SD	126.120	1982–1989		53	
Mercedes Benz	300 SE	126.024	1985		53	
Mercedes Benz	300 SE	126.024	1990	68		
Mercedes Benz	300 SE	126.024	1986–1987		53	
Mercedes Benz	300 SE	126.024	1988–1989		53	
Mercedes Benz	300 SEL	126.025	1986		53	
Mercedes Benz	300 SEL	126.025	1987		53	
Mercedes Benz	300 SEL	126.025	1990	21		
Mercedes Benz	300 SEL	126.025	1988–1989		53	
Mercedes Benz	300 SL	107.041	1989	7		
Mercedes Benz	300 SL	129.006	1992	54		
Mercedes Benz	300 SL	107.041	1986–1988		44	
Mercedes Benz	300 TD	123.190	1982–1985		52	
Mercedes Benz	300 TD	123.193	1982–1985		52	
Mercedes Benz	300 TE	124.090	1990	40		
Mercedes Benz	300 TE		1992	193		
Mercedes Benz	300 TE	124.090	1986–1989		55	
Mercedes Benz	320 CE		1993	310		
Mercedes Benz	320 SL		1992–1993	142		
Mercedes Benz	380 SE	126.032	1982–1983		53	
Mercedes Benz	380 SE	126.043	1982–1989		53	
Mercedes Benz	380 SE	126.032	1984–1989		53	
Mercedes Benz	380 SEL	126.033	1982–1989		53	
Mercedes Benz	380 SL	107.045	1982–1989		44	
Mercedes Benz	380 SLC	107.025	1982–1989		44	
Mercedes Benz	400 SE		1992–1994	296		
Mercedes Benz	420 E		1993	169		
Mercedes Benz	420 SE	126.034	1985		53	
Mercedes Benz	420 SE	126.034	1986		53	
Mercedes Benz	420 SE	126.034	1987–1989		53	
Mercedes Benz	420 SE		1990–1991	230		
Mercedes Benz	420 SEC		1990	209		
Mercedes Benz	420 SEL	126.035	1990	48		
Mercedes Benz	420 SEL	126.035	1986–1989		53	
Mercedes Benz	420 SL	107.047	1986		44	
Mercedes Benz	450 SEL	116.033	1982–1988		51	
Mercedes Benz	450 SEL (6.9)	116.036	1982–1988		51	
Mercedes Benz	450 SL	107.044	1982–1989		44	
Mercedes Benz	450 SLC	107.024	1982–1989		44	
Mercedes Benz	500 E	124.036	1991	56		
Mercedes Benz	500 SE	126.036	1988	35		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	500 SE		1990	154		
Mercedes Benz	500 SE	140.050	1991	26		
Mercedes Benz	500 SE	126.036	1982–1986		53	
Mercedes Benz	500 SEC	126.044	1990	66		
Mercedes Benz	500 SEC	126.044	1982–1983		53	
Mercedes Benz	500 SEC	126.044	1984–1989		53	
Mercedes Benz	500 SEL		1990	153		
Mercedes Benz	500 SEL	126.037	1991	63		
Mercedes Benz	500 SEL	126.037	1982–1983		53	
Mercedes Benz	500 SEL	126.037	1984–1989		53	
Mercedes Benz	500 SL	107.046	1982		44	
Mercedes Benz	500 SL	107.046	1983		44	
Mercedes Benz	500 SL	129.066	1989	23		
Mercedes Benz	500 SL	126.066	1991	33		
Mercedes Benz	500 SL	129.006	1992	60		
Mercedes Benz	500 SL	107.046	1984–1985		44	
Mercedes Benz	500 SL	107.046	1986–1989		44	
Mercedes Benz	560 SEC	126.045	1990	141		
Mercedes Benz	560 SEC		1991	333		
Mercedes Benz	560 SEC	126.045	1986–1989		53	
Mercedes Benz	560 SEL	126.039	1990	89		
Mercedes Benz	560 SEL	140	1991	469		
Mercedes Benz	560 SEL	126.039	1986–1989		53	
Mercedes Benz	560 SL	107.048	1986–1989		44	
Mercedes Benz	600 SEC Coupe		1993	185		
Mercedes Benz	600 SEL	140.057	1993–1998	271		
Mercedes Benz	600 SL	129.076	1992	121		
Mercedes Benz	All other passenger car models except Model ID 114 and 115 with sales designations ''long,'' ''station wagon,'' or ''ambulance''.		1982–1989		77	
Mercedes Benz	C 320	203	2001–2002	441		
Mercedes Benz	C Class		1994–1999	331		
Mercedes Benz	C Class	203	2000–2001	456		
Mercedes Benz	CL 500		1998	277		
Mercedes Benz	CL 500		1999–2001	370		
Mercedes Benz	CL 600		1999–2001	370		
Mercedes Benz	CLK 320		1998	357		
Mercedes Benz	CLK Class		1999–2001	380		
Mercedes Benz	CLK Class	209	2002–2005	478		
Mercedes Benz	E 200		1994	207		
Mercedes Benz	E 200		1995–1998	278		
Mercedes Benz	E 220		1994–1996	168		
Mercedes Benz	E 250		1994–1995	245		
Mercedes Benz	E 280		1994–1996	166		
Mercedes Benz	E 320		1994–1998	240		
Mercedes Benz	E 320	211	2002–2003	418		
Mercedes Benz	E 320 Station Wagon		1994–1999	318		
Mercedes Benz	E 420		1994–1996	169		
Mercedes Benz	E 500		1994	163		
Mercedes Benz	E 500		1995–1997	304		
Mercedes Benz	E Class	W210	1996–2002	401		
Mercedes Benz	E Class	211	2003–2004	429		
Mercedes Benz	E Series		1991–1995	354		
Mercedes Benz	G-Wagon	463	1996			11
Mercedes Benz	G-Wagon	463	1997			15
Mercedes Benz	G-Wagon	463	1998			16
Mercedes Benz	G-Wagon	463	1999–2000			18
Mercedes Benz	G-Wagon 300	463.228	1993			3
Mercedes Benz	G-Wagon 300	463.228	1994			5
Mercedes Benz	G-Wagon 300	463.228	1990–1992			5
Mercedes Benz	G-Wagon 320 LWB	463	1995			6
Mercedes Benz	G-Wagon 5 DR LWB	463	2001			21
Mercedes Benz	G-Wagon 5 DR LWB	463	2002	392		
Mercedes Benz	G-Wagon LWB V–8	463	1992–1996			13
Mercedes Benz	G-Wagon SWB	463	2005			31
Mercedes Benz	G-Wagon SWB	463	1990–1996			14
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2004			28
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR	463	2001–2003			25
Mercedes Benz	G-Wagon SWB Cabriolet & 3DR (manufactured before 9/1/06).	463	2005			35
Mercedes Benz	Maybach		2004	486		
Mercedes Benz	S 280	140.028	1994	85		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Mercedes Benz	S 320		1994–1998	236		
Mercedes Benz	S 420		1994–1997	267		
Mercedes Benz	S 500		1994–1997	235		
Mercedes Benz	S 500		2000–2001	371		
Mercedes Benz	S 600		1995–1999	297		
Mercedes Benz	S 600		2000–2001	371		
Mercedes Benz	S 600 Coupe		1994	185		
Mercedes Benz	S 600L		1994	214		
Mercedes Benz	S Class		1993	395		
Mercedes Benz	S Class	140	1991–1994	423		
Mercedes Benz	S Class		1995–1998	342		
Mercedes Benz	S Class		1998–1999	325		
Mercedes Benz	S Class	W220	1999–2002	387		
Mercedes Benz	S Class	220	2002–2004	442		
Mercedes Benz	SE Class		1992–1994	343		
Mercedes Benz	SEL Class	140	1992–1994	343		
Mercedes Benz	SL Class		1993–1996	329		
Mercedes Benz	SL Class	W129	1997–2000	386		
Mercedes Benz	SL Class	R230	2001–2002			19
Mercedes Benz	SL Class (European market)	230	2003–2005	470		
Mercedes Benz	SLK		1997–1998	257		
Mercedes Benz	SLK		2000–2001	381		
Mercedes Benz (truck)	Sprinter		2001–2005	468		
Mini	Cooper (European market)	Convertible	2005	482		
Mitsubishi	Galant Super Salon		1989	13		
Mitsubishi	Galant VX		1988	8		
Mitsubishi	Pajero		1984	170		
Moto Guzzi (MC)	California EV		2002	403		
Moto Guzzi (MC)	Daytona		1993	118		
Moto Guzzi (MC)	Daytona RS		1996–1999	264		
MV Agusta (MC)	F4		2000	420		
Nissan	240SX		1988	162		
Nissan	300ZX		1984	198		
Nissan	GTS & GTR (RHD) a.k.a. ''Skyline'' manufactured 1/96–6/98.	R33	1996–1998			32
Nissan	Maxima		1989	138		
Nissan	Pathfinder		2002	412		
Nissan	Pathfinder		1987–1995	316		
Nissan	Stanza		1987	139		
Peugeot	405		1989	65		
Plymouth	Voyager		1996	353		
Pontiac	Firebird Trans Am		1995	481		
Pontiac (MPV)	Trans Sport		1993	189		
Porsche	911		1997–2000	346		
Porsche	928		1991–1996	266		
Porsche	928		1993–1998	272		
Porsche	944		1982–1983		61	
Porsche	911 (996) Carrera		2002–2004	439		
Porsche	911 (996) GT3		2004	438		
Porsche	911 C4		1990	29		
Porsche	911 Cabriolet		1984–1989		56	
Porsche	911 Carrera		1993	165		
Porsche	911 Carrera		1994	103		
Porsche	911 Carrera		1982–1989		56	
Porsche	911 Carrera		1995–1996	165		
Porsche	911 Carrera 2 & Carrera 4		1992	52		
Porsche	911 Coupe		1982–1989		56	
Porsche	911 Targa		1982–1989		56	
Porsche	911 Turbo		1992	125		
Porsche	911 Turbo		2001	347		
Porsche	911 Turbo		1982–1989		56	
Porsche	924 Coupe		1982–1989		59	
Porsche	924 S		1987–1989		59	
Porsche	924 Turbo Coupe		1982–1989		59	
Porsche	928 Coupe		1982–1989		60	
Porsche	928 GT		1982–1989		60	
Porsche	928 S Coupe		1983–1989		60	
Porsche	928 S4		1990	210		
Porsche	928 S4		1982–1989		60	
Porsche	944 Coupe		1984–1989		61	
Porsche	944 S Cabriolet		1990	97		
Porsche	944 S Coupe		1987–1989		61	

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Porsche	944 S2 (2-door Hatchback)		1990	152		
Porsche	944 Turbo Coupe		1985–1989		61	
Porsche	946 Turbo		1994	116		
Porsche	All other passenger car models except Model 959.		1982–1989		79	
Porsche	Boxster		1997–2001	390		
Porsche	Boxster (manufactured before 9/1/02)		2002	390		
Porsche	Carrera GT		2004–2005	463		
Porsche	Cayenne		2003–2004	464		
Porsche	GT2		2001			20
Porsche	GT2		2002	388		
Rolls Royce	Bentley		1987–1989	340		
Rolls Royce	Bentley Brooklands		1993	186		
Rolls Royce	Bentley Continental R		1990–1993	258		
Rolls Royce	Bentley Turbo		1986	53		
Rolls Royce	Bentley Turbo R		1995	243		
Rolls Royce	Bentley Turbo R		1992–1993	291		
Rolls Royce	Camargue		1984–1985	122		
Rolls Royce	Corniche		1982–1985	339		
Rolls Royce	Phantom		2004	455		
Rolls Royce	Silver Spur		1984	188		
Saab	9.3		2003	426		
Saab	900		1983	158		
Saab	9000		1988	59		
Saab	9000		1994	334		
Saab	900 S		1987–1989	270		
Saab	900 SE		1995	213		
Saab	900 SE		1990–1994	219		
Saab	900 SE		1996–1997	219		
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2005			30
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure).		2002–2004			27
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2006			34
Smart Car	Fortwo coupe & cabriolet (incl. trim levels passion, pulse, & pure) manufactured before 9/1/06.		2007			39
Suzuki (MC)	GS 850		1985	111		
Suzuki (MC)	GSF 750		1996–1998	287		
Suzuki (MC)	GSX 750		1983	208		
Suzuki (MC)	GSX1300R a.k.a. ''Hayabusa''		1999–2006	484		
Suzuki (MC)	GSX–R 1100		1986–1997	227		
Suzuki (MC)	GSX–R 750		1986–1998	275		
Suzuki (MC)	GSX–R 750		1999–2003	417		
Toyota	4-Runner		1998	449		
Toyota	Avalon		1995–1998	308		
Toyota	Camry		1989	39		
Toyota	Camry		1987–1988		63	
Toyota	Celica		1987–1988		64	
Toyota	Corolla		1987–1988		65	
Toyota	Land Cruiser		1989	101		
Toyota	Land Cruiser		1982–1988	252		
Toyota	Land Cruiser		1990–1996	218		
Toyota	MR2		1990–1991	324		
Toyota	Previa		1991–1992	326		
Toyota	Previa		1993–1997	302		
Toyota	RAV4		1996	328		
Toyota	RAV4		2005	480		
Toyota	Van		1987–1988	200		
Triumph (MC)	Thunderbird		1995–1999	311		
Triumph (MC)	TSS		1982	409		
Vespa (MC)	ET2, ET4		2001–2002	378		
Volkswagen	Eurovan		1993–1994	306		
Volkswagen	Golf		1987	159		
Volkswagen	Golf		1988	80		
Volkswagen	Golf III		1993	92		
Volkswagen	Golf Rallye		1988	73		
Volkswagen	Golf Rallye		1989	467		
Volkswagen	GTI (Canadian market)		1991	149		
Volkswagen	Jetta		1994–1996	274		

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET—Continued

Manufacturer	Model type(s)	Body	Model year(s)	VSP	VSA	VCP
Volkswagen	Passat	Wagon & Sedan	1982	488		
Volkswagen	Passat 4-door Sedan		1992	148		
Volkswagen	Scirocco		1986	42		
Volkswagen	Transporter		1990	251		
Volkswagen	Transporter		1986–1987	490		
Volkswagen	Transporter		1988–1989	284		
Volvo	740 GL		1992	137		
Volvo	740 Sedan		1988	87		
Volvo	850 Turbo		1995–1998	286		
Volvo	940 GL		1992	137		
Volvo	940 GL		1993	95		
Volvo	945 GL	Wagon	1994	132		
Volvo	960 Sedan & Wagon		1994	176		
Volvo	C70		2000	434		
Volvo	S70		1998–2000	335		
Yamaha (MC)	FJ1200 (4 CR)		1991	113		
Yamaha (MC)	FJR 1300		2002			23
Yamaha (MC)	R1		2000	360		
Yamaha (MC)	RD–350		1983	171		
Yamaha (MC)	Virago		1990–1998	301		

Issued on: September 24, 2007.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E7–19118 Filed 9–26–07; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 158 and 260

[Docket No. RM07–9–000]

Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines

September 20, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking, the Federal Energy Regulatory Commission (Commission) proposes to amend its financial forms, statements, and reports for natural gas companies, contained in FERC Form Nos. 2, 2–A and 3–Q. The proposed revisions reflect the fact that in the present regulatory environment, where interstate natural gas pipelines are no longer required to file a triennial restatement of rates, and the number of filed rate cases has declined sharply, FERC Form Nos. 2, 2–A, and 3–Q need to be expanded and otherwise revised in order for the Commission and the public to have sufficient information to assess the justness and reasonableness of pipeline rates. The proposed changes will enhance the forms' usefulness by updating them to reflect current market and cost information relevant to interstate natural gas pipelines and their customers. In addition, the Commission proposes to eliminate FERC Form No. 11.

DATES: Comments must be filed on or before November 13, 2007.

ADDRESSES: You may submit comments, identified by Docket No. RM07–9–000, by one of the following methods:

- *Agency Web site: http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Commission proposes to amend its forms, reports and statements for natural gas companies.[1] Specifically, the Commission proposes changes to FERC Form No. 2 (Form 2), Annual report for major natural gas companies,[2] FERC Form No. 2–A (Form 2–A), Annual report for nonmajor natural gas companies,[3] and FERC Form No. 3–Q (Form 3–Q), Quarterly financial report of electric utilities, licensees and natural gas companies.[4] The Commission is proposing the changes to improve the forms, reports and statements to provide, in greater detail, the information the Commission needs to carry out its responsibilities under the Natural Gas Act (NGA) to ensure that rates are just and reasonable, and to provide pipeline customers, state commissions, and the public the information they need to assess the justness and reasonableness of pipeline rates. The proposed changes would require pipelines to provide additional information regarding their sources of revenue and amounts included in rate base, and identify costs related to affiliate transactions, incremental facilities, and discounted and negotiated rates. They would be effective January 1, 2008. Accordingly, companies subject to the new requirements would file their new Form 3–Q beginning with the first quarter of 2009 and their new Forms 2 and 2–A in 2009 for calendar year 2008. Finally, the Commission proposes to eliminate the requirement to file FERC Form No. 11 (Form 11) and to extend the period of time to May 18 of the year following the submittal of annual and quarterly forms to file the Report of Certification.[5]

II. Background

A. General

2. The Commission strives to ensure that its reporting requirements keep pace with the evolution of the natural gas industry. Before the advent of Order No. 636 and its progeny, interstate natural gas pipeline companies provided both sales and transportation services.[6] Gas costs were entered into a

[1] Section 10 of the NGA, 15 U.S.C. 717g (1988), authorizes the Commission to prescribe rules and regulations concerning annual and other periodic or special reports, as necessary or appropriate for purposes of administering the NGA. The Commission may prescribe the manner and form in which such reports are to be made, and require from natural gas companies specific answers to all questions on which the Commission may need information.

[2] 18 CFR 260.1.

[3] 18 CFR 260.2.

[4] 18 CFR 260.300.

[5] *See* 18 CFR 158.11. The Commission is concurrently issuing a Notice of Inquiry (NOI) in Docket No. RM07–20–000, titled Fuel Retention Practices of Natural Gas Pipelines, seeking comments on several specific proposals for natural gas pipeline rate recovery of fuel and lost and unaccounted-for gas. The NOI addresses Commission policy regarding the method of cost recovery used by pipelines and seeks comments on whether that policy should be changed. While the instant proposed rulemaking in Docket RM07–9–000 addresses changes to the Commission's financial forms, the NOI addresses the method of recovery of fuel and seeks comments on whether it should change the current policy and prescribe a uniform recovery method for all pipelines. Therefore, there is no conflict between the two proposals.

[6] *See Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, FERC Stats. & Regs. ¶ 30,939, *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g,* Order No. 636–B, 61 FERC

purchased gas adjustment (PGA) account and were periodically adjusted and passed through to customers. The quid pro quo for the ability to recover the gas costs through a PGA tracker was the requirement that the pipelines file to restate their rates every three years. The PGA regulations, and the triennial filing requirement therein, were eliminated when the Commission issued a Final Rule that changed pipeline filing and reporting requirements in the post-Order No. 636 environment.[7]

3. In Order No. 636, the Commission restructured pipeline services and required pipelines to unbundle their sales and transportation services. Accordingly, shippers were able to buy gas at the wellhead or from gas marketers, and purchase pipeline capacity from other shippers in the secondary market, as well as from the pipeline. Order No. 636 authorized pipelines to make unbundled commodity sales at market-based rates at the wellhead because it concluded that, after unbundling, sellers of short-term or long-term gas supplies (whether pipelines or other sellers) would not have market power over the sale of natural gas.

4. In 1995, in Order No. 581, the Commission issued a Final Rule revising the filing and reporting requirements for interstate natural gas pipeline companies to reflect the changed regulatory environment of unbundled pipeline sales for resale at market-based prices and open-access transportation of natural gas.[8] The Commission eliminated outdated reporting requirements but revised Forms 2 and 2–A to provide financial, rate, and statistical information on transactions that it deemed more useful in monitoring the restructured industry.[9]

5. In 2000, in Order No. 637, the Commission again amended its regulations in response to the growing development of more competitive markets for natural gas and the transportation of natural gas.[10] The rule revised the Commission's regulatory approach to pipeline pricing by permitting pipelines to propose peak/off-peak and term differentiated rate structures. Although the rule did not change the financial forms, it required pipelines to provide additional data on their Web sites, including: (1) Information regarding the pipeline's capacity and released capacity transactions, including names of parties to the contract, rate charged, and receipt and delivery points; and, (2) information concerning market affiliates, including an organizational chart showing the structure of the parent corporation and the position within that structure of all affiliates. These additional reporting requirements were designed to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination.[11]

6. Since the Commission eliminated the triennial restatement of rates filing requirement in Order No. 636, there has been a decline in filings under NGA section 4.[12] Of course, the Commission may, on its own motion, institute an investigation under NGA section 5 to determine if pipeline rates are just and reasonable.[13] The Commission relies also on section 5 complaints, which may be filed by state public utility commissions or pipeline customers, to review gas rates outside of a section 4 rate proceeding. In a section 5 proceeding, the complainant has the burden of proof and must have access to the information needed to meet that burden. A section 5 complaint may rely on Forms 2, 2–A, and 3–Q financial data and that data must be sufficient to support a complaint.

7. Within the past year, two section 5 complaints were filed with the Commission, both relying on data provided in Forms 2 and 2–A to argue that the pipelines' rates were unjust and unreasonable.[14] In *National Fuel,* the complainants contended that it had been 11 years since the Commission had reviewed National Fuel's rates and that during that time the rates had become unjust and unreasonable.[15] Relying upon Forms 2 and 3–Q data, the complainants prepared an analysis for the most recent three-year period, which allegedly demonstrated significant excess revenue and an equity return near 20 percent.[16] National Fuel argued in response to the complaint that the Form 2 data relied upon by the complainants was not sufficient and that only a detailed cost and revenue study could provide justification for an investigation into a pipeline's rates under NGA section 5. Complainants acknowledged that the lack of certain data in Form 2 hindered the performance of a full rate analysis, but argued that the complaint, nonetheless, presented evidence sufficient to initiate an investigation of National Fuel's rates.[17]

8. In its order setting the case for hearing, the Commission found that the complainants had raised serious questions as to whether the rates established in 1995 settlements allowed National Fuel to recover revenue substantially in excess of its costs.[18] The Commission rejected National Fuel's contention that a detailed cost and revenue study is the sole means of justifying an investigation into a pipeline's rates under section 5, and that Form 2 data could provide the starting point for such an investigation.[19] However, the Commission denied complainants' request for summary disposition, noting that data extrapolated from Form 2 was, in some cases, unclear and not adequate to support a summary disposition.[20]

9. On December 21, 2006, the Commission set for hearing another complaint filed by a group of customers that contended that Southwest Gas' rates had not been reviewed in 17 years and that during that time, the rates had become unjust and unreasonable.[21] Complainants submitted a cost and revenue study using information from Southwest Gas' Form 2–A, which allegedly demonstrated that the pipeline was earning a return on equity as high as 32 percent.[22] The complainants sought an immediate rate reduction and a hearing. The Commission found that

¶ 61,272 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos.* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[7] *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs,* FERC Stats. & Regs. ¶ 31,025 (1995).

[8] *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies,* Order No. 581, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g,* Order No. 581–A, FERC Stats. & Regs. ¶ 31,032 (1996).

[9] *Id.*

[10] *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, clarified, Order No. 637–A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied,* Order No. 637–B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002), *order on remand,* 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC,* 428 F.3d 255 (D.C. Cir. 2005).

[11] *Id. See also* 18 CFR 284.13.

[12] 15 U.S.C. 717c.

[13] 15 U.S.C. 717d.

[14] *Public Service Commission of New York, Pennsylvania Public Utility Commission and Pennsylvania Office of Consumer Advocate* v. *National Fuel Gas Supply Corp.,* 115 FERC ¶ 61,299 (2006) (National Fuel), *order approving uncontested settlement,* 118 FERC ¶ 61,091 (2007); *Panhandle Complainants* v. *Southwest Gas Storage Co.,* 117 FERC ¶ 61,318 (2006) (Southwest Gas).

[15] *National Fuel* at P 7.

[16] *Id.*

[17] Motion for Leave to Answer and Answer of the Joint State Agencies to National Fuel Gas Supply Corporation's Answer to Complaint at 6.

[18] *National Fuel* at P 37.

[19] *Id.*

[20] *Id.* at P 42.

[21] *See Southwest Gas,* 117 FERC at P 1.

[22] *Id.*

the complainants' rate study did not support an immediate rate reduction, but set the matter for hearing.[23]

10. Against this backdrop, Commission staff initiated a review of Forms 1, 1–F, 2, 2–A, and 3–Q data in the fall of 2006. As part of this review, staff met with both filers and users of annual and quarterly reports for the purpose of reexamining the breadth of data collected by the forms and to determine the need for additional information, deletions, or other clarifications. Thereafter, on February 15, 2007, the Commission issued a Notice of Inquiry (NOI).[24]

B. Notice of Inquiry

11. In the NOI, the Commission sought comment on the need for changes or additions to the financial information reported in the Commission's quarterly and annual financial reports, FERC Form Nos. 1, 1–F, 2, 2–A, 3–Q, 6 and 6–Q applicable to the electric utility, natural gas, and oil pipeline industries. Specifically, the Commission asked commenters to address the question of whether the Commission's financial reports provide sufficient information to the public to permit an evaluation of the filers' jurisdictional rates, and whether these forms should otherwise be modified. The NOI posed 12 general questions and also invited commenters to raise other questions or issues that might aid the Commission's assessment of the forms.[25] The 12 questions are listed in Appendix B to this order.

12. On March 28, 2007, the Commission received 35 comments from FERC Form Nos. 1, 1–F, 2, 2–A, 3–Q, 6 and 6–Q users and jurisdictional entities that file the reports.[26] On April 27, 2007, 15 reply comments were filed. After reviewing the comments, the Commission has determined that each of the forms merits its own separate review. Addressing changes or amendments to all of the forms that serve the electric, gas, and oil pipeline industries in a single proceeding, would be an unwieldy task with the potential to cause confusion among the industries, which could delay the Commission's action. Accordingly, this Notice of Proposed Rulemaking (NOPR) addresses changes, additions, and amendments to the forms applicable to natural gas companies—Forms 2, 2–A, and 3–Q. Potential changes or amendments to the annual and quarterly forms applicable to electric utilities and oil pipelines, Forms 1, 1–F, 6 and 6–Q will be addressed in future orders.

C. Comments to Notice of Inquiry

13. As noted, the Commission received 35 comments and 15 reply comments in response to the NOI. Eleven initial comments and two reply comments specifically address Forms 2, 2–A, and 3–Q data.[27] Not surprisingly, as a general matter, pipeline customers and state commissions support revising the forms and pipelines oppose revisions that would require filing additional information. The Industry Coalition urges the Commission to revise Form 2 to require additional detail which, in their view, would permit a proper evaluation of pipelines' cost-based rates and ensure that those rates are just and reasonable.[28] The Industry Coalition asks the Commission to require greater detail in several areas: (1) Capital structure; (2) deferred taxes; (3) gas purchases and sales; (4) state income tax rates; (5) miscellaneous assets; (6) corporate overhead costs; (7) volumes and revenues associated with discounted and negotiated rate services; (8) revenues and costs associated with at-risk facilities; and (9) calculation of the rate of return.[29]

14. In addition, the Industry Coalition states that it has attempted to quantify the burdens and benefits associated with each proposal and estimates that the burden associated with providing the additional material would be low to moderate. The Industry Coalition also asks the Commission to require types of information contained in Form 2 to be replicated in the quarterly Form 3–Q, to the extent possible. In addition, the Coalition suggests changes specific to Form 3–Q, including (1) a separate report of fuel used for operation and maintenance; and (2) information that is consistent with page 520 of Form 2 related to fuel use.

15. Several state agencies, including the New York State Public Service Commission (NYPSC), the Kansas Corporation Commission (KCC), the Missouri Public Service Commission (MoPSC), and the Public Utilities Commission of Ohio (PUCO), filed comments recommending changes to the forms. The KCC claims that current Form 2 data is inadequate and advocates the reinstatement of a periodic rate refiling requirement in the three to five year range.[30] In the absence of such a requirement, the KCC suggests specific changes to Form 2 which are similar, in part, to the changes recommended by the Industry Coalition. KCC's proposals include the following: (1) Calculation of the pipeline's rate of return; (2) identification of which components of deferred tax and regulatory asset and liability balances are included in rate base; (3) detail on miscellaneous current and accrued assets; (4) detail concerning gas purchase and sales accounts; (5) detail concerning corporate administrative costs; (6) identification of revenues associated with negotiated rate contracts and with at-risk facilities; and (7) information concerning the pipeline's capital structure.[31] PUCO requests that debt accounts balances for Form 2 be shown separately for each debt issuance and asks the Commission to make the data available in electronic format that can be compared and analyzed electronically.[32]

16. The NYPSC asserts that currently the forms contain no information related to affiliate transactions and recommends that utilities be required to describe and quantify each type of affiliate transaction, similar to the requirements adopted in Form 60 for service companies and recommends that a schedule, modeled on Schedule XVI, be added to Form 2.[33] The NYPSC also recommends that each company report its contributions to other post-employment benefits and pension funds.[34] As an alternative to a cost and revenue study, the NYPSC recommends that the Commission require pipelines to provide a more detailed breakdown of Accounts 480–484 Sales, according to revenues and quantities of gas that comprise each sale.[35] The NYPSC also asks that pipelines provide additional detailed information, such as billing determinants for each rate schedule, the separate identification of revenues and costs associated with trackers or special surcharges, and the amount of deferred taxes included in rate base for cost-of-service purposes.[36]

[23] *Id.* at P 19.

[24] *Assessment of Information Requirements for FERC Financial Forms, Notice of Inquiry,* 72 FR 8316 (February 26, 2007), FERC Stats. & Regs. ¶ 35,554 (2007). While the outreach meetings addressed only Forms 1 and 2, the NOI invited comments from filers and users of Form 6 and 6–Q as well.

[25] NOI at P 16.

[26] Parties who filed comments and reply comments are listed on Appendix C.

[27] In some instances, comments were filed which addressed more than one financial form.

[28] Initial Comments of the Industry Coalition at 4. The Industry Coalition is comprised of the American Public Gas Association, the Independent Petroleum Association of America, the Natural Gas Supply Association, and the Process Gas Consumers Group.

[29] *See* Industry Coalition Comments at 5–6.

[30] KCC Comments at 4. For purposes of this NOPR, the term ''at-risk'' facilities has the same meaning as ''incremental'' facilities.

[31] *Id.* at 7.

[32] PUCO Comments at 3.

[33] NYPSC Comments at 6.

[34] *Id.* at 7.

[35] *Id.* at 9.

[36] *Id.* at 10–11.

17. MoPSC suggests that several accounts in Form 2, not currently required for Form 2–A filers, be added to Form 2–A, including detail of miscellaneous current accrued liabilities; detail of revenues from gathering, transmission, and storage; miscellaneous general expense; and charges for outside consultative services.[37] For all of these accounts, the Form 2 has a threshold reporting requirement of $250,000. MoPSC requests that the schedules be included in Form 2–A and that the threshold for reporting be lowered to $50,000 or $100,000.[38]

18. Comments opposing revisions, in part or in whole, to the annual and quarterly financial reports were filed by the Interstate Natural Gas Association of America (INGAA), the American Gas Association (AGA), Boardwalk Pipeline Partners, L.P. (Boardwalk), Williston Basin Interstate Pipeline Co. (Williston), and Washington Gas Light Company (Washington Gas). INGAA urges the Commission to balance the amount of information it needs in periodic reports for the purpose of administering section 5 against the burden it places on the pipelines. INGAA contends that the information now provided in both Forms 2 and 2–A is sufficient for the Commission's responsibilities under the NGA. INGAA notes that in two recent decisions, the Commission relied on Forms 2 and 2–A data to initiate an investigation of pipeline rates under section 5.[39] In addition, INGAA asserts that pipelines file other reports or postings that provide information supplemental to Form 2, including posting an index of customers and identifying contracts with negotiated rates. INGAA also contends that pipeline Web sites provide information on pipeline capacity and discounts awarded.[40] INGAA states that the Commission should be careful that an expanded Form 2 does not blur the distinction between sections 4 and 5, thus shifting the burden of proof established under section 5.[41] Finally, INGAA suggests that the Commission should be wary of converting Form 2 from a financial reporting document to the equivalent of an annual cost and revenue study.[42] INGAA states that any proposal that would require additional information not collected in accord with the Uniform System of Accounts, or reported in a different format, will result in additional regulatory burdens.

19. Williston Basin, Boardwalk Pipeline, AGA, and Washington Gas concur with INGAA that Form 2 data, as now filed, provides sufficient information to allow users to evaluate pipeline rates. The commenters echo INGAA's concern that the current Form 2 not be transformed into a cost and revenue study, and that pipelines not be required to file an annual mini-rate case, thereby reversing the statutory burden of proof for section 5.[43] Williston Basin suggests several technical revisions and requests that the Commission discontinue the Form 11 and incorporate that information in the Form 3–Q.[44] Washington Gas states that Form 2 should remain as it is, and that if the Commission determines that more information is needed to monitor rates, a new form for reporting this ratemaking information should be created.[45]

20. Only INGAA and Williston Basin filed reply comments. Both commenters reiterate the assertion that the information contained in Forms 2 and 3–Q is sufficient to allow the Commission and other users to adequately evaluate pipeline rates.[46] In response to the KCC's complaint that pipeline rate filings have declined since the end of the triennial rate review, INGAA asserts that pipeline rate filings continue to be made.[47] INGAA further asserts that the elimination of triennial rate review has had beneficial effects: (1) Customer settlements now dictate the timing of pipeline rate cases; (2) repeal of the triennial rate review is an incentive for controlling and reducing pipeline costs; (3) pipeline rates have remained stable for the last decade and have actually gone down in real (inflation adjusted) dollars; and (4) the quality of pipeline service has improved due to the increased flexibility provided by Order No. 637.[48]

21. INGAA's reply comments also address specific proposals or requests for information made by the Industry Coalition, the NYPSC, the KCC, and MoPSC.[49] INGAA argues that:

- Some requests, *e.g.*, more detailed information on deferred taxes and identification of the appropriate capital structure, would require filers to make the sort of subjective judgment that is involved in a litigated rate case,[50]
- The forms are currently designed to report what has actually occurred, and not to make projections based on the data,[51]
- Requiring a rate of return calculation and the detail requested on gas purchases would turn Form 2 into a mini-rate case,
- Other sources of information are available to the public, *e.g.*, pipelines' operational sales and purchase reports and fuel tracker filings,[52]
- If the Commission needs additional information from time to time, that need can be met through the Commission's audit authority on a case-by-case basis,[53]
- Commenters may review pipelines' operational sales and purchase reports, cashout reconciliation reports and fuel tracker filings, all of which are routinely filed by pipelines,[54]
- Pipelines already provide details of their effective income tax rate, and such details are disclosed in the Notes to Financial Statements and include the total dollar amount for taxes broken down between current and deferred taxes, and
- Other items, such as the calculation of the income tax of a particular state changing from a tax based on net income to a tax based on gross receipts are burdensome to calculate and subjective.[55]

22. INGAA states that its members have no objection to identifying the entity whose capital structure is now reported on page 218a of Form 2, which provides a computation of the allowance for funds used during construction (AFUDC), but requiring the pipeline to state whether it believes this number is appropriate for a rate case would require the pipeline to speculate on a potentially contentious issue in a fully litigated rate case.[56] Generally, INGAA contends that the information provided in all of the areas identified by the Industry Coalition and others is already burdensome, and that the information sought is, in many instances, available elsewhere, *e.g.*, in the pipelines' index of customers and other information posted on pipelines' Web sites.[57] INGAA further argues that the proposal to require pipelines to identify costs and revenues associated

[37] Comments of MoPSC at 5–8.

[38] Comments of MoPSC at 7–8.

[39] INGAA Initial Comments at 5; *National Fuel,* 115 FERC ¶ 61,299, *on reconsideration,* 115 FERC ¶ 61,368 (2006) and *Southwest Gas,* 117 FERC ¶ 61,318 (2006).

[40] *Id.* at 6.

[41] *Id.* at 6–7, (citing *Public Service Comm'n* v. *FERC,* 866 F.2d 487, 490–91 (D.C. Cir. 1989)).

[42] *Id.* at 7.

[43] Boardwalk Pipeline Comments at 5.

[44] Williston Basin Comments at 6–7.

[45] Washington Gas Comments at 3.

[46] Williston Basin Reply Comments at 2; INGAA Reply Comments at 2.

[47] *Id.* at 7.

[48] *Id.* at 8–9.

[49] *Id.* at 9.

[50] *Id.* at 10.

[51] *Id.* at 1.

[52] *Id.* at 4–5.

[53] *Id.* at 3.

[54] *Id.* at 13–14.

[55] *Id.* at 15–16.

[56] *Id.* at 11–12.

[57] *Id.* at 20.

with at-risk facilities could essentially impose a cost and revenue study obligation for these facilities and should not be required outside of a section 4 or 5 proceeding.[58] Similarly, INGAA contends that a requirement to include billing determinants for each rate schedule would impose a substantial burden because it would effectively require the preparation of a schedule equivalent to a Schedule G, required for a section 4 filing.[59]

23. Finally, INGAA suggests that certain items required by Form 2 be deleted as burdensome or of limited usefulness, including: (1) Pages 508–509, Compressor Stations; (2) page 357, Charges for Outside Professional and Other Consultative Services; and (3) page 261, Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes.

III. Discussion

A. General

24. The steady decline of section 4 rate filings, the concerns regarding the adequacy of data in Forms 2 and 2–A expressed in both the *National Fuel* and *Southwest Gas* complaints, and the comments received in response to the NOI indicate a need to update and supplement Forms 2, 2–A, and 3–Q. While a hiatus in section 4 rate case filings does not, in every instance, support a conclusion that the pipeline is earning excess revenues, some pipelines have not filed a section 4 rate case in more than a decade, and their costs of service and revenues have gone unreviewed as a consequence.[60] If shippers cannot readily access the data they need to make informed assessments regarding the propriety of the rates charged, they are left without any plausible means of assessing the justness and reasonableness of those rates and are forced to accept the information provided at face value or attempt to initiate expensive and time-consuming section 5 proceedings to obtain the data.

25. The proposed additions or changes to Forms 2, 2–A and 3–Q require a pipeline to provide additional, detailed information regarding the pipeline's costs and revenues, including a reconciliation of gas supplied by shippers for compressor fuel and gas losses; disaggregation of certain cost data; provision of additional information related to affiliate transactions; and the distinction between services provided at discounted or negotiated rates and costs recovered through incremental, as opposed to rolled-in, rates. As noted above, we believe that all of the proposed changes will better facilitate the forms users' ability to make a meaningful assessment of the pipeline's cost of service and current rates. We have endeavored, however, to achieve a balance between the benefits these changes will facilitate and the imposition of any additional burden on the pipelines. Most of the information requested is data that is maintained by the pipeline and can be transferred to existing and new schedules. In addition, as discussed below, we are proposing the elimination of Form 11, which would lessen pipelines' filing requirements.

26. Several schedules are being added to Form 2–A as well as to Form 2. The Commission regulates 44 pipelines that are classified as ''nonmajor'' and required to file Form 2–A. It is no less important that customers of pipelines classified as nonmajor be provided with the information we propose to add to Form 2. Form 2–A filers now provide less data than do Form 2 filers. As with Form 2, the information we are adding to Form 2–A is information we deem necessary to enable customers, state commissions, and the Commission to assess existing pipeline rates. Complaints regarding the dearth of data have been made by customers of both major and nonmajor pipelines and we believe all are entitled to the same information.[61]

27. We have not adopted many of the commenters' proposals. For example, we reject the KCC's request that we resurrect the triennial rate restatement requirement for all pipelines and AGA's alternative suggestion that we create a new form to supplement Form 2.[62] We reject as burdensome the Industry Coalition's and the MoPSC's requests that pipelines not using the rate of return on equity approved in the pipeline's last rate case provide the calculation and derivation of the return used at present. We reject also the Industry Coalition's request that pipelines provide additional information on capital structure used for ratemaking purposes since it would require the pipeline to speculate on the pipeline's preferred capital structure.

28. We acknowledge INGAA's concern that an expanded Form 2 could blur the distinction between sections 4 and 5, and shift the burden of proof established under section 5, and we invite commenters to address this issue. However, the changes proposed herein do not affect existing rates nor change any rates on file. The requested data is designed to provide the Commission and pipeline customers with information that will aid their ability to make a reasonable assessment of a pipeline's cost of service. Along the same lines, the requested data is not the functional equivalent of a cost and revenue study. Therefore, the revised Form 2 will not be used to limit an entity's rights under the NGA and our regulations. Nor will the revised Form 2 change our obligation to rule on complaints, petitions, or other requests for relief based on a full record and substantial evidence.

29. At the same time, we find no merit in INGAA's argument that much of the data sought by Form 2 users is available elsewhere, in forms and filings made before state agencies, the Commission, other federal agencies, or in the pipeline's tariff. We do not believe that users should have to piece together and interpret from myriad sources information that is readily available to the pipeline and can, without a substantial increase in burden, be incorporated into Forms 2 and 2–A. Also, much of the information cited by INGAA is not coterminous with Form 2 data and cannot be used for purposes of comparison.

30. Additionally, as discussed below, INGAA has requested that the Commission eliminate three schedules from Form 2. As discussed below, we reject INGAA's request to eliminate information now reported in Form 2. INGAA first requests that the Commission delete pages 508–509 of Form 2 which provide details on compressor stations. The schedule shows plant, expenses, amount of gas and usage in total hours intended to assist Form 2 users in calculating a depreciation analysis of remaining life for compressor plant. In addition, some compressor stations are built as part of expansion projects with incremental rates. The separation of costs by compressor station is a key element to assist in determining the appropriate allocations of costs to generate incremental rates. In addition, in order to provide more clarity regarding fuel use for compressor stations, we propose to revise pages 508–509 of Form 2 to require pipelines to provide both the

[58] *Id.* at 22.

[59] *Id.* at 24–25.

[60] The records indicate that as many as 15 major and 20 nonmajor gas pipelines have not filed a section 4 rate case in more than a decade. Also, although INGAA contends that pipeline rate cases are quite common, a review of the cases cited by INGAA reveals that most were filed because prior settlement agreements required the filing.

[61] *See, e.g., Southwest Gas*, 117 FERC at P 4 (complaint filed by Form 2–A users).

[62] *See, e.g., Public Service Commission of New York* v. *FERC*, 866 F.2d 487 (D.C. Cir. 1989); *see also United Distribution Companies* v. *FERC*, 88 F.3d 1105, 1175–6 (D.C. Cir. 1996).

amounts used and expenditures made for gas and electric power.

31. INGAA asks that the Commission eliminate Page 357, Charges for Outside Professional and Other Consultative Services. As discussed below, the Commission is adding a new Page 358 to Forms 2 and 2–A where information currently provided on Page 357 would be reported. INGAA asserts that the schedule has no value for ratemaking purposes. The information required for Page 357, now proposed to be substituted by a new page 358, allows Form 2 users to identify the annual charges for outside consulting activities and the identification of associated company charges. The Commission believes this information is of value to forms users and the reporting requirement will be retained.

32. Finally, we reject INGAA's request to eliminate page 261, Reconciliation of Reported Net Income With Taxable Income for Federal Income Taxes. The Commission believes page 261 should be retained because it can provide information as to book and tax timing differences, thereby indicating if costs are included in the revenue requirement which may not be deductible for tax purposes. The reconciliation reflects revenues reported for book purposes which are not included for income tax purposes. In other words, for example, AFUDC equity is isolated and can be used as a means of checking the reasonableness of the AFUDC included in the tax calculation.

B. Overview of FERC Forms 2, 2–A, 3–Q, and 11.

33. Before describing the proposed changes, the Commission believes that an overview of Forms 2, 2–A, and 3–Q, as well as a related form (Form 11) would be helpful. As discussed above, these forms are the vehicles the Commission uses to obtain financial and certain operational information from interstate natural gas companies. The forms provide information concerning a company's past performance and its future prospects, information compiled using a standard chart of accounts contained in the Commission's Uniform System of Accounts (USofA).[63] The forms contain schedules which include a basic set of financial statements: Comparative Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flows, and the Statement of Comprehensive Income and Hedging Activities. Supporting schedules containing supplementary information are filed, including revenues and the related quantities of products sold or transported; account balances for various operating and maintenance expenses; selected plant cost data; and other information.

34. Currently, there are 74 Form 2 filers, 44 Form 2–A filers and 118 Form 3–Q filers. The Form 2 is an annual reporting requirement for ''major'' natural gas pipeline companies, *i.e.*, natural gas companies that transport or store gas in excess of 50 million Dth in each of the three previous calendar years. The Form 2–A is an abbreviated version of the Form 2 for ''non-major'' natural gas pipeline companies, *i.e.*, natural gas companies that do not meet the filing threshold for Form 2 but have total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years. Form 3–Q is a quarterly filing requirement for filers of Forms 2 and 2–A, which requires gas companies to file certain Form 2 and 2–A information on a quarterly basis. The increased frequency of information provided in Form 3–Q allows for more timely evaluations of the adequacy of existing cost-based rates and improves the transparency of financial information submitted to the Commission. Finally, Form 11 is a quarterly filing made by natural gas companies that transport or store gas in excess of 50 million Dth in each of the three previous years. Filers must report quantities shipped or stored and revenues received under each rate schedule for each month of the quarter.

C. Proposed Adjustments to the Annual and Quarterly Reports

35. The proposed revisions fall into three categories of information. The first group, ''Acquisition and Disposition of Gas,'' covers revenue data that is not now included in the forms, in particular, reporting revenue from shipper-supplied gas. The second group, ''New Rate Policies and Affiliate Transactions,'' pertains to pipelines' affiliate transactions, discounted or negotiated rates, and incremental facilities. The third group, ''Rate Base and Other Key Cost-of-Service Components,'' involves information regarding deferred income tax expense, state income tax, wages and salaries, and pensions. All of the proposed changes are reflected in the attached schedules, Appendix D.

1. Acquisition and Disposition of Gas

a. Shipper-Supplied Gas

36. As an initial matter, as noted, the issue of the appropriate rate methodology used by natural gas pipelines for compressor fuel and lost and unaccounted-for gas is before the Commission in Docket No. RM07–2–000, Notice of Inquiry, Fuel Retention Practices of Natural Gas Companies, seeking comments on whether the Commission should prescribe a uniform method for all pipelines to use in recovering these costs.[64] In this NOPR, the Commission is not proposing a change to the pipelines' recovery methods; rather, it simply is proposing that pipelines provide forms users with detailed financial data of how each pipeline accounts for these costs. Therefore, there should be no conflict between what is proposed here with whatever is proposed in the RM07–2–000 proceeding.

37. The Commission's USofA requires that pipelines electing to recognize shipper-provided gas as revenue must also recognize an equal amount of purchased gas expense. Pipelines must credit the appropriate transportation revenue account (Accounts 489.1 through 489.4) and record an equal amount in Account 805, Other Gas Purchases. The USofA also requires that all gas consumed in compressor stations or used for other operational purposes be recognized in the appropriate expense accounts in accordance with the existing USofA requirements. Finally, for those pipelines not electing to recognize all shipper provided gas as revenue, the Commission requires that the value of gas received from shippers under tariff allowances that is not consumed in operations nor returnable to customers through rate tracking mechanisms be credited to Account 495, Other Gas Revenues, and charged to Account 805. Despite these accounting and reporting requirements for gas used in operations, gas lost, and gas sold, Forms 2 and 2–A users cannot readily determine the disposition and value of any shipper-supplied gas that exceeds the pipelines' operational needs or the source and cost of any gas acquired to meet deficiencies in shipper-supplied gas.

38. The Industry Coalition, NYPSC, and the KCC all request that pipelines be required to provide details of gas purchases and sales, including an accounting of gas that pipelines retain from shippers.[65] The Commission agrees that forms users should have access to this information in order to assess the sources of revenue recorded for gas sales by pipelines. With escalating gas prices and a declining number of full section 4 rate reviews,

[63] *See* 18 CFR part 201.

[64] *See Fuel Retention Practices of Natural Gas Companies*, Notice of Inquiry, Docket No. RM07–20–000, 120 FERC ¶ 61,255 (2007).

[65] *See* Industry Coalition comments at 5; NYPSC Comments at 10; KCC Comments at 7.

the disposition of this gas has become an important item in the pipeline's cost of transportation.[66]

39. The Commission is proposing to add a new schedule entitled ''Shipper-Supplied Gas for the Current Quarter'' (pages 521–A and 521–B) to Forms 2, 2–A, and 3–Q, which would require the pipeline to report: (1) The difference between the volume of gas received from shippers and the volume of gas consumed in pipeline operations each month; (2) the disposition of any excess and the accounting recognition given to such disposition including the basis of valuing the gas and the specific accounts charged or credited; and (3) the source of gas used to meet any deficiency and the accounting recognition given to the gas used to meet the deficiency, including the accounting basis of the gas and the specific account(s) charged or credited. The Commission also proposes to add page 520 to Form 3–Q in order to provide more timely reporting of this information. In addition, in order to provide more clarity for gas purchase activity, we are proposing to require pipelines to provide in a footnote to page 520, the volumes of gas purchased applicable to each of the gas purchase expense accounts.[67] Currently, pipelines must report the dollar amount of gas purchases by type of purchase on the Gas Operation and Maintenance Expenses schedule on page 319 of Forms 2 and 2–A, and they are required to report the related volumes only in the aggregate on the Gas Account—Natural Gas schedule on page 520.

b. Other Gas Dispositions

40. The Commission collects information concerning different types of gas operating revenue on the schedule entitled Gas Operating Revenue, pages 300–301 of Forms 2 and 2–A. This schedule currently combines on one line sales data related to residential, commercial and industrial, other sales to public authorities, sales for resale and interdepartmental sales. The Industry Coalition and the KCC request that pipelines provide greater detail concerning these accounts and be required to separately identify these costs and provide an accounting for each.[68] The Commission agrees that detail concerning these accounts would provide important data that would enable users to identify the dispositions of gas acquired by or tendered to the pipeline and how those transactions may affect the pipeline's cost of service. Accordingly, the Commission proposes to expand the detail provided on pages 300–301 of Forms 2 and 2–A to require filers to report sales amounts reported in Accounts 480 (Residential Sales); 481 (Commercial and Industrial Sales); Account 482 (Other Sales to Public Authorities); Account 483 (Sales for Resale); and 484 (Interdepartmental Sales).

41. Both the Industry Coalition and the KCC seek detail concerning the types of revenues recorded in Account 495, Other Gas Revenues. Under the Commission's USofA, pipelines record in Account 495 miscellaneous revenues derived from gas operations not includible in any of the other gas revenue accounts. Additionally, pipelines are required to report these revenues on the schedule entitled Other Revenues (Account 495) on page 308 of Form 2. The descriptions and aggregations of amounts reported by pipelines on this schedule, however, do not allow users of the data to obtain a meaningful understanding of the nature of the business activities from which the revenues are derived. It is important for users of the data to understand which customer classes or groups may be affected by the miscellaneous revenues.

42. In order to provide additional information, the Commission proposes to modify the schedule for Account 495, Other Gas Revenues, on page 308 of Form 2 and add a new schedule to Form 2–A to specify that the following types of revenues must be separately reported on the schedule: (a) Commissions on sale or distribution of gas of others; (b) compensation for minor or incidental services provided for others; (c) profit or loss on sale of material and supplies not ordinarily purchased for resale; (d) sales of steam, water, or electricity, including sales or transfers to other departments; (e) miscellaneous royalties; (f) revenues from dehydration and other processing of gas of others except as provided for in the instructions to Account 495; (g) revenues for rights and/or benefits received from others which are realized through research, development, and demonstration ventures; (h) gains on settlements of imbalances receivables and payables; (i) revenues from penalties earned pursuant to tariff provisions, including penalties associated with cash-out settlements, and (j) revenues from shipper-supplied gas.

2. New Rate Policies and Affiliate Transactions

a. Affiliate Transactions

43. Forms 2 and 2–A filers are required to disclose information regarding any significant financial changes, including information regarding sales, transfers or mergers of affiliates in the Notes to Financial Statements schedule page 122.1. However, forms filers are not required to provide detailed information regarding affiliate transactions. The absence of affiliate information makes it impossible for forms users to determine the type and extent of all affiliate transactions. In this regard, the NYPSC points out that at present, Form 2 does not require any reporting related to affiliate transactions.[69] NYPSC believes that additional controls and disclosures of affiliate transactions are needed, not only to ensure that costs are just and reasonable, but to prevent cross-subsidization between regulated and unregulated companies.[70] The Commission agrees that information concerning the nature and extent of affiliate transactions is important because these transactions are not conducted at arms' length and could provide opportunities for inappropriate cross-subsidization.

44. To ensure that forms users have access to more detailed information regarding affiliate transactions, the Commission proposes several revisions. First, the Commission proposes to add a new Schedule, page 358, ''Transactions with Associated (Affiliated) Companies'' that would require filers to report associated (affiliated) transactions, which include administrative and general costs billed from the parent. The Commission believes this proposed new schedule would provide the transparency necessary to improve the detection of cross-subsidization. Second, on page 358, we propose to add the requirement that filers report the following: (1) A description of the good or service transacted; (2) the name of the Associated (Affiliated) Company; (3) the FERC account charged or credited; and (4) the amount charged or credited. We propose that where amounts billed to or from affiliates are based on an allocation process, filers be required to explain the basis of the allocation in a footnote. This would be a new schedule for both Forms 2 and 2–A. Finally, we propose to amend the instructions for page 357, Charges for Outside Professional and Other Consultative Services, to exclude

[66] *See National Fuel,* 115 FERC at P 21.

[67] 18 CFR part 201, Account Nos. 800–805.

[68] Industry Coalition Comments at 5; KCC Comments at 7.

[69] NYPSC's Comments at 6.

[70] *Id.* at 6.

associated (affiliated) transactions, and remove the $250,000 threshold for reporting services. This schedule is already in existence in Form 2, but will be a new addition to Form 2–A.

b. Incremental Pricing Policy

45. Construction of the interstate natural gas pipeline system began in earnest in the 1940's. As consumption increased, pipelines expanded their facilities to meet the growing demand. The majority of these early expansions involved adding facilities that were integrated into the pipeline's mainline system and provided benefits to all customers using the system. For this reason, the cost of those facilities was considered to be a part of the pipeline's cost of serving all customers. This ''rolled-in'' approach remained the predominant rate methodology for new additions to existing pipeline systems through the early 1990s. Under a predominantly rolled-in rate regime, financial information reported in Forms 2 and 2–A on an aggregate company-wide basis was sufficient for Commission oversight of pipeline rates. The Commission's pricing policy for pipeline capacity expansions has evolved, due in part to changes in the industry brought about by Order No. 636, and its predecessor, Order No. 436.[71] Current Commission policy requires that a pipeline be prepared to financially support expansion projects without relying on subsidization from existing customers.[72]

46. In concert with this changing pricing policy, the Commission has granted an increasing number of companies incremental and other rate treatments for facility expansions.[73] Under these more recent pricing methods, new and existing customers pay different rates based on the cost of the different facilities that provide service to them. In the individual cases where incremental rates have been approved, the Commission has required the pipelines to maintain their accounting records so as to be able to readily identify the facilities and related costs used to provide service to the customers that pay the incremental rates.[74] Until now, the Commission has not required the disaggregation of costs and revenues associated with incremental rate treatment in Forms 2 and 2–A. The Industry Coalition believes that a proper assessment of rates requires that these facilities be considered separately.[75] Without this information, they claim that pipeline customers cannot evaluate the reasonableness of different rates that are determined from distinct and separate facilities.[76]

47. The Commission agrees with the Industry Coalition, and proposes to add a new schedule to Forms 2 and 2–A which would provide information regarding a company's individual rate treatments for services. The proposed new schedule at page 217, entitled ''Non-Traditional Rate Treatment Afforded New Projects,'' would report: (1) The name of the facility; (2) docket number under which the facility was approved; (3) the type of rate treatment (*e.g.*, incremental or another rate treatment); (4) the amount of plant in service; (5) the amount of accumulated depreciation; (6) amount of accumulated deferred income taxes; (7) amount of operating expenses; (8) the amount of maintenance expenses; (9) the amount of depreciation expense; (10) incremental revenues; and (11) other expenses. Because the Commission already requires the companies to separately account for each rate treatment, the Commission believes the burden for the company to identify each facility and the associated costs would be minimal.

c. Discounted Rate Services and Negotiated Rate Services

48. At present, certain pages in Form 2 require filers to report the dollar amounts and volumes associated with each type of transportation service provided. These are pages 300–301, Gas Operating Revenue; pages 302–303, Revenues from Gas Transportation of Others Through Gathering Facilities; pages 304–305, Revenues from Gas Transportation of Others Through Transmission Facilities; 306–307, Revenues from Storing Gas of Others; and page 308, Other Gas Revenues, which require filers to report the dollar amounts and volumes associated with each type of transportation service provided. Form 2 does not, however, require filers to identify the volumes and revenues applicable to discounted, negotiated, or recourse rates. Both the Industry Coalition and the KCC believe that this information is invaluable to shippers because it would allow for the proper assessment and analysis of adequacy of rates.[77]

49. The Commission permits pipelines to negotiate individualized rates[78] which, unlike discounted rates,[79] are not constrained by the maximum and minimum rates in the pipeline's tariff.[80] However, pipelines must permit shippers the option of paying the traditional cost-of-service recourse rates in their tariffs, instead of requiring them to negotiate rates for any particular service.[81] The Commission relies on the availability of recourse rates to prevent pipelines from exercising market power by assuring that the customer can revert to the just and reasonable tariff rate if the pipeline unilaterally demands excessive prices or withholds service.[82] At present, individual pipelines may provide services from the same facilities using different rates—negotiated, discounted, or recourse rates. In these circumstances, the Commission agrees with the Industry Coalition and the KCC that it is important for the customer and the Commission to know the level of services provided under each rate structure in order to protect against cross-subsidization and to ensure that the rate for recourse service remains just and reasonable. Therefore, we propose to add a new schedule, page 313, Discounted Services and Negotiated Services, which would require pipeline filers to report the revenues and volumes applicable to discount and negotiated rate services provided during the period.

[71] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 436, FERC Stats. & Regs. ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC,* 824 F.2d 981 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1998), *readopted on an interim basis,* Order No. 500, FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, American Gas Ass'n* v. *FERC,* 888 F.2d 136 (D.C. Cir. 1989), *readopted on an interim basis,* Order No. 500–H, FERC Stats. & Regs. ¶30,867 (1989), *aff'd in part and remanded in part, American Gas Ass'n* v. *FERC,* 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied,* 498 U.S. 1084 (1991).

[72] *See Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy,* 88 FERC ¶ 61,227 (1999), *order clarifying policy,* 90 FERC ¶61,128 (2000), *order clarifying policy,* 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[73] *See, e.g., Questar Pipeline Co.,* 93 FERC ¶ 61,279 (2000); *Independence Pipeline, et. al.,* 89 FERC ¶ 61,283 (1999); and *Transcontinental Gas Pipeline Corp.,* 76 FERC ¶ 61,318 (1996).

[74] *See* 18 CFR 154.309.

[75] Industry Coalition Comments at 6.

[76] *Id.*

[77] Industry Coalition comments at 6; *see also* KCC Comments at 7.

[78] *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines,* 74 FERC ¶ 61,076, *reh'g denied,* 75 FERC ¶ 61,024 (1996), *petitions for review denied sub nom. Burlington Resources Oil & Gas Co.* v. *FERC,* 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement); *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy,* 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification,* 114 FERC ¶ 61,042 (2006), *dismissing reh'g and denying clarification,* 114 FERC ¶ 61,304 (2006).

[79] *See* 18 CFR 284.10(c)(5).

[80] *See Northern Natural Gas Co.,* 105 FERC ¶ 61,299 (2003) (clarifying the distinction between discounted and negotiated rates).

[81] A recourse rate is a cost of service based rate for natural gas pipeline service that is on file in a pipeline's tariff and available to customers who do not negotiate a rate with the pipeline company.

[82] Negotiated Rate Policy Statement at 61,238–42.

3. Rate Base and Other Key Cost-of-Service Components

a. Deferred Income Taxes

50. The Industry Coalition and the KCC request that the Commission require pipelines to identify the components of deferred taxes that are included in the pipeline's rate base.[83] Both suggest that the information would provide Form 2 users with an essential element needed to calculate the pipeline's current rates. At present, Form 2 filers are required to report only a single line of data for the total deferred income tax balances related to gas operations on the schedules titled Accumulated Deferred Income Taxes (Account 190) pages 234–235, Accumulated Deferred Income Taxes—Other Property (Account 282) pages 274–275, and Accumulated Deferred Income Taxes—Other (Account 283) pages 276–277. Although Form 2 filers also must identify and report on these pages the deferred income taxes related to other income and deductions as well as classification of the total deferred income tax amounts between federal, state and local income tax, this information does not provide any significant insight into the source of the deferred income taxes related to gas operations. Form 2–A filers report even less information concerning their deferred income tax amounts. Form 2–A filers report only the total amount of deferred income taxes (by applicable deferred income tax account) on their balance sheet and income statement. Unlike Form 2, no additional supporting information for these amounts is presently required in Form 2–A.

51. The Commission agrees that deferred income tax balances are an important factor in determining rate base and evaluating a pipeline's earned rate of return. Customers need to know the amount of deferred tax balances related to gas operations that would be included in the pipeline's cost of service in order to assess the reasonableness of the rates currently paid. At present, the level of detail required for deferred income taxes related to gas operations in both Forms 2 and 2–A does not provide this information.[84] Accordingly, the Commission is proposing to add an instruction to each of the deferred income tax schedules noted above to require pipelines to provide, in a footnote to those schedules, a summary of the type and amount of deferred income taxes reported in the beginning-of-year and end-of-year balances for deferred income taxes used to develop jurisdictional recourse rates. These revisions meet the concerns of the Industry Coalition that users be provided additional information to enable them to calculate the pipeline's rate base and evaluate the pipeline's current rates.

52. The Commission also proposes to add those deferred tax reporting schedules to Form 2–A so that all pipeline customers, not just those of larger pipelines, would have this key piece of information which the Commission believes is essential to an assessment of the reasonableness of the rates for pipeline service. Also, we propose a technical correction to each of the deferred income tax reporting schedules to delete one of the lines for reporting ''other'' deferred income taxes. This will eliminate the confusion caused by providing two lines for reporting this information.

b. State Income Tax Expense

53. The KCC and MoPSC ask that filers be required to provide the pipeline's current effective overall state income tax rate.[85] Both argue that the information now provided in Forms 2 and 2–A is inadequate. Currently, in Form 2, the amount of state income tax paid or payable for the current year is reported by state on the schedule titled Taxes Accrued, Prepaid and Charged During Year, Distribution of Taxes Charged, pages 262–3. The aggregate state deferred income tax for the entire reporting entity is reported in Form 2 schedules for accumulated deferred income taxes, as noted above. However, this information does not readily permit the Commission or the pipeline's customers to determine the amount of state income tax expense (both current and deferred) that should be associated with the before-tax net income generated from the sales of transportation services under more than one rate structure (*e.g.,* where the pipeline provides transportation services for some customers on a rolled-in basis and others on an incremental basis). Since state income taxes are a valid component of the cost of providing service, the Commission and the pipeline's customers must be able to determine the amount of state income tax expense applicable to each of these rate structures in order to evaluate the reasonableness of the return earned from providing the disparate services on an after-tax basis. For that purpose, we propose to add a column Q to the Taxes Accrued, Prepaid and Charged During Year, Distribution of Taxes Charged schedule on pages 262–3 of Form 2 and to add the same schedule to Form 2–A to require pipelines to report state and local income tax rates.

c. Regulatory Assets and Liabilities

54. The KCC requests that pipelines identify regulatory asset and liability balances included in rate base.[86] Currently, Forms 2 and 2–A filers are required to report a break-out of regulatory assets and liabilities on page 232, Other Regulatory Assets, and page 278, Other Regulatory Liabilities. Commission regulations require companies to establish regulatory assets and liabilities where future recovery from rate payers or refund to rate payers is probable. However, during a rate case the validity of any regulatory asset or regulatory liability can be challenged. In order to enable Form 2 and 2–A users to determine which regulatory assets are recovered and which regulatory liabilities are refunded, the Commission proposes to revise the regulatory asset schedule by adding footnote citations for each regulatory asset to identify the regulatory approval to record the item and adding a column to identify amounts written off during the period as non-recoverable. In addition, we propose to revise the regulatory liability schedule by adding footnote citations for each regulatory liability to identify the regulatory approval to refund the item and adding a column to identify amounts written off during the period as non-refundable.

d. Distribution of Salaries and Wages

55. The Distribution of Salaries and Wages schedule of Form 2, pages 354–355, requires natural gas companies to report the distribution of total salaries and wages for the year, segregated according to particular operating functions of the company. The schedule allows users of the forms to review and analyze the payroll distribution of the company. However, the schedule does not provide for the recording of payroll costs billed to the company by affiliated companies. Both the KCC and the Industry Coalition request that the Commission require pipeline companies to provide more information on pipeline

[83] Industry Coalition Comments at 4; KCC Comments at 7.

[84] In contrast to the single line reported in Form 2, the deferred income balances are comprised of numerous book and income tax timing differences, many of which are not used in formulating jurisdictional rates. *See, e.g.*, Transcontinental Gas Pipe Line Corporation's general section 4 rate filing in Docket No. RP06–569–000, Schedule B–1, pages 1–16 (reflecting approximately 120 timing differences generating deferred income taxes, with only approximately 15 used in the rate base calculation).

[85] KCC Comments at 7; MoPSC Comments at 4.

[86] KCC Comments at 7.

overhead and shared service costs.[87] Based on our experience in section 4 rate cases, natural gas company affiliates have become a larger cost of operations for many natural gas companies as these affiliated companies are increasingly providing the workforce for the natural gas company's operations. The salary and wage expenses that affiliated companies charge to the natural gas companies are not currently reported in the Distribution of Salaries and Wages schedule by all filers of Form 2. As a consequence, an important tool used for evaluating the reasonableness of the level of salaries and wages charged to pipeline operations, and thus included in the cost of service, is compromised.

56. To enhance the usability of the Distribution of Salaries and Wages schedule, the Commission proposes to add an instruction and a new column that would require all filers of Form 2 to report salaries and wages billed by affiliates or affiliated service companies separately from other salary and wage distributions. The new column to pages 354–355 would be titled ''Payroll Billed by Affiliated Companies.'' Requiring natural gas companies to file this payroll distribution information would allow the forms user to determine the level of salaries and wages included in the natural gas company's operations and maintenance expenses, make valid comparisons of the amounts between entities and periods, and better assess the reasonableness of the levels for cost of service purposes.

e. Employee Pensions and Benefits

57. NYPSC requests that pipelines be required to report information concerning pension and other post-employment benefits.[88] NYPSC states that presently, Form 2 does not require any reporting related to these expenses, and believes that these expense components are material to a rate assessment.[89] Presently, the USofA requires pipelines to record the cost of pension and other employee benefits in Account 926, Employee Pensions and Benefits. Instruction 3 to page 122.1, Notes to Financial Statements, requires filers to furnish details on their pension plans, post-retirement benefits other than pensions (PBOPS), and post-employment benefit plans, including the current year's cash contribution to each plan. Despite these accounting and disclosure requirements, information about the costs of the various employee benefit plans charged to expense each period is not readily available in Forms 2 and 2–A. This is due to the complexity of the disclosure requirements for defined PBOP's, the participation by pipelines in multi-employer benefits plans in which they are assigned a portion of the cost of the total plan, and the flexibility in how information is displayed and described in a footnote disclosure.

58. We agree that it is important that forms users be able to identify the types and costs of employee benefits. Therefore, we propose to amend Instruction 3 to page 122.1 to require filers that participate in multi-employer post-retirement benefit plans to disclose the amount of cost recognized in the filer's financial statements for each plan for the period presented and the basis for determining the filer's share of the total plan costs. In addition, we are proposing to add a schedule entitled Employee Pensions and Benefits, page 352, to both Forms 2 and 2–A, to provide additional details about the types and costs of benefits provided to employees. The Commission believes that requiring pipelines to provide this level of detail would permit forms users to assess the cost of employee benefits and better compare this information between periods and entities.

f. Asset Retirement Obligation (ARO)

59. The Commission amended its regulations in Order No. 631 to update the accounting and financial reporting requirements for asset retirement obligations (ARO) under its USofA for public utilities and licensees, natural gas and oil pipeline companies.[90] An asset retirement obligation is a liability resulting from a legal obligation to retire or decommission a plant asset. Recently, some pipelines have sought to recover ARO costs in their overall cost of service.[91] As a result of this increasing trend, the Commission believes that it has become increasingly important to make the accounting for AROs more transparent to the users of the financial statements as the statements currently do not provide the level of detail required to perform a thorough analysis of a company's asset retirement obligations.

60. The Commission is proposing to add a new instruction to the Notes to the Financial Statements schedule, page 122.1. The new instruction would require natural gas companies to disclose: (1) Details on the initial accounting for asset retirement obligations; (2) any subsequent changes in the measurement or method of accounting for the obligations; and (3) the final accounting for the settlement of the obligations, including recognition of any gains or losses on the settlement. In addition, it would require identification of ARO costs that are recovered through rates and placed into funding mechanisms or deposit accounts, (*e.g.*, trust funds, insurance policies, surety bonds).

61. Account No. 824 of the USofA requires pipelines to maintain records of costs incurred in operating underground storage plant and other underground storage expenses, not includable in other accounts, including research and development expenses. Account No. 859 requires that pipelines maintain records of the costs of labor, material used and expenses incurred in operating transmission system equipment and transmission system expenses not includable in other accounts, including research and development expenses. This information is currently not provided in Form 2. We invite comments on whether research and development expenditures included in Account Nos. 824 and 859 should be reported in Form 2.

D. Proposed Elimination of Form 11

62. Williston Basin suggested that Form 11, Natural Gas Pipeline Company Quarterly Statement of Monthly Data be eliminated and that the information required by Form 11 be reported in Form 3–Q.[92] Form 11 is a quarterly filing made by natural gas companies whose gas transported or stored for a fee exceeded 50 million Dth in each of the three previous years.[93] The form collects information concerning selected revenues and associated quantities for each month by applicable rate schedule. The data is submitted electronically on a quarterly basis. The Commission requests that Form 11 users advise whether the information reported in the form is relied upon by pipeline shippers, and, specifically, how the data is used. In addition, both filers and users of Form 11 are asked to respond whether the information reported in Form 11 could, alternatively, be incorporated into Form 3–Q.

E. Proposed Adjustments to the CPA Certification Statement

63. Each natural gas company not classified as Class C or D prior to

[87] Industry Coalition Comments at 6; KCC Comments at 7.

[88] NYPSC Comments at 7.

[89] *Id.*

[90] *Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations*, Order No. 631, 68 FR 19610 (April 21, 2003), FERC Stats. & Regs. ¶ 31,142, *order on reh'g*, Order No. 631–A, 104 FERC ¶ 61,183 (2003).

[91] *See, e.g., Transcontinental Pipe Line Corporation*, 116 FERC ¶ 61,314 (2006); *Dominion Cove Point LNG, LP*, 116 FERC ¶ 61,110 (2006).

[92] Williston Basin Comments at 7.

[93] *See* 18 CFR 260.3.

January 1, 1984, is required to file with the Commission a letter or report of an independent accountant certifying approval, together with the filing of the applicable Form 2 or 2–A.[94] The Commission's regulations require that an independent certified public accountant test for compliance in all material respects with the USofA and published accounting releases for those schedules listed in the General Instructions of the applicable Form 2 or 2–A.[95] Natural gas companies that file a Form 2 or 2–A are required to file the Certified Public Accountant's (CPA) Certification Statement on April 18 of the following calendar year.

64. The Commission proposes to extend the filing date for the CPA Certification Statement until May 18 of the following calendar year for natural gas companies. This proposal would reduce the filing and administrative burden by allowing more time for the company and the certified public accountant to identify and resolve issues that may arise during the course of the examination.

F. Miscellaneous Issues

65. The NOPR posed two questions that are not directly related to the forms. The first is whether interstate pipelines should be required to notify the Commission when their total sales or transactions fall below the minimum thresholds established in the Commission's regulations such that the pipeline believes that it is no longer subject to the filing requirements.[96] The KCC and MoPSC responded that the Commission should require such notification.[97] MoPSC observes that this requirement would allow the Commission and the public to determine if a report is late or no longer required.[98] INGAA and Williston Basin stated that they did not object to this requirement. The Commission agrees that notification of non-filing status would be helpful to the Commission and users of Forms 2 and 2–A. Accordingly, at such time as a pipeline now subject to the reporting requirements in either Form 2 or 2–A has, in three consecutive years, experienced volumes and transactions below the threshold levels specified in the Commission's regulations and believes that they are no longer required to file a Form 2 or 2–A, must notify the Commission of this change. The pipeline must file the notification on the date that the form would otherwise be due.

66. The Commission also asked commenters whether the Commission should require a showing of good cause before granting an extension of time in which to file the required reports. Both MoPSC and the KCC support such a requirement.[99] The Commission agrees that any request for an extension of time in which to comply with Commission regulations or a Commission order must show good cause. Without such a showing, the request may not be granted. The Commission staff is monitoring filers' timely compliance with the reporting requirements and will continue to do so.

IV. Information Collection Statement

67. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[100] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden:

The Commission estimates that on average it will take respondents from fifty-nine to one hundred and fifty-six hours to comply with the proposed requirements. Most of the additional information required to be reported is already compiled and maintained by the pipelines, and will not substantially increase the existing reporting burden. This will result in total hours for the following collections of information:

Data collection form (a)	Number of respondents (b)	Change in the number of hours per respondent (c)	Filing periods (d)	Change in the total annual hours (e)=(b)×(c)×(d)
FERC Form 2	74	50	1	3700
FERC Form 2–A	44	135	1	5940
FERC Form 3–Q	118 (74_{m},44_{nm})	7	3	2478 (1554_{m},924_{nm})
FERC Form 11	74	−3	4	(−888)
Relevant Totals		59_{m},156_{nm}		11,230 (4366_{m},6864_{nm})

nm=nonmajor company.
m=major company.

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. As most of the required data is already maintained by the pipelines, the Commission estimates that the collection costs will not be overly burdensome.

Title: FERC Form No. 2, ''Annual Report of Major Natural Gas Companies''; FERC Form No. 2–A, ''Annual report for Nonmajor public utilities and licensees''; FERC Form No. 3–Q, ''Quarterly financial report of electric utilities, licensees, and natural gas companies.''

Action: Proposed information collection.

OMB Control Nos. 1902–0028 (Form 2); 1902–0030 (Form 2–A); 1902–0205 (Form 3–Q), and 1902–0032 (Form 11).

Respondents: Businesses or other for profit.

Frequency of responses: Annually and quarterly.

Necessity of the information: The information maintained and collected under the requirements of Part 141 is essential to the Commission's oversight duties. The data now reported in the forms does not provide sufficient information to the Commission and the public to permit an evaluation of the filers' jurisdictional rates. Since the triennial restatement of rates

[94] *See* 18 CFR 158.11. The C and D classifications refer to pipelines now defined as Nonmajor. *See* 18 CFR part 201 General Instructions.

[95] *See* 18 CFR 158.10.

[96] *See* 18 CFR 260.1 and 260.2.

[97] KCC Comments at 8; MoPSC Comments at 10.

[98] MoPSC Comments at 10.

[99] *Id. See* KCC Comments at 8.

[100] 44 U.S.C. 3507(d).

requirement was abolished and pipelines are no longer required to submit this information, the need for current and relevant data is greater than in the past. The information collection proposed in the NOPR will increase the forms' usefulness to both the public and the Commission. Without this information, it is difficult for the Commission and the public to perform an assessment of pipeline costs, and thereby help to ensure that rates are just and reasonable.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support associated with the information requirements.

68. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, phone (202) 502–8415, fax: (202) 273–0873, e-mail: *Michael.miller@ferc.gov*]

V. Environmental Analysis

69. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[101] No environmental consideration is necessary for the promulgation of a rule that addresses information gathering, analysis, and dissemination,[102] and, also, addresses accounting.[103] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect if legislation or regulations being amended, and therefore, fall under these exclusions.[104] These proposed rules, if finalized, involve information gathering, analysis, and dissemination. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required.

VI. Regulatory Flexibility Act

70. The Regulatory Flexibility Act of 1980 (RFA)[105] requires rulemakings to contain either a description and analysis that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[106] Under the industry standards used for purposes of the RFA, a natural gas company qualifies as a ''small entity'' if it has annual revenues of $6.5 million or less. Most companies regulated by the Commission do not fall within the RFA's definition of a small entity.[107] Thus, most interstate natural gas companies to which the rules proposed herein, if finalized, would not fall within the RFA's definition of small entities. Consequently, the rules proposed herein, if finalized, will not have a significant economic effect on a substantial number of small entities.

VII. Comment Procedures

71. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due on or before November 13, 2007. Comments must refer to Docket No. RM07–9–000 , and must include the commenter's name, the organization he or she represents, if applicable, and his or her address.

72. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing.

73. Commenters who are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426.

74. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this notice of proposed rulemaking are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

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

77. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail at *public.referencerom@ferc.gov*.

List of Subjects

18 CFR Part 158

Natural gas, Reporting requirements.

18 CFR Part 260

Natural gas, Reporting requirements.

By direction of the Commission.

Commissioner Wellinghoff concurring with a separate statement attached.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 158 and 260 of Title 18 of the *Code of Federal Regulations*, as set forth below:

PART 158—ACCOUNTS, RECORDS, MEMORANDA AND DISPOSITION OF CONTESTED AUDIT FINDINGS AND PROPOSED REMEDIES

1. The authority citation for part 158 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7102–7352.

2. Section 158.11 is revised to read as follows:

§ 158.11 Report of certification.

Each natural gas company not classified as Class C or Class D prior to January 1, 1984 shall file with the

[101] *See* Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987) FERC Stats. & Regs. ¶30,783 (1987).

[102] *See* 18 CFR 380.4(a)(5).

[103] *See* 18 CFR 380.4(a)(16).

[104] *See* 18 CFR 380.4(a)(2)(ii).

[105] 5 U.S.C. 601–612.

[106] *Id.*

[107] 5 U.S.C. 601(3).

Commission by May 18 of the following calendar year, a letter or report of the independent accountant certifying approval, covering the subjects and in the format prescribed in the General Instructions of the applicable Form No. 2 or Form No. 2–A. The letter or report shall also set forth which, if any, of the examined schedules do not conform to the Commission's requirements and shall describe the discrepancies that exist. The Commission shall not be bound by the certification of compliance made by an independent accountant pursuant to this paragraph.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 260.3 [Removed]

2. Section 260.3 is removed.

WELLINGHOFF, Commissioner, *concurring:*

The adequacy of data reported in Forms 2, 2–A and 3–Q has been questioned for years. Based on the comments received in response to the NOI in this proceeding, the need to update and supplement these forms is clear. Today, we propose modifications that should correct many deficiencies in these forms.

We have endeavored to make the changes necessary to provide the data needed by the Commission to carry out our responsibility, and for the form users to effectively exercise their rights, under NGA Section 5. Most of the information requested is data that is maintained by the pipeline and can readily be transferred to existing and new schedules. Conversely, I do not believe that we have blurred the distinction between NGA sections 4 and 5, a concern expressed by some commenters. I urge parties in their comments to focus on whether our proposed modifications have struck the proper balance.

I also have a specific request for comment. As noted, these forms are the vehicles the Commission uses to obtain financial and certain operational information from pipelines. The forms provide information concerning a pipeline's past performance and its future prospects. For example, a pipeline is currently required to provide a statement and system map identifying and detailing all important changes in the facilities it operates.[108] I propose that pipelines submit an Energy Efficiency Statement as well. I believe advancement of energy efficient infrastructure is critical to help address the energy crisis our country faces. The Energy Efficiency Statement would describe how the pipeline has incorporated efficiency in the facility changes it reports. Such transparency will be useful in encouraging energy efficiency improvements by pipelines and more broadly disseminating the best practices throughout the industry.

For this reason, I respectfully concur.

Jon Wellinghoff,

Commissioner.

[FR Doc. E7–19015 Filed 9–26–07; 8:45 am]

BILLING CODE 6717–01–P

[108] General Corporate Information and Financial Statements, Important Changes during the Year and Gas Plant Statistical Data, System Map.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0544; FRL–8470–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from Ohio to amend its State Implementation Plan (SIP) emission statement reporting regulation. Ohio submitted the SIP revision requests to EPA on May 1, 2006, and supplemented on May 22, 2007. Ohio held a public hearing on the submittal on September 8, 2005. The SIP revision concurrently rescinds and revises portions of Ohio Administrative Code Chapter 3745–24 to be consistent with the Clean Air Act emission statement program reporting requirements for stationary sources. The revision makes the rule more general to apply to all counties designated nonattainment for ozone, and not to a specific list of counties.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0544, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *Hatten.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–18895 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R07–OAR–2007–0943; FRL–8473–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Missouri; Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Plan submitted by Missouri on May 18, 2007, and revisions submitted on September 6, 2007. The plan addresses the requirements of EPA's Clean Air Mercury Rule (CAMR), promulgated on May 18, 2005, and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted State Plan fully meets the CAMR requirements for Missouri.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU Hg emissions and requires States to submit State Plans to ensure that annual EGU Hg emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered CAMR cap-and-trade program. In the State Plan that EPA is proposing to approve Missouri would meet CAMR requirements by participating in the EPA trading program.

DATES: Comments must be received on or before October 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0943, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: jay.michael@epa.gov.*

3. *Mail:* Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Michael Jay, Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0943. 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 through *http://www.regulations.gov or e-mail*, information that you consider to be CBI or otherwise protected. 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 and any form of encryption and should 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 at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551–7460 or by e-mail at *jay.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Proposing To Take?

EPA is proposing to approve the State Plan submitted by Missouri on May 18, 2007, and revisions submitted on September 6, 2007. In its State Plan, Missouri would meet CAMR by requiring certain coal-fired EGUs to participate in the EPA-administered cap-and-trade program addressing Hg emissions. EPA is proposing to determine that the State Plan meets the applicable requirements of CAMR.

II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule''). In this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States and the District of Columbia (all of which are referred to herein as States) meet Statewide annual budgets limiting Hg emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under CAA section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual Hg emissions from the coal-fired EGUs located in the respective States do not exceed the applicable statewide annual EGU mercury budget. Under CAMR, States may implement and enforce these reduction requirements by participating in the EPA-administered cap-and-trade program or by adopting any other effective and enforceable control measures.

CAA section 111(d) requires States, and along with CAA section 301(d) and the Tribal Air Rule (40 CFR part 49) allows Tribes granted treatment as States (TAS), to submit State Plans to EPA that implement and enforce the standards of performance. CAMR explains what must be included in State Plans to address the requirements of CAA section 111(d). The State Plans were due to EPA by November 17, 2006. Under 40 CFR 60.27(b), the Administrator will approve or disapprove the State Plans.

III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU Hg emission budgets and is to be implemented in two phases. The first phase of reductions starts in 2010 and continues through 2017. The second phase of reductions starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by

either: (1) Requiring coal-fired EGUs to participate in the EPA-administered cap-and-trade program; or (2) adopting other coal-fired EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU Hg budget.

Each State Plan must require coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Each State Plan must also show that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75.

IV. How Can States Comply With CAMR?

Each State Plan must impose control requirements that the State demonstrates will limit Statewide annual Hg emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU Hg budget. States have the flexibility to choose the type of EGU control measures they will use to meet the requirements of CAMR. EPA anticipates that many States will choose to meet the CAMR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. EPA also anticipates that many States may chose to control Statewide annual Hg emissions for new and existing coal-fired EGUs through an alternative mechanism other than the EPA-administered CAMR cap-and-trade program. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU Hg emission budget.

A State submitting a State Plan that requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model Hg trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the model rule. CAMR provides that States may only make limited changes to the model rule if the States want to participate in the EPA-administered trading program. A State Plan may change the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of Hg allowances using a methodology chosen by the State. A State's alternative allowance allocation provisions must meet certain allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU Hg budget for that year.

V. Analysis of Missouri's CAMR State Plan Submittal

A. State Budgets

In this action, EPA is proposing to approve Missouri's State Plan that adopts the annual EGU Hg budgets established for the State in CAMR, i.e., 1.393 tons for EGU Hg emissions in 2010–2017 and 0.55 tons for EGU Hg emissions in 2018 and thereafter. Missouri's State Plan sets these budgets as the total amount of allowances available for allocation for each year under the EPA-administered CAMR cap-and-trade program.

B. CAMR State Plan

The Missouri State Plan requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program. The State Plan incorporates by reference the EPA model Hg trading rule but has adopted an alternative allowance allocation methodology. Under the Hg allowance allocation methodology in the model rule, Hg allowances are allocated to units that have operated for 5 years, based on heat input data from a 3-year period that are adjusted for coal rank by using coal factors of 3.0 for the lignite combusted by the unit, 1.25 for the subbituminous combusted by the unit, and 1 for other coal ranks combusted by the unit. The model rule also provides a new unit set-aside from which units without 5 years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their State Plan submissions a different Hg allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative Hg allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;

2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

In Missouri's alternative allowance methodology, Missouri has chosen to distribute Hg allowances directly based upon Table I in 10 CFR 10–6.368. The table permanently allocates to designated units the entirety of Missouri's mercury allowances for both phases of the program. Accordingly, Missouri has not provided allowances for the establishment of set-aside accounts.

Missouri's State Plan requires coal-fired EGUs to comply with the monitoring, record keeping, and reporting provisions of 40 CFR part 75 concerning Hg mass emissions. Missouri's State Plan also demonstrates that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU Hg budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, record keeping, and reporting requirements of 40 CFR part 75. Missouri cites Section 643.050 and 643.055 of the Missouri Air Conservation Law, as containing the legal authority for the Missouri Air Conservation Commission to adopt the State's rule that allows for Missouri's participation in the nationwide cap and trade program.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to approve State law as meeting Federal requirements and would impose no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule would 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 action proposes to approve pre-existing requirements under State law and would 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 proposal also does not have Tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to approve a State rule implementing a Federal standard.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance [1] states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that ''appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998) Because this rule merely proposes to approve a state rule implementing the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with Executive Order 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined it would not.

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

List of Subjects in Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Mercury, Reporting and recordkeeping.

Dated: September 19, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–19120 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

[1] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0022; FRL–8474–2]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Solicitation of comment on legal analysis.

SUMMARY: On October 12, 2005, pursuant to section 112(d) of the Clean Air Act, EPA issued national emission standards for hazardous air pollutants (NESHAP) emitted by various types of hazardous waste combusters. EPA subsequently granted reconsideration petitions relating to certain issues presented by the rules. 71 FR 14665, 52564, but has not yet issued a final determination on reconsideration. Following the close of the comment period on the proposed reconsideration rule, the United States Court of Appeals for the District of Columbia Circuit has issued several opinions construing section 112 (d) of the Clean Air Act, and one of those opinions has called into question the legality of some of the standards for hazardous waste combusters. This notice discusses the standards that EPA promulgated in October 2005, and specifically identifies which standards EPA believes are consistent with the Act and caselaw, and which standards are not and need to be reexamined through a subsequent rulemaking. With respect to those standards EPA intends to retain, this notice indicates the portions of the rationale upon which EPA intends to rely, and which portions EPA would no longer rely upon as a justification for the October 2005 standards. EPA is seeking public comment on this analysis. EPA has also placed edited versions of various support documents in the public docket, edited to remove portions of the rationale on which EPA no longer plans to rely, and seeks public comment on these edits.

DATES: Comments must be received on or before October 18, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (2822T), Docket ID No. EPA–HQ–OAR–2004–0022, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: HQ EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. 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 the disclosure of which is restricted by

statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

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 the disclosure of which 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 HQ EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the HQ EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For more information on this notice, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (5302P), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: *Entities Potentially Affected by this Action.* Categories and entities potentially affected by this action include:

Category	NAICS code[a]	Potentially affected entities
Petroleum and coal products manufacturing	324	Any entity that combusts hazardous waste as defined in the final rule.
Chemical manufacturing	325	
Cement and concrete product manufacturing	3273	
Other nonmetallic mineral product manufacturing	3279	
Waste treatment and disposal	5622	
Remediation and other waste management services	5629	

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200.[1] If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

How Do I Obtain a Copy of this Document and Other Related Information? In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the World Wide Web (WWW). Following the Administrator's signature, a copy of this document may be posted on the WWW at *http://www.epa.gov/hwcmact*. This Web site also provides other information related to the NESHAP for hazardous waste combustors including the NESHAP issued on October 12, 2005 (70 FR 59402) and the two petition for reconsideration notices published on March 23, 2006 (71 FR 14665) and September 6, 2006 (71 FR 52624).

Preparation of Comments. 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. Send or deliver information identified as CBI to only the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305P), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, Washington DC, 20460. Clearly mark the part or all of the information that you claim to be CBI.

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 it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

Organization of this Document. The information presented in this notice is organized as follows:

[1] Unless otherwise noted, all regulatory references in this notice are to 40 CFR.

I. Background
II. Consideration of Variability in Establishing MACT Floors
III. Discussion of Individual Standards
A. Standards for Particulate Matter
1. Standards for Incinerator, Cement Kilns, Lightweight Aggregate Kilns, and Solid Fuel Boilers
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1. Methodology to Establish Floor Levels
2. Alternatives to the Particulate Matter Standard for Incinerators, Liquid Fuel Boilers, and Solid Fuel Boilers
3. Alternative Mercury, Semivolatile Metals, Low Volatile Metals, and Total Chlorine Standards for Cement Kilns and Lightweight Aggregate Kilns
4. Alternative Mercury Standards for Cement Kilns and Lightweight Aggregate Kilns Under the Interim Standards
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1. Incinerators
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E. Non-Dioxin Organic HAP
F. Mercury
1. Incinerators
2. Cement Kilns
3. Lightweight Aggregate Kilns
4. Liquid Fuel Boilers
5. Solid Fuel Boilers
G. Normalization
H. Potential Implications to the Compliance Date Provisions If Standards Are Remanded to EPA

I. Background

The Hazardous Waste Combustor (HWC) Maximum Achievable Control Technology (MACT) rule, 70 FR 59402 (October 12, 2005), adopts separate standards for six source categories, the common link being that sources in each category burn hazardous waste. These sources are incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces. Liquid fuel boilers are further subcategorized into those burning higher heating value hazardous wastes and lower heating value hazardous wastes. The following hazardous air pollutants (''HAP'') are regulated for each of these source categories: dioxins and furans (''D/F''); semivolatile metals (lead and cadmium) (''SVM''); low volatile metals (arsenic, beryllium and chromium) (''LVM''); mercury, particulate matter (''PM'') (as a surrogate for the remaining HAP metals (antimony, cobalt, manganese, nickel, and selenium), and also to control HAP metals in all inputs to the units which are not hazardous waste); hydrogen chloride/chlorine (measured as total chlorine) (''TCl''); carbon monoxide/total hydrocarbons (''CO/HC'') (as surrogates for non-dioxin organic HAP (and in a few cases, dioxin as well); and destruction removal efficiency (''DRE'') (an aspect of control of non-dioxin organic HAP, and in a few cases, dioxin).

On March 13, 2007, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *Sierra Club* v. *EPA,* 479 F.3d 875 (2007) (''*Brick MACT*''). EPA has reexamined the rule to determine if it is compliant with the statute with respect to the issues discussed in the Court's opinion, and specifically whether the MACT floors for each standard are compliant. For the most part, EPA believes that they are. The basic reason, for those standards EPA plans to retain, is that the rule identifies as best performers—the best performing 12 per cent or best performing five sources in smaller source categories for existing sources, and the best controlled single source for new sources—those sources which are likely to emit the least HAP over time, and reasonably estimates these sources' level of performance. Put another way, the rule identifies as best performers those emitting the least HAP considering variability (i.e., their performance over time), and accounts for that variability as much as possible in estimating these sources' level of performance. See 70 FR at 59346 (''best performers are those that perform best over time (i.e., day-in, day-out)'').

The statute does not address the question of whether, in assessing which sources perform best or are best controlled, emission levels should be evaluated over time, or in a single test result. Nor does *Brick MACT,* which states at 479 F.3d 880 that ''section [112(d)(3)] requires floors based on the emission level actually achieved by the best performers (those with the lowest emission levels)'', but does not refer to a time period for measurement. The following example shows why it is reasonable to determine which sources are the best performers by accounting in the first instance for what their emissions are over time. Assume that source A in a single test emitted 10 units of cadmium, and source B emitted 15 units. However, assume further that over time source A emits cadmium at a rate of 40 units and source B emits cadmium at a rate of 25 (the difference being that source B's performance is less variable). It is at the very least reasonable to view source B as the better performer; over time it emits less cadmium than source A. Indeed, given that the chief health risks of most HAP emitted by Hazardous Waste Combustors results from chronic rather than acute exposure (i.e., amount of repeated exposure over time as opposed to single exposure incidents), floor standards based on evaluation of sources' performance over time (i.e., standards which account for sources' variability) best address the sources' ultimate impacts on human health. See 70 FR at 59533–35 where EPA discusses human health benefits of the standards considering reductions in chronic exposure to HAP.

II. Consideration of Variability in Establishing MACT Floors

EPA may consider variability in identifying best performers and their level of performance. See 70 FR at 59436. See also *Brick MACT,* 479 F.3d at 881–82 (variability of best performing sources may be taken into account in establishing MACT floors).

EPA in this rule identified two types of variability, run-to-run variability and test-to-test variability. Run-to-run variability ''encompasses variability in individual runs comprising the compliance tests, and includes uncertainties in correlation of monitoring parameters and emissions, and imprecision of stack test methods and laboratory analyses.'' 70 FR at 59437. A shorthand description is that this is within-test variability. EPA quantified run-to-run variability using the statistical methodology set forth in Technical Support Document (''TSD'') Vol. III section 7.2; [2] see also 70 FR at 59437/1–2, 59438, and 59439 explaining the reasonableness of this statistical approach. The chief element of this quantification is simply the standard deviation in the performance test data (standard deviation being the usual statistical measure for assessing variation within a data set by comparing a single result with the average of the data comprising the data set). The result is an estimate of the value which the source would achieve in 99 of 100 future tests if it replicated the operating conditions of the compliance test. 70 FR at 59437; [3] see also 69 FR at 21232 and n. 69 (April 20, 2004).

[2] USEPA, ''Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards,'' (TSD Vol. III) September 2005. Unless otherwise specified, all TSD references in this notice are to this document, which is available in the docket to the rule. See docket items EPA–HQ–OAR–2004–0022–0453, 0457, 0459, and 0460.

[3] More precisely, this is a modified prediction limit that ensures at the 95% confidence level that the average of the best performing sources could

Continued

Existence of run-to-run variability is confirmed most evidently by the wide variations within different runs of the best performers' performance tests. Moreover, simply averaging these different run results would lead to standards which not even the best of the best performers would achieve over time. TSD Vol. III section 16.4. Comparative test results of best performing sources (i.e., tests of the same source at a different time) strongly suggest that run-to-run variability can be appreciable (although not the only measure of variability), since these sources have been shown consistently to emit more than the averaged emissions from the performance test identifying the source as best performing. See TSD Vol. III Tables 16–4, 16–5, 17–1, 17–3. Failure to consider run-to-run variability could seriously underestimate a source's emissions over time. See TSD Vol. III section 17.3.3, showing that even the lowest emitting Straight Emission sources could have emissions higher than floor levels under a methodology that considers run-to-run variability. EPA has comparative data from a number of lowest emitting incinerators for PM in single test results. In other tests, these same sources were typically unable to achieve the same level of performance, sometimes emitting up to seven times more PM. 69 FR at 21232 and n. 69 (April 20, 2004).

Test-to-test variability results from variability in pollution device control efficiencies over time (depending on multitudinous factors, including for fabric filters the point in the maintenance cycle at which the source is tested, and for electrostatic precipitators variations in combustion gas moisture and particle resistivity), as well as measurement variability resulting from different sampling crews under different meteorological conditions and different analytical laboratories. *Id.* and n. 63. A shorthand description is that this is long-term variability. EPA demonstrated generally that: (a) Test-to-test variability exists; (b) it is not encompassed in EPA's statistical quantification of run-to-run variability; (c) the amount of test-to-test variability can be significant such that failing to account for it in some manner means that the sources' performance over time can be seriously underestimated (i.e., since their long-term variability would be ignored); and (d) sources which are lowest emitting in single emission tests may not be the lowest emitters over time due to their test-to-test variability. 70 FR at 59437–438 and TSD Vol. III chapters 16 and 17; see also 70 FR at 59439 explaining why total variability is not accounted for by compliance test conditions.

EPA was able to provide a quantitative estimate of test-to-test variability in only one instance—where fabric filters are used to capture particulate matter. See discussion of PM standards in section III.A. below. In other instances, EPA accounted for test-to-test (i.e., long-term) variability in one of two ways: (a) Selecting as best performers those which minimized their long-term (i.e., test-to-test) variability by best controlling the aspects of performance (notably removal efficiency evaluated systemwide and hazardous waste HAP feedrate) within their control, or (b) using a surrogate for the HAP where EPA could assess the long-term variability associated with emissions of that surrogate, but could not otherwise assess long-term variability.

EPA also carefully assessed a floor methodology which simply assumed that the lowest emitters in individual performance tests were the best performers. The major problem with such a methodology is that it ignores the sources' performance over time, leading to situations where the sources' level of performance may be assessed improperly. See TSD Vol. III chapters 16 and 17; 70 FR at 59442–446 (explaining why lowest emitters in individual performance tests [4] are not always the best performers). EPA consequently used this methodology to identify best performers and their level of performance when it was not possible to assess sources' waste feedrate and systemwide removal efficiency.

III. Discussion of Individual Standards

A. Standards for Particulate Matter

1. Standards for Incinerator, Cement Kilns, Lightweight Aggregate Kilns, and Solid Fuel Boilers

EPA adopted standards for particulate matter (''PM'') for all of the hazardous waste combuster source categories except for hydrochloric acid production furnaces.[5] Particulate Matter is a surrogate for the HAP metals antimony, cobalt, manganese, nickel, and selenium, the HAP metals not covered by the standards for semi-volatile and low-volatile HAP metals (referred to as 'nonenumerated metals' in this rulemaking). See section III.B. below. In addition, as explained in section III.B., the PM standard also controls all non-mercury HAP metals (i.e., semi-volatile, low volatility, and nonenumerated HAP metals) in all nonhazardous waste inputs to HWCs. 70 FR at 59459. Since the PM standards are measured by total end-of-stack output, these standards account for all HAP metal input to hazardous waste combustion devices (other than mercury). *Id.*

EPA used the Air Pollution Control Device methodology to establish floors for PM. Under this methodology, EPA determined as a matter of engineering judgment which devices best control PM emissions, ranked these means of control, and selected as the best performers those with the lowest PM emissions using the best control device. See TSD Vol. III section 7.4; see also *id.* at 16–2 ranking PM control devices from best to worst for each source category. The floor for each source category was then established based on the average of these lowest emitting sources' PM emissions (or the lowest emitter of these sources for the new source floor).

In most instances, the lowest emitters in the performance test used for determining best performers were equipped with the best control device—some type of fabric filter (''FF''). Occasionally, a lower PM emitter in a single test was equipped with some other type of control device, or, in the case of three incinerators, no control device, but EPA ranked these sources as lower (i.e., worse) performing than FF-equipped sources. EPA reevaluated carefully whether the lower ranking of these sources, in some instances resulting in their omission from the pool of best performers, is consistent with the holding of *Brick MACT*, 479 F.3d at 882–83, as well as *Cement Kiln Recycling Coalition* v. *EPA*, 255 F.3d 855, 863–65 (D.C. Cir. 2001), that floors are not to be set only on performance of sources equipped with certain technology unless that is the only factor affecting emissions, and that EPA must consider all means of control when selecting best performers.

EPA of course accepts these holdings, and believes its approach here is consistent with the statute and applicable case law. EPA selected as best performers (or as the best controlled source) those sources it estimated to have the lowest PM emissions over time. EPA's selection process has a reasoned basis. Sources equipped with control devices other than FFs are likely to emit more over

achieve the emission level in 99 or 100 future test conditions based on a three-run average, assuming the best performers could initially replicate the compliance test conditions. TSD Vol. III at 7–7; 70 FR at 59437.

[4] The heading to this preamble section should have explicitly included the words ''in individual performance tests'' in the section title.

[5] The alternative metal standards, in lieu of PM standards, for incinerators, and liquid and solid fuel boilers are discussed in section III.B discussing standards using the SRE Feed floor methodology.

time than they do in individual test conditions, even after adjusting test results to account for run-to-run variability. (Put another way, these sources' performance in individual test conditions are likely not representative of what they will emit over time.) This is because test-to-test variability, that is, long-term variability, has not been taken into account. Since these other control devices are known to be more variable and less efficient than FFs, TSD Vol. III pp. 16–3 to 4 and 11, failure to consider long-term variability (i.e., looking exclusively at results of single performance tests) results in these sources' performance not being fully characterized. Long-term variability exists due to, among other things, variation over time in control device performance and varying ash feed rates.[6] EPA confirmed in a series of analyses of HWCs that this test-to-test variability for non-FF equipped devices both exists and is appreciable. See TSD Vol. III section 16.5 showing among other things that ostensibly lowest emitting, non-FF equipped sources in other tests (i.e., other occasions when the same source was tested) were unable to duplicate (i.e., achieve): (a) Their own level of performance (i.e., their performance in the other test), (b) their own performance adjusted to account for run-to-run variability, (c) floors based on the average of the lowest single test emitters' performance, (d) design level of the floor actually adopted in the rule (i.e., the level sources would design to in order to comply with the rule), and, in one case, (e) the floor level established in the rule (i.e., the floor reflecting application of the Air Pollution Control Device methodology). EPA further examined whether this difference in performance resulted from legitimate operating variability, rather than from differing ash feed rates, and in the instance where direct comparison was possible, determined that it did not. TSD Volume III pp. 16–15 through 17.

In contrast, EPA was able to quantify the long-term performance (i.e., performance accounting for both run-to-run and test-to-test variability) of HWC sources equipped with FFs. This is the only type of air pollution control device for HWCs, and the only pollutant, for which such a calculation is possible. The reason this quantification is possible is that FFs are less variable than other control devices, and perform relatively constantly regardless of input loadings. 70 FR at 59449. EPA thus developed a so-called Universal Variability Factor algorithm for fabric filters, which is derived from the quantified measure of the total variability (i.e., both run-to-run and long-term test-to-test variability) of the FF-equipped hazardous waste combusters identified as best performers based on the historical test conditions for those sources. See TSD Vol. III section 5.3.

As a result, for HWCs EPA has a considerably more reliable idea of what fabric filter-equipped sources' actual performance for PM is over time than for any other type of control device-equipped source (or for sources without air pollution control devices). Second, as just noted above, the record demonstrates that the performance data from sources that emitted less PM in individual performance tests but are not equipped with FFs significantly underestimates the amount of PM these sources emit over time (i.e., fails to account for their long-term variability). Third, over time, these emissions in some instances exceed (i.e., are higher than) the lowest emitting FF-equipped sources, even though emitting less in an individual performance test. 70 FR at 59448; TSD Vol. III section 16.5. Putting all this together, EPA selected the lowest emitting FF-equipped sources as the best performing. 70 FR at 59448.

This approach is consistent with the statute and applicable case law. EPA selected as best performers (or best controlled sources) those sources it reasonably estimated to have the lowest PM emissions over time. Performance of units equipped with fabric filters can be reliably estimated over time—i.e., all of the variability can be quantified. Performance of other units over time cannot be estimated as reliably (the long-term variability cannot be quantified at all), but is known to be less efficient and more variable. Short-term performance tests thus demonstrably and dramatically understate the amount of PM (and HAP metal) these sources emit, so that these units could (and demonstrably do in some instances) emit more PM (and therefore more HAP metal) than the lowest emitting FF-equipped sources notwithstanding lower PM emissions in individual tests. The D.C. Circuit has held repeatedly that EPA may use reasonable means to estimate the performance of best performing sources, and may account for sources' variability in doing so. *CKRC*, 255 F.3d at 865–66; *Mossville,* 370 F.3d at 1240, 1242; *National Lime Ass'n* v. *EPA*, 627 F. 2d 416, 431 n. 46, 443 (D.C. Cir. 1980); see also *Brick MACT,* 479 F.3d at 881–82 (estimates of variability are to be for the variability of the best performing sources). EPA's approach here is consistent with these requirements.

The D.C. Circuit has stressed in both *Brick MACT* and *CKRC* that factors such as low HAP feed that influence emissions cannot be ignored in assessing performance. 479 F.3d at 882–83; 255 F.3d at 864–65. EPA thus carefully reexamined those instances where low PM emitters in single tests were not equipped with any pollution control equipment so that their emission levels necessarily reflected low ash inputs. There are three incinerators that had lower PM emissions in single tests that were lower than the worst of the lowest-emitting FF-equipped incinerators on whose performance the floor standard is based. TSD Vol. III App. F at APCD–INC–PM. EPA continues to believe that it properly chose not to include these sources among the pool of best performers. First, even in single test conditions, these sources' emissions were not significantly lower (0.0018 to 0.0009 gr/dscf lower, that is, roughly a 7–14% difference) than the average of the best performing 12% of sources EPA identified as best performing using the Air Pollution Control methodology. *Id.* These sources also emit more PM than all but one of the best performing incinerators in EPA's pool of best performers, and the difference in performance between these uncontrolled sources and the last of the EPA pool is small, roughly a factor of 2. *Id.* Since these devices lack any pollution control equipment, their performance over time will be highly variable as ash feedrates vary and their emissions could[7] well exceed the emissions of the sources comprising EPA's pool of best performing incinerators. Second, and of at least equal importance, low ash feedrates are not a guarantee of low HAP metal emissions. Low PM emissions from uncontrolled sources could still reflect high metal HAP emissions since, if the ash has high metal content, all of it would be emitted. See 70 FR at 59449 (''ash feedrates are not reliable indicators of nonmercury metal HAP feed control levels and are therefore inappropriate parameters to assess in the MACT evaluation process. For example, a source could reduce its ash feed input by reducing the amount of silica in its feedstreams. This would not result in * * * emission reductions of metal HAP''). In contrast, ''particulate matter emissions from baghouses [e.g., FF-equipped units] are not significantly affected by inlet particulate matter

[6] Ash content is an indicator of the noncombustible matter (i.e., inorganic content, including metals) in the feed to the source.

[7] There are no comparative test data in the record for these sources.

loadings'', *id.,* so that PM (and hence HAP metal emissions) from these units will remain best controlled regardless of relative amounts fed to the device. See also TSD Vol. III section 17.7 documenting that PM emissions from FF-equipped sources are not affected appreciably by inlet loadings. EPA is thus giving preference as best performers to those incinerators we know are effectively controlling non-mercury metal HAP because they are the lowest emitting of the most efficiently controlled sources. Moreover, although a severable part of the rationale, EPA believes it reasonable that most efficiently controlled sources can be viewed as ''best performing'' and ''best controlled'' under appropriate circumstances. See discussion in section B.1 below.

EPA does, however, believe that certain parts of the justification for the PM standards in the final rule are not proper after *Brick MACT,* and EPA is no longer relying on them and will revise the record accordingly. The principal revisions are to discussions relating to how EPA considered raw material inputs in assessing which sources are best performers. See *Brick MACT,* 479 F. 3d at 882–83. The specific alterations EPA is contemplating (generally excising existing language) are found in red line/strike out versions of the Preamble, Technical Support Documents, and Response to Comment Document which EPA has placed in the docket for this rule.

2. Standards for Liquid Fuel Boilers

EPA's initial decision is not to defend the PM standard for liquid fuel boilers (LFBs), and we thus contemplate requesting the Court to remand the standard so that EPA can reexamine it. Most of the liquid fuel boilers with lowest PM emissions are uncontrolled units with extremely low ash feeds. TSD Vol. III App. F at APCD–LFB–PM. Unlike the situation with incinerators, the difference in PM emissions between these sources and those lowest-emitting LFBs equipped with FFs is great, ranging from a factor of 6 (comparing lowest emitting FF-equipped LFB with lowest emitting uncontrolled LFB) to over three orders magnitude (comparing worst of the lowest emitting FF-equipped LFB to lowest emitting uncontrolled LFB). *Id.* These uncontrolled sources' emissions are also roughly an order of magnitude lower than the promulgated floor based on performance of FF-equipped sources. *Id.* There are also ten uncontrolled LFBs in the data base with lower PM emissions than the lowest emitting FF-equipped LFB. *Id.* Under these circumstances, EPA is less certain that these LFBs could emit more PM over time than the FF-equipped sources EPA selected as best performers and therefore will reexamine the standard with a view to amending it. However, EPA notes further that this difference in emission levels between controlled and uncontrolled sources suggests that subcategorization may be appropriate. EPA intends to investigate that possibility in subsequent rulemaking.

B. Standards for Semivolatile Metals and Low Volatility Metals

1. Methodology To Establish Floor Levels

EPA used the so-called system removal efficiency/hazardous waste feed control (''SRE Feed'') methodology to establish floor levels for semivolatile metal HAP (''SVM''—lead and cadmium) and low volatile metal HAP (''LVM''—arsenic, beryllium, and chromium) for all source categories except hydrochloric acid production furnaces. Under this methodology, best performers are ranked by hazardous waste feed rate of metal HAP, and by system removal efficiency (the degree to which HAP are removed from stack emissions across the entire system, be it by an air pollution control device or by any other means). 70 FR at 59441. Best performers are those with the best combination of hazardous waste feed rate for the HAP at issue and system removal efficiency (i.e., lowest hazardous waste feed rate and best removal efficiency). EPA assessed SVM and LVM separately, so that there are separate pools of best performing sources for each of these HAP metal groups for each of the source categories.

Once best sources are identified by this methodology, EPA calculated the floor (accounting for run-to-run variability) based on the averaged emission levels of SVM or LVM from these best performing sources (or for new sources, the SVM or LVM emission level of the single best performer). For source categories where SVM and LVM standards are normalized by hazardous waste heat input (cement kilns, lightweight aggregate kilns, and the higher heating value hazardous wastes subcategory for liquid fuel boiler), see 70 FR at 59451–53, the standard is expressed exclusively in terms of SVM or LVM attributable to hazardous waste inputs. For all source categories, total SVM and LVM emissions are addressed and controlled by the PM standard.

The SRE Feed methodology does not always identify the lowest emitters of SVM or LVM in single tests as the best performers; it identifies the lowest emitters as the sources with the best combination of hazardous feed rate control and back end control (removal efficiency across the entire system). Some of these sources were also the lowest emitters in single test results, but were not in all cases. EPA selected this methodology, rather than the so-called Straight Emissions approach of simply identifying best performers as those with the lowest emissions after accounting for run-to-run variability, because the SRE Feed methodology better identifies who the lowest emitters will be over time, and better assesses their performance (i.e., how much SVM or LVM they will emit as they operate). 70 FR at 59441–442; TSD Vol. III at 17–1. SRE Feed best performers are likely to emit less of these metals over time than sources identified as best under the Straight Emissions methodology—averaged performance of lowest emitting sources in the most recent performance test accounting for run-to-run variability (see TSD Vol. III at section 7.2)—because the Straight Emissions methodology (even after accounting for run-to-run variability) ignores sources' long-term (test-to-test) variability, and so underestimates (indeed, ignores) their performance over time. The SRE Feed methodology accounts for test-to-test variability, albeit qualitatively. *Id.*[8] For the same reason, the SRE Feed methodology better estimates sources' performance over time since it accounts in some measure for their long-term variability instead of ignoring it. As discussed earlier, elements of long-term variability include such things as chlorine feed rates (since metals are more volatile in the chlorinated form), back-end control devices' controllable operating parameters (e.g. ESP power levels, pressure drop across baghouses, and other such operating parameters), the matrix in which the metal is fed (solid, liquid, pumpable) and the hazardous waste feedrate. TSD Vol. III at p. 17–5. SRE Feed best performers are those that best control these and other controllable parameters and therefore are less variable (i.e., are more efficient at controlling SVM and LVM emissions), and therefore likely to emit less SVM and LVM over time. *Id.* at p. 17–11. Put more broadly, the methodology best evaluates the two things sources can do to control SVM and LVM emissions: limit the feed rate of these HAP in hazardous waste (since hazardous waste feed rate is controlled under RCRA rules), and manage

[8] See TSD Vol. III at 17–1 to 4 explaining why long-term variability for SVM and LVM cannot be determined quantitatively, even for sources equipped with baghouses (FFs).

controllable parameters to limit emissions across the entire system (both through emission control device control and by any other means), the result being that these sources are likely to emit less SVM and LVM over time. 70 FR at 59441.

Data confirm that lowest emitters in single tests (i.e., performers identified as best under the Straight Emissions methodology) can and do emit more SVM and LVM over time than the sources EPA identified as best performers using the SRE Feed methodology. See TSD Vol. III sections 17.2 and 17.3.1 and 17.3.2. Looking at all the data in the record where there were multiple test results (i.e., tests conducted at different times) from sources with the lowest SVM or LVM emissions in single tests, EPA found that a) three of four of these sources emitted more SVM or LVM in historical tests than allowed under the Straight Emissions floor (i.e., average emissions (not considering run-to-run variability) of SVM or LVM were higher than the average of the best performers using the Straight Emissions methodology (which considers run-to-run variability)) (*id.* Table 17–1);[9] (b) 5 of 15 of these sources were projected to emit more SVM or LVM than allowed under the SRE Feed floor using the reasonable assumption that these sources fed the same amount of LVM and SVM in hazardous waste as they did in the performance test identifying them as a best performer (lowest emitter) under the straight emission approach, but had the system removal efficiency demonstrated in their other tests. *Id.* at Tables 17–2 and 17–3;[10] and (c) 8 of 13 straight emission best performers would exceed the SRE Feed floor if their system removal efficiency from all tests (i.e., whether the system removal efficiency was higher or lower than that demonstrated in the single performance test identifying it as a best performer under the straight emissions methodology) were pooled and applied to the hazardous waste federate for LVM or SVM used in the single performance test identifying it as a best performer under the straight emissions methodology. *Id.* at 17.3.2 and Tables 17–6 and 7. In addition, most of the straight emissions best performers emitted more SVM and LVM in previous performance tests than they did in the single performance test identifying them as a straight emission best performer (or were projected to do so under the same reasonable assumptions), and often exceeded their earlier performance by wide margins (failing routinely, for example, to achieve their own performance test results adjusted upward to account for run-to-run variability, the Straight Emissions approach floor level (which also accounts for run-to-run variability), and the design level of the SRE Feed floor level). See TSD Vol. III sections 17.2 and 17.3.1 and 17.3.2.

EPA's approach is consistent with the statute and with applicable caselaw. EPA may consider variability in assessing sources' performance, and it did so here for the evident reason that variability is an aspect of a source's performance. *CKRC*, 255 F.3d at 865–66; *Mossville*, 370 F.3d at 1242. Here, short-term and long-term variability (i.e., run-to-run and test-to-test) in SVM and LVM performance demonstrably exists. The SRE Feed methodology accounts for both types of variability. The Straight Emissions methodology demonstrably does not. The Straight Emissions methodology thus not only consistently underestimates sources' performance, but identifies as best performers those which may emit more SVM and LVM over time. For these reasons we believe the record of this rulemaking demonstrates that the SRE Feed methodology better accounts for variability, and hence performance, than does the Straight Emissions approach (even with consideration of run-to-run variability), and consequently, the SRE Feed methodology more accurately identifies the best performing sources and their level of performance.

It is also no answer to say that the Straight Emissions best performing sources could simply retrofit their devices to achieve over time what they were able to achieve in a single performance test. Section 112(d)(3) requires EPA to determine the best performers and their level of performance based on sources as they now exist, not how they might be retrofitted. Requiring even the pool of best performers (i.e., those whose performance was measured at below the average of the best performers) to retrofit to meet a floor level is a de facto beyond the floor standard and therefore impermissible unless costs and other factors under section (d)(2) factors are considered. 70 FR at 59445. Moreover, a source so retrofitted would not be an existing source as required by section 112(d)(3), but rather some hypothetical entity which does not even presently exist. See 71 FR 14665 (March 23, 2006).

As noted above, the SVM and LVM standards which are normalized by hazardous waste thermal input apply only to SVM and LVM contributed by the hazardous waste. MACT standards must address all HAP emitted by a source, not just some portion of the HAP. *Brick MACT*, 479 F.3d at 882–83 (raw material input contributions to HAP emissions must be addressed by MACT floor). Although most SVM and LVM emitted by these sources comes from the hazardous waste,[11] hazardous waste is not the sole input of these metals. However, all SVM and LVM emissions from these sources is controlled by virtue of the PM standard. In addition, although the SVM and LVM floor standards for cement kilns and lightweight aggregate kilns are normalized by hazardous waste thermal input, EPA also capped these standards by the interim standards for SVM and LVM, which are standards that control all SVM and LVM emissions emitted from the combustor, not just emissions of SVM and LVM from hazardous waste.[12] Moreover, there is strong direct correlation between the control of total PM and control of metal HAP (including SVM and LVM), so that emission limits reflecting best PM control will also similarly control the total SVM and LVM. *Sierra Club* v. *EPA (''Primary Copper MACT'')*, 353 F.3d 976, 984–85 (D.C. Cir. 2004) (PM proper surrogate for HAP metals ''even in light of the potential variability of impurities in copper ore''). Furthermore, as a cross-check, EPA determined that total SVM and LVM emissions from the sources EPA identified as the PM best performers from these source categories are generally comparable to (and often lower than) total SVM and LVM emissions from the sources identified as best performers under EPA's SRE Feed methodology.[13] Thus, on the facts here, the thermally normalized floors for SVM and LVM (i.e., the SVM and LVM standards for cement kilns, lightweight aggregate kilns, and the higher heating value hazardous wastes subcategory of liquid fuel boilers), in combination with the PM standards, provide control of

[9] It should be noted that source 3016 was feeding more LVM in this test than in its most recent performance test, although the source was operating within its permit limits, and so far as can be determined was also otherwise properly designed and operated in this test.

[10] EPA also showed that these sources were operating properly in the tests where they removed SVM and LVM less efficiently. TSD Vol. III at 17–14 to 15 and Tables 17–4 and 5.

[11] See Source Data for Hazardous Waste Combustors, Source Category Summary Sheets, at *http://www.epa.gov/epaoswer/hazwaste/combust/finalmact/source.htm*.

[12] See 70 FR at 59457–458, § 63.1220(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii), and § 63.1221(a)(3)(ii), (a)(4)(ii), (b)(3)(ii), and (b)(4)(ii).

[13] See note from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–OAR–2004–0022 entitled ''SVM/LVM Emissions from PM Best Performers Are Generally Comparable to SVM/LVM Emissions from SVM/LVM Best Performers,'' dated August 23, 2007.

SVM and LVM reflecting the average SVM and LVM emissions of the best performing sources.

EPA further justified its use of the SRE Feed methodology on two additional bases, both of which are severable from the analysis just presented. First, EPA appropriately utilized the SRE Feed methodology because the Straight Emissions approach would force some best-controlled commercial hazardous waste treatment units to stop burning hazardous waste (or to burn less waste), even though hazardous waste must be treated before it can be land disposed under sections 3004(d), (e), (g), and (m) of RCRA and combustion is the only means of successfully treating the hazardous waste. 70 FR at 59442; TSD Vol. III section 17.4. EPA noted further that the Clean Air Act requires that EPA take into account RCRA requirements when issuing MACT standards for hazardous waste combustion units.[14] CAA section 112(n)(7). Although a severable part of EPA's rationale, 70 FR at 59447/3, EPA continues to believe that use of the Straight Emissions methodology is unreasonable here because it could have significant adverse cross-media environmental impacts by reducing the amount of needed, and statutorily mandated hazardous waste treatment capacity. See *id.* at 59442 (''EPA doubts that a standard which precludes effective treatment mandated by a sister environmental statute must be viewed as a type of best performance under section 112(d)''). EPA's concern here is not that certain sources are unable to achieve a floor standard. See *Brick MACT,* 479 F.3d at 881–82. Rather, the concern is the adverse cross-media environmental impact resulting from undermining ''the heart of RCRA's hazardous waste management program'', the restrictions on land disposal of untreated hazardous waste. *Chemical Waste Management* v. *EPA,* 976 F.2d 2, 23 (D.C. Cir. 1992). Section 112(n)(7) of the Clean Air Act requires EPA to consider RCRA standards when adopting section 112(d) standards for RCRA sources, and EPA's consideration of the issue here reinforces the conclusion that the SRE Feed methodology is reasonable, and the proper means here of assessing which sources are best, and their level of performance, for SVM and LVM emissions.

Second, as a legal matter, section 112(d)(3) does not specifically address the question of whether ''best performing'' sources are those with the lowest net emissions, or those which control HAP emissions the most efficiently. 70 FR at 59443. EPA posited the example of whether a source emitting 100 units of HAP and feeding 100 units of the HAP must be considered better performing than a source emitting 101 units of the HAP but feeding 10,000 units. *Id.* Indeed, floors for new sources are to be based on the performance of the ''best controlled'' similar source. Section 112(d)(3). In the example just given, a source with control efficiency of 99.9 per cent can naturally be viewed as better controlled than one with 0 per cent control efficiency. EPA's decision to incorporate control efficiency (*i.e.*, system removal efficiency) into the SRE Feed methodology as one of the two factors used to identify best performing/best controlled sources reasonably reflects that the statute allows performance to be evaluated in terms of control efficiency. See further discussion of this issue in the analysis of the total chlorine emission standard for hydrochloric acid production furnaces.

EPA does, however, realize that certain parts of the justification for the SVM and LVM standards in the final rule may not be consistent with *Brick MACT*, and EPA is no longer relying on them. These relate principally to how MACT standards reflect HAP metal inputs from variable raw materials. The specific alterations EPA is contemplating (generally excising existing language) are found in red line/strike out versions of the Preamble, Technical Support Documents, and Response to Comment Document which EPA has placed in the docket for this rule.

2. Alternatives to the Particulate Matter Standard for Incinerators, Liquid Fuel Boilers, and Solid Fuel Boilers

EPA promulgated alternatives to the PM standard for incinerators, liquid fuel boilers, and solid fuel boilers.[15] In the case of liquid fuel boilers, separate alternatives to the PM standard were finalized for each subcategory: those burning higher heating value hazardous wastes and those burning lower heating value hazardous wastes. The alternative to the PM standard allows sources to comply with standards limiting emissions of all SVM and LVM metals, including the five nonenumerated metal HAP not covered by the standards for SVM and LVM, in lieu of complying with the PM standard. Under these alternatives, the numerical emission limits for SVM and LVM HAP are identical to the promulgated standards. However, for SVM, the alternative standard applies not only to the combined emissions of lead and cadmium, but also includes selenium, a semivolatile nonenumerated metal HAP; for LVM, the standard applies to the combined emissions of arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, the latter four being low volatile nonenumerated metal HAP.

As noted above, some SVM and LVM standards are normalized by hazardous waste thermal input and apply only to SVM and LVM contributed by the hazardous waste. For these standards, SVM and LVM emissions from nonhazardous waste inputs is controlled by the PM standard. However, if a source were to elect to comply with the alternative to the PM standard, then the nonhazardous waste inputs would not be controlled because, under the alternative, the source would not be required to comply with a PM standard. In such instances, the alternative to the PM standard would not address all HAP emitted by a source. This does not appear to be consistent with the holding of *Brick MACT* that the standard must apply to all HAP emitted. 479 F.3d at 882–83. Of the source categories for which EPA promulgated alternatives to the PM standard, the higher heating value hazardous wastes subcategory for liquid fuel boilers is the only category for which SVM and LVM standards normalized by hazardous waste thermal input were established. Therefore, EPA believes (subject to comment) that it must reassess the alternative to the PM standard for this subcategory (and intends to seek remand of this standard). See § 63.1217(e)(2)(ii) and (e)(3)(ii).

3. Alternative Mercury, Semivolatile Metals, Low Volatile Metals, and Total Chlorine Standards for Cement Kilns and Lightweight Aggregate Kilns

EPA promulgated provisions that allow cement kilns and lightweight aggregate kilns to petition the Administrator for alternative mercury, semivolatile metals, low volatile metals,

[14] EPA investigated the possibility of subcategorizing by commercial/non-commercial sources but found this undesirable because it would lead to anomalously high floors for some subcategories due to sparse available data. 70 FR at 59442 and n. 78.

[15] For incinerators, the alternative to the PM standard are promulgated §§ 63.1206(b)(14) and 63.1219(e). For the higher and lower heating value hazardous wastes subcategories for the liquid fuel boiler category, the alternatives are promulgated under § 63.1217(e)(2) and (e)(3). The alternative to the PM standard is under § 63.1216(e) for solid fuel boilers.

and total chlorine standards.[16] 64 FR at 52962–967 and 70 FR at 59503–504. Under these provisions, the alternative standard was not prescribed, and could take the form of an operating requirement, such as a hazardous waste feedrate limitation of metals and chlorine or an emission limitation, subject to approval by the Administrator. The rule discusses two sets of circumstances under which a source could petition for such an alternative standard. One reason is that the source cannot achieve the standard due to contributions of metals and chlorine HAP in the raw materials. The second reason is limited to mercury, and applies in situations where a source cannot comply with the mercury standard when mercury is not present in the raw materials at detectable levels (*e.g.*, the mercury emission standard could be exceeded by a source if it assumed mercury is present in the raw materials at the detection limit). These circumstances appear to be inappropriate bases for an alternative standard after *Brick MACT*. Accordingly, EPA currently intends to seek a remand of these alternative metals and total chlorine standards and remove these provisions in a subsequent rulemaking.

4. Alternative Mercury Standards for Cement Kilns and Lightweight Aggregate Kilns Under the Interim Standards

EPA promulgated an alternative to the interim standards for mercury for cement and lightweight aggregate kilns in 2002. Section 63.1206(b)(15) and 67 FR 6792 (February 13, 2002). Under this alternative, sources are allowed to comply with a hazardous waste maximum theoretical emissions concentration of mercury.[17] This alternative mercury standard does not address all mercury emitted by a source, and, therefore, is not permissible in light of the holding of *Brick MACT* that the standard must apply to all HAP emitted. 479 F.3d at 882–83. Accordingly, EPA currently intends to seek a remand of these alternative standard provisions and remove them in a subsequent rulemaking.

[16] The alternative standard provisions are promulgated under § 63.1206(b)(9) for lightweight aggregate kilns and § 63.1206(b)(10) for cement kilns.

[17] Maximum theoretical emissions concentration (MTEC) is a term to compare metals (and chlorine) feedrates across sources of different sizes. MTEC is defined as the metals (or chlorine) feedrate divided by the gas flow rate and is expressed in units of ug/dscm.

C. Standards for Total Chlorine

EPA established standards for total chlorine (TCl, which controls emissions of both hydrochloric acid and chlorine) for all of the source categories. For all of the source categories except HCl production furnaces, EPA established floors using the SRE Feed methodology described in the previous section. For HCl production furnaces, EPA selected sources with the best removal efficiency as the best performers. EPA believes that most of these standards are consistent with the statute and applicable caselaw, although certain of the standards probably are not.

1. Incinerators

For hazardous waste incinerators, all of the best performers using the SRE Feed methodology were also the lowest emitters using the Straight Emissions methodology. Thus, choice of floor methodology is not at issue here. However, EPA found that the analytic method used to gather these data is biased below 20 ppmv. 70 FR at 59427–428. EPA's determination of how to estimate these best performers' level of performance is explained in detail in 71 FR at 52628–30 (Sept. 6, 2006). As there stated, this determination is consistent with *Brick MACT* and all other applicable statutory and caselaw.

2. Cement Kilns

EPA used the SRE Feed methodology to establish floors for new and existing sources, but believed that the data did not fully reflect variability that best performing kilns experience due to fluctuating alkalinity levels within the kiln. Rather, the TCl emissions data reflect the alkalinity of the limestone raw material used at the time of performance tests. 70 FR at 59469–70, TSD Vol. III section 13.7.1. To account for this variability, EPA assumed a 90 per cent system removal efficiency for all cement kiln sources. The best performing sources then effectively become the lowest chlorine feeders. Although this assumed system removal efficiency has some factual basis, see Table 1 at 70 FR 59470 showing that the median of the best performing sources (Ash Grove) demonstrated removal efficiencies ranging from 85.1 to 98.8%, the standard reflects concerns relating to raw material variability, and also may reflect a level that is achievable (albeit by best performers) rather than actually achieved. Neither of these rationales is permissible after *Brick MACT,* 479 F.3d at 880–81, 882–83. Accordingly, subject to consideration of comments on this issue, EPA currently intends to seek a remand on this standard and reexamine it in a subsequent rulemaking. EPA notes further that the health-based compliance alternatives for total chlorine under § 63.1215 would not be affected by this reexamination and thus would provide an alternative means of demonstrating compliance.

3. Lightweight Aggregate Kilns

Choice of a floor methodology for TCl is essentially academic for existing lightweight aggregate kilns, since both the SRE/Feed and Straight Thermal Emission (and Straight Mass Emission) methodologies yield floor levels higher than the interim standard for these devices, in which case the floor level is capped by the level of the interim standard. 70 FR at 59457; see TSD Vol. III appendices C, D, and E for data and calculations. The reason for this seeming anomaly in all the methodologies is that EPA has little data from this source category (and there are only a few sources to begin with), so that differences in individual performance runs are magnified when the standard is calculated. In addition, all of the data in the record came from tests conducted before EPA adopted the interim standards. This is especially relevant for this standard because the interim standard is a beyond-the-floor standard. See generally TSD Vol. III chapter 19. The interim standard thus remains the best measure of evaluating best performing sources.

However, for new sources, EPA noted only that the new source floor calculated using the SRE Feed methodology would be less stringent than the interim standard but did not closely examine whether the methodology clearly identified the best controlled source. TSD Vol. III section 12.6.3. EPA therefore intends to reexamine this standard in a subsequent rulemaking, subject to consideration of comment (and to seek remand of the standard).

4. Liquid Fuel Boilers

a. *Higher Heating Value Hazardous Wastes Subcategory.* EPA believes (subject to comment) that it must reassess this standard (for both new and existing sources) since the standard applies only to TCl attributable to hazardous waste inputs, and currently intends to seek remand of the standard. See § 63.1217(a)(6)(ii). This is not permissible in light of the holding of *Brick MACT* that the standard must apply to all HAP emitted, notwithstanding variable HAP levels in raw materials. 479 F.3d at 881–82.

b. *Lower Heating Value Hazardous Wastes Subcategory.* The SRE Feed and Straight Emissions methodologies give

the same floor value for this subcategory, and the standard applies to all TCl emissions from the boiler, not just those attributable to hazardous waste. See § 63.1217(a)(6)(i). The issue is how to account for analytical bias at levels below 20 ppmv, and EPA's resolution of the issue is explained at 71 FR at 52628–630. EPA does not believe this approach raises issues under the statue, or under *Brick MACT* or other applicable caselaw.

5. Solid Fuel Boilers

The SRE Feed and Straight Emission methodologies give the same floor level for both existing and new solid fuel boilers, so the issue of appropriate floor methodology is academic. TSD Vol. III at App. E and C.

6. Hydrochloric Acid Production Furnaces

The TCl standard for this source category controls TCl emissions and also serves as a surrogate for all metal HAP. TSD Vol. III sections 15.2 and 15.3. EPA selected as best performers sources with the best TCl system removal efficiency (or, for new sources, the single source with the best TCl system removal efficiency). The standard is then expressed as a required degree of control: 99.923 percent for existing sources (the average efficiency of the five best controlled sources), 99.987 percent for new sources (the control efficiency of the single best controlled source). *Id.* section 15.3.

EPA continues to believe that this standard is consistent with the statute and applicable caselaw. First, the statutory language requiring floors to be based on ''best controlled'' (new) /''best performing'' (existing) does not specify whether ''best'' is to be measured on grounds of control efficiency or emission level. See *Sierra Club* v. *EPA,* 167 F.3d 658, 661 (' 'average emissions limitation achieved by the best performing 12 percent of units' * * * on its own says nothing about how the performance of the best units is to be calculated''). The requirement that the new source floor reflect ''emission control'' achieved in practice reinforces that the standard can be determined and expressed in terms of control efficiency. Existing floors determined and expressed in terms of control efficiency are likewise consistent with the requirement that the floor for existing sources reflect ''average emission limitation achieved'', since ''emission limitation'' includes standards which limit the ''rate'' of emissions on a continuous basis—exactly what the standards do here. CAA section 302(k). Moreover, where Congress wanted to express performance solely in terms of numerical limits, rather than performance efficiency, it said so explicitly. See CAA section 129(a)(4).

The policy reason for EPA's interpretation here is that a standard limiting volumetric TCl emissions means that less product is produced, since these sources recover hydrogen chloride to produce hydrochloric acid. TSD Vol. III at 15–6; 70 FR at 59450. EPA does not believe that the MACT floor provisions should compel an otherwise best performing source to limit the amount of product it produces. See 2 *Legislative History* at 3352 (House Report) (''MACT is not intended to * * * drive sources to the brink of shutdown'').

Moreover, all that is at issue here is how to express the performance of sources ranked as best performing under both EPA's methodology and under the Straight Emissions methodology. This is because, with one exception, the best performing sources are the same under EPA's methodology as those identified as best performing under the Straight Emissions methodology. TSD Vol. III App. C at E–HCLPF–CL and App. E at SO–HCLPF–CL. The one exception is where EPA chose a parallel test condition which exhibits more variability to characterize the source's performance (source 855 condition 11 rather than condition 13), and consequently resulted in this source not being selected as a best performer. Given this documented variability, this is a reasonable choice. Thus, EPA is selecting as best performers those with the lowest measured emissions of chlorine, but chose to express their performance in terms of system removal efficiency to avoid impacts on amount of product these best performing sources produce. EPA continues to regard this choice as reasonable.

EPA has carefully reexamined this standard in light of *Brick MACT.* The opinion does not address the issue directly, since no standard there was determined or expressed in terms of control efficiency. Moreover, as noted above, unlike section 129, section 112 contains no directive to express standards as numerical limits (see section 129(a)(4)), further supporting EPA's view that it could reasonably choose to express this standard in per cent reduction terms. See also section 112(i)(5)(A), which allows sources that achieve early reductions based on measured rates of removal efficiency a reprieve from MACT, a provision reasonably read to allow section 112(d) performance to be expressed in terms of rate of removal efficiency.

The opinion does hold, however, that different HAP levels in raw materials could not justify a conclusion that floor standards were unachievable, so that emissions attributable to raw material HAP had to be accounted for in the standard. 479 F.3d at 882–883. The TCl standard at issue here accounts for emissions from all HAP inputs, 70 FR at 59450, and so does not present this deficiency. Nor are the floor standards designed to be achieved by all sources with a specific emission control technology. 479 F.3d at 880–81. The removal efficiency standard is not based on performance of any particular technology, and simply is the averaged (or single best) efficiencies of the best performing sources (after accounting for run-to-run variability).

EPA, however, does not (subject to comment) believe that the alternative standard of 150 ppmv by volume for existing sources (section 63.1218 (a) (6) (i)) should be retained and EPA currently intends to seek remand of this alternative standard. The standard appears inconsistent with the SRE MACT standard, since it allows sources to operate with less efficient system removals.

EPA also recognizes that certain parts of the rationale for the standard, generally related to whether standards are to reflect varying raw material HAP inputs, do not appear to be consistent with *Brick MACT.* EPA is making appropriate revisions to the key record documents, which are available in red line strike out versions in the administrative record.

D. Standards for Dioxins/Furans

Polychlorinated dioxins and furans (D/F, or 'dioxins') are typically not present in any of the inputs to hazardous waste combustion devices. Rather, they are formed post-combustion (often from some type of chlorinated precursor, which precursor is itself typically a product of incomplete combustion). 70 FR at 59461. As combustion efficiency increases, complex organic molecules which can be D/F precursors are oxidized to form carbon dioxide or carbon monoxide, helping to minimize D/F formation and emission. *Id.* Different levels of chlorine in waste or other inputs do not appreciably influence D/F emission rates. TSD Vol. IV [18] section 3.3 (documenting that D/F formation and emission is ordinarily not dependent on feed levels of chlorinated

[18] USEPA, ''Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards'' (TSD Vol. IV), September 2005. See docket item EPA–HQ–OAR–2004–0022–0435.

materials); TSD Vol. III at 10–6. Nor does burning hazardous waste generally have an appreciable impact on CDD formation and emissions, so that it is technically appropriate in some instances to consider D/F emission levels from sources which do not burn hazardous waste in evaluating emission potential from those that do. TSD Vol. III at 11–4 and n. 72.

Precise formation and control mechanisms of D/Fs are thought to be fairly well understood for systems with dry air pollution control devices (or extensive ductwork containing particulates on surfaces, such as for certain lightweight aggregate kilns). For these systems, D/Fs are formed on particles entrained in the control device by surface-catalyzed reactions where entrained particulate matter provides the reaction surfaces.[19] D/F formation can increase exponentially as gas temperatures increase from 400 °F to 750 °F.[20] Formation mechanisms, or their degree, are less well understood for systems with wet air pollution control or no air pollution control systems, making it less certain how much D/F these sources may emit over time. TSD Vol. III pp. 10–5 to 6.

EPA used the Straight Emissions methodology rather than the SRE Feed methodology as the starting point for calculating floors for D/F because dioxins/furans do not come from inputs (but rather are formed post-combustion), so that it is not possible to calculate system removal efficiencies (which is calculated from inputs and outputs). However, for a number of the source categories where best performers do not have dry air pollution control devices, EPA's professional judgment was that this methodology did not give an accurate assessment of the best performing sources' performance over time (i.e., the best performers' variability). This is because there are myriad factors that can affect D/F emissions for these sources [21] and, unlike sources equipped with a dry emission control device where gas temperature at the inlet to the control device is generally the dominant factor affecting D/F emissions),[22] there is no generic, dominant factor affecting emissions. In these instances, EPA consequently selected as best performers those sources which best minimized the formation of dioxin precursors by maintaining the most efficient combustion conditions, as measured by carbon monoxide (CO) or total hydrocarbon emissions (HC), as well as by destruction/removal of hardest-to-burn hazardous waste constituents at an efficiency of 99.99 percent. The floor standards for these sources consequently is either meeting a CO standard of 100 ppmv or an HC standard of 10 ppmv, plus demonstrating a destruction/removal efficiency (DRE) of 99.99 percent on the hardest-to-combust hazardous constituents present in the hazardous waste. In instances where the interim standard applied to such sources, EPA used that standard as the measure of best performers' good combustion instead of quantified CO/HC and destruction/removal efficiency.

Our assessment of these standards, subject to comment, is:

1. Incinerators

a. *Dry Air Pollution Control Device Subcategory.*[23] EPA used the Straight Emissions approach to establish floor levels for existing and new sources for this subcategory. The existing source floor, calculated in this manner, was slightly higher than the interim standard, so the floor is capped at the level of the interim standard. TSD Vol. III p. 10–4. The standard for new sources is based on the performance of the single lowest emitting source. *Id.* at 10–11. EPA believes this standard to be consistent with the statute and all applicable caselaw.

b. *Incinerators with Wet Air Pollution Control Systems or No Air Pollution Control Systems.* For both new and existing sources, EPA selected the interim standard as the floor standard. *Id.* at 10–6 and 10–11. EPA considered basing the floor on the performance of lowest emitters in single tests, but these sources had strikingly varied results in other tests, with one 'best' performer (source 3016) having emissions over 1000 times greater than its previous test, and well in excess of the floor level established by EPA. TSD Vol. III at 10–6.[24] Under these circumstances, EPA was unable to conclude that single test results adequately represented the sources' performance over time (i.e., their long term variability). TSD Vol. III at 10–6 (lowest emitters in single tests would prove unable to duplicate their performance in other tests due to their variability). Without a means to assess long-term performance, EPA used the interim standard as the measure of best performers' performance over time. *Id.* EPA continues to believe that this is a reasonable estimate of best performance, and that the standards are consistent with the statute and applicable caselaw.

2. Cement Kilns

The calculated floor for existing cement kilns using the straight emissions approach was slightly higher (less stringent) than the low end of the interim standard (0.28 as opposed to 0.20 ng TEQ/dscm). However, available historical D/F emissions data for cement kiln best performers (other test conditions conducted at different times from cement kiln sources identified as best performing, which test conditions reflect temperature optimization) show that these sources performance considering run-to-run variability exceeded both the floor level calculated using the Straight Emissions methodology and the interim standard.[25] In light of this documented variability, EPA considered the interim standard the more stringent and consequently used the interim standard (0.20 ng TEQ/dscm or 0.40 ng TEQ/dscm and a temperature of 400 °F or less at the inlet of the dry air pollution control device) as the floor. The calculated floor for new cement kilns using the straight emissions approach was slightly higher (less stringent) than one part of the interim standard for new cement kilns (0.21 ng TEQ/dscm as opposed to 0.20 ng TEQ/dscm), and in addition, the lowest emitter in a single test condition (source 323B3) exhibited enormous variability in other

[19] USEPA, ''Draft Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards,'' March 2004, Section 3.0.

[20] To be clear, the dry air pollution control device does not control D/F emission (except insofar as some of the formed dioxins/furans adsorb to particulate which is collected). Rather, the inlet to these devices serves as an agent for the actual formation of the chemical, to the availability of a surface catalyzed reaction which occurs under these conditions.

[21] Factors that can affect D/F emissions from sources with a wet control device or no control device include: Soot buildup on boiler tubes and presence of metals in the feed that can catalyze D/F formation reactions. 70 FR at 59502.

[22] For sources with dry emission control devices, D/F emissions during the compliance tests EPA used to characterize emissions would generally be at the upper end of the range of normal operations. Because an operating limit is established on gas temperature at the inlet to the control device based on levels achieved during the compliance test, operators had the incentive to maximize gas temperatures while still complying with the D/F emission standard under part 266, subpart H (§ 266.104(e)).

[23] EPA explained a number of times that it did not subcategorize incinerators by control device. Rather, the presence or absence of a dry air pollution device relates to differences in dioxin formation mechanisms and consequent dioxin emission levels. See e.g. 70 FR at 59467.

[24] See also Note from Bob Holloway, USEPA, to Docket ID No. EPA–HQ–OAR–2004–0022 entitled ''Incinerators: Comparison of D/F Emissions Variability for Best Performers and Other Sources with Wet or No APCD,'' dated April 5, 2007.

[25] See data for test conditions 228C4, 403C4, and 404C3 in Note from Frank Behan, USEPA, to Docket ID No. EPA–HQ–OAR–2004–0022 entitled ''Comparative D/F Data for the Cement Kiln Best Performers,'' dated August 23, 2007.

performance tests (see test condition 323C1; the other lowest emitters likewise showed significant variability in other tests (*id.*)) so EPA adopted the level of the interim standard as the MACT floor for new sources. TSD Vol. III p. 11–7. EPA believes that these standards are consistent with the statute and applicable caselaw.

3. Lightweight Aggregate Kilns

The calculated floors for existing and new lightweight aggregate kilns using the Straight Emissions approach were higher (less stringent) than the interim standard, so EPA adopted the level of the interim standard as the MACT floor for both existing and new sources. TSD Vol. III pp. 12–4 and 12–6. EPA continues to believe that this approach uses the best measure of evaluating the best sources and their level of performance, and that these standards are consistent with the statute and applicable caselaw.

4. Liquid Fuel Boilers

a. *Sources with Dry Air Pollution Control Devices.* EPA used the Straight Emissions approach to establish a floor for existing liquid fuel boilers equipped with a dry air pollution control device, which yielded an extremely high standard of 3.3 ng TEQ/dscm.[26] TSD Vol. III p. 13–7. The floor standard also includes an alternative based on meeting temperature control of 400° F at the inlet to the dry air pollution control device. *Id.* EPA also adopted a beyond-the-floor standard for these sources which is (necessarily) more stringent than the level of the floor. *Id.* at 13–8. This beyond the floor standard would be ascertained identically whether or not the existing source floor included the temperature control alternative. EPA believes that this standard is consistent with section 112 (d) (2) of the statute, and that the floor is also consistent with the statute, but not of direct relevance given that the actual standard is beyond-the-floor.

For new sources, EPA adopted a floor standard of the lowest emitters' performance, or meeting temperature control of 400° F or less at the inlet to the dry air pollution control device. Subject to comment, EPA does not believe that this standard accounts for all the factors that could influence dioxin emissions from new sources, see *Brick* MACT, 479 F.3d at 881–82, and therefore intends to seek a remand of the standard and further examine it in a subsequent rulemaking.

EPA also recognizes that not all of the rationale adopted for these standards is consistent with *Brick MACT,* particularly discussions relating to whether sources other than those in the best performing half of the MACT pool of best performers could replicate best performers' level of performance. EPA has made appropriate edits to the key support documents which are available for comment in red line strikeout form in the administrative record.

b. *Sources with Wet or Without Air Pollution Control Equipment.* EPA has decided (subject to comment) not to defend most of the dioxin standards for sources with wet air pollution control equipment or without air pollution control equipment.[27] These include the standards for liquid fuel boilers with wet or no air pollution control systems and standards for hydrochloric acid production furnaces. EPA continues to adhere to its analysis that these sources experience enormous operating variability based on dioxin formation and control mechanisms which are uncertain and presently not quantifiable. However, based on the discussion at 70 FR 59202/2, EPA does not believe that it is certain that the promulgated standard based on quantified good combustion addresses all of the potential formation and control mechanisms for dioxins as required. See *Brick MACT,* 479 F.3d at 882–83; *CKRC,* 255 F.3d at 862–63. Moreover, the cited preamble discussion suggests that additional dioxin formation and control mechanisms can be quantified directionally, if not with exactitude. This again may not be consistent with *Brick MACT,* 479 F.3d at 883 (lack of data resulting in inability to quantify variability related to non-technology factors does not by itself justify by itself a less stringent floor standard). EPA intends to seek a remand (subject to consideration of public comment) and to investigate these issues further in subsequent rulemaking.

E. Non-Dioxin Organic HAP

Hazardous wastes contain non-dioxin organic HAP which are destroyed by effective combustion. Treatment of hazardous waste by destruction of organics is indeed the chief reason that there is a hazardous waste combustion industry. See 40 CFR 268.42. (RCRA treatment standards for organic hazardous wastes, reflecting application of Best Demonstrated Available Technology (see *Hazardous Waste Treatment Council* v. *EPA,* 886 F.2d 355, 363–64 (D.C. Cir. 1989)), are invariably based on performance of combustion technology.) EPA adopted standards quantifying good combustion conditions for non-dioxin organic HAP emitted by liquid fuel boilers, solid fuel boilers, and hydrochloric acid production furnaces. The floor standards for these sources is either meeting a CO standard of 100 ppmv or an HC standard of 10 ppmv, plus demonstrating a destruction/removal efficiency (DRE) of 99.99 percent on the hardest-to-combust hazardous constituents present in the hazardous waste. In the event a source chooses to comply with the 100 ppmv CO standard, it must also demonstrate that it is achieving 10 ppmv HC standard in a single performance test, and establish continuously monitored parameters reflecting the conditions of that performance test (including operating temperature, maximum feed rates, minimum combustion zone residence time, and operating requirements on the hazardous waste firing system that optimize liquid waste atomization efficiency). Sections 63.1216(a)(5), 63.1217(a)(5), and 63.1218(a)(5).

The basis for these standards is that good combustion, as measured by 100 ppmv CO or 10 ppmv HC, plus meeting 99.99 percent DRE, is the best measure of the performance over time of best performers. However, in contrast to dioxin, EPA has more knowledge of formation mechanisms and means of control over time. Non-dioxin organics (of which there are over 100 on the list of HAP) can be present in hazardous waste (or other inputs) or can be formed as products of incomplete combustion. Organics are destroyed when wastes are combusted, and best performers are those which destroy organics through the most efficient combustion. 70 FR at 59463; see also *Horsehead Resource Development* v. *Browner,* 16 F.3d 1246, 1265 (D.C. Cir. 1994) (''A kiln's utility as a means of destroying hazardous wastes turns on its ability to fully destroy them. In practice, destruction of hazardous wastes in the fuel is a function of the combustion efficiency of the kiln: Under poor conditions of efficiency, the principal organic hazardous constituents * * * of the toxic organic compounds contained in the hazardous waste fuel will be only partially broken down, thereby increasing the production of [products of incomplete combustion]'').

Furthermore, 100 ppmv CO or 10 ppmv HC are long-recognized levels representing good combustion conditions. 70 FR 59463–464 (explaining further that lower levels are unlikely to be associated with good combustion and so no longer serve as a

[26] The basis for subcategorizing in this way is the same as for incinerators.

[27] For the same reasons, we will not defend the dioxin standards for solid fuel boilers.

measure of organic destruction). EPA adopted these levels here as the best measure of the sources' long-term performance (and reiterates that finding here). *Id.* and TSD Vol. III at 13–35, 14–26, and 15–9. In addition to good combustion being the long-recognized metric for organic destruction and performance, EPA lacked any data on individual organic HAP emissions from these devices, so had no choice but to use some type of surrogate to evaluate sources' performance.

EPA views these standards as consistent with the statute and applicable caselaw. Regarding use of the quantified good combustion surrogate, the D.C. Circuit has held repeatedly that EPA may select a surrogate for control of HAP in adopting section 112(d) standards. See, e.g. *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 639 (D.C. Cir. 2000); *Sierra Club* v. *EPA (''Primary Copper MACT''),* 353 F.3d 976, 984–85 (D.C. Cir. 2004). EPA has shown here a valid basis for choosing good combustion as a surrogate: There is a strong correlation between optimized combustion conditions and minimized organic emissions in that oxidation of heavier, more complex organic molecules will be maximized when combustion conditions are optimized, thus minimizing emission of organics. 70 FR at 59463; see also *id.* at 59461–62; see also *National Lime,* 233 F.3d at 639 (upholding EPA's selection of PM as a surrogate for HAP metals where EPA demonstrated a correlation between removal of PM and metal HAP, and further holding both that EPA need not quantify the precise amount of metal HAP removed, and that the amount of HAP metal removed may vary); *Primary Copper MACT,* 353 F.3d at 984. EPA has further demonstrated the reasonableness of 100 ppmv CO or 10 ppmv HC as measures of good combustion.

National Lime further indicates (in dicta) that choice of a surrogate may not be valid if emissions of the HAP could increase by some mechanism for which the surrogate fails to account, specifically noting that if HAP metal feedrates decreased and PM emissions did not decrease proportionately, PM might not be a valid surrogate. 233 F.3d at 639. This discussion has no direct factual applicability here since organic emissions are not input dependent. See also *Primary Copper MACT,* 353 F.3d at 985 (rejecting argument that input variability made PM an arbitrary surrogate for metals). The situation here is similar to that in *Mossville,* where the court held that EPA could account for best performers' performance over time, and could estimate performance over time by some means other than emission levels. 370 F.3d at 1242. The difference here is that EPA is using a quantified surrogate to do so, but EPA believes this is a difference without legal significance given the reasonableness of the surrogate on the facts presented here. Indeed, EPA selected here an existing regulatory standard as a measure of best performers' performance over time (RCRA standards for CO/HC and DRE), just as in *Mossville* EPA selected the existing uniform vinyl chloride regulatory standard as that measure. 370 F.3d at 1240.[28]

One commenter maintained that CO/HC standards should be numerically lower to reflect lowest CO/HC emissions, and further maintained that CO and HC are not the sole measures of organic combustion efficiency, which, as EPA noted, can be influenced by such factors as inadequate time, temperature and turbulence within individual combustion zones, and, the argument goes, are therefore improper or inadequate surrogates. 70 FR at 59463/2; cf. *National Lime,* 233 F.3d at 639. EPA addressed these issues in the record. 70 FR at 59462–63. With respect to the level for CO/HC, extremely low CO floors are unlikely to be met at all times by best performers due to all the potential minor sources of variability. So the 100 ppmv standard—which must be met continuously (and is measured by a continuous emission monitor), is the best measure of best performers' variability and hence performance over time. TSD Vol. III at 13–35, 14–26 and 15–9 (best sources' inability to duplicate a lower level of performance at all times for these reasons); see also *Mossville,* 370 F.3d at 1242 (if floor standard must be met continuously, then the best performers' maximum variability must be reflected in that standard). Of equal importance, lower levels of either CO or HC are no longer likely to be associated with increased organic destruction efficiency. 70 FR at 59462–64 (CO itself is a conservative indicator of combustion efficiency because it is a thermally stable, refractory compound which is the final stage of the combustion process of an organic molecule, and levels lower than 100 ppmv are no longer reliably associated with levels of organic HAP). Finally, the factors mentioned by the commenter which can influence organic destruction are in fact encompassed within the CO and HC standards because, as EPA explained, sources must conduct a performance test for HC and DRE, and continuously monitored parameters, including minimum operating temperature, maximum feed rates, minimum combustion zone residence time, and operating requirements on hazardous waste firing systems (i.e., all of the factors mentioned by the commenter), are established based on the conditions established in that performance test. 70 FR at 59464/1. EPA consequently views all of these standards as consistent with *Brick MACT* and the statute.

Edited versions of the key support documents for this standard, edited to reflect changes necessary in light of *Brick MACT,* are available in red line strike out format for comment in the administrative record.

F. Mercury

1. Incinerators

For existing incinerators, both the SRE/Feed methodologies and straight emissions methodologies (even without calculation of run-to-run variability) produced floors which were higher than the interim standard. TSD Vol. III appendices C and E, tables E–INC–HG CT and SF–INC–HG, respectively. EPA's decision to use the interim standard as the level of the floor consequently does not raise issues vis-á-vis *Brick MACT.* See also *Mossville,* 370 F.3d at 1241–42 (selection of regulatory standard as floor is a legitimate means of assessing best performers' variability when these performers demonstrably emit at a level close to that regulatory level).

For new incinerators, EPA selected the emission level of the lowest emitting source since the same source was the lowest emitter under both the SRE methodology and the Straight Emissions methodology, TSD Vol. III appendices C and E, tables E–INC–HG CT and SF–INC–HG, respectively, again raising no issues vis-á-vis *Brick MACT.*

2. Cement Kilns

For both new and existing cement kilns, the mercury floor standard appears inconsistent with the *Brick MACT* opinion and the statute because it is based in whole or in substantial part on emissions attributable exclusively to hazardous waste control. The standard thus does not result in control of all mercury which could be

[28] *Brick MACT* holds that EPA may not select floor standards to assure that all sources in the category will be able to meet the standards. 479 F.3d at 880–81. EPA did not do so here. The CO/HC and DRE standards are EPA's best estimate of best performers' performance over time. As in *Mossville,* EPA selected an existing regulatory limit not because all sources were (by definition) meeting that regulatory limit, but because no other means of accurately assessing variability were available. 370 F.3d at 1240. Moreover, sources will establish parametric monitoring conditions, which will vary by source, as part of the process of meeting the 10 ppmv HC standard, so the standards in fact are not uniform across the source category.

emitted by cement kilns (mercury in raw materials being the notable example), and so appears to require revision. 479 F.3d at 882–83. Subject to comment, it is thus EPA's intent to amend this standard and to seek remand of the standard.

3. Lightweight Aggregate Kilns

The methodology for developing floor standards for mercury for lightweight aggregate kilns is essentially a Straight Emissions approach for mercury contributed by hazardous waste.[29] The floor calculated thereby produced existing and new source floors higher than the interim standard of 120 µg/dscm total mercury emissions (110 µg/dscm for new sources), which EPA therefore adopted as the floor standard. TSD Vol. III at 12–8 to 9, 12–12 and section 7.2.3.5. EPA continues to believe that the interim standard remains the best measure of best sources' performance given the available data. However, the interim standard contains a compliance option based solely upon mercury emissions attributable to hazardous waste. Section 63.1206(b)(15). Subject to comment, this alternative compliance mechanism appears to be inconsistent with *Brick MACT* since it would not control all mercury emitted by the kiln. 479 F.3d at 882–83; see also section III.B.3 above. Subject to consideration of public comment, EPA intends to seek a remand of this alternative standard and to consider this issue further in subsequent rulemaking.

4. Liquid Fuel Boilers

a. *Higher Heating Value Hazardous Wastes Subcategory.* The mercury floor standard for this subcategory for both existing and new sources accounts only for mercury emissions from hazardous waste. TSD Vol. III pp. 13–14 and 13–16. These standards thus appear to require revision, and EPA accordingly currently expects to seek remand of this standard. *Brick MACT,* 479 F.3d at 882–83.

b. *Lower Heating Value Hazardous Wastes Subcategory.* The mercury floor standard for this subcategory for both existing and new sources is based on the Straight Emissions methodology. TSD Vol. III at 13–16 and 13–18; see also 69 FR 21286–87 (because so many of the data measurements were non-detects, EPA was unable to calculate removal efficiencies, and so did not use the SRE Feed methodology). The standard also applies to all mercury emitted by the source, not just that attributable to hazardous waste. Section 63.1217(a)(2)(i). EPA does not believe that this approach creates any issues vis-á-vis *Brick MACT.*

5. Solid Fuel Boilers

EPA used the SRE Feed methodology to identify best sources and their level of performance for both new and existing solid fuel boilers. TSD Vol. III at 14–7, 14–9. The floor standards are identical to those using the Straight Emissions methodology because the best performing sources (and single best performing source) are the same under either methodology. TSD Vol. III at App. C (E–SFB–HG–CT) and E (SF–SFB–HG). EPA does not believe that these standards pose issues vis-á-vis *Brick MACT.*

G. Normalization

A number of the standards are ''normalized,'' that is expressed as a given amount of pollutant per amount of some production related parameter such as air flow or thermal inputs. See generally 70 FR at 59451. Most technology-based standards are expressed in terms of some type of normalizing parameter in order to allow meaningful comparison between performance of different sources. *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1059 (D.C. Cir. 1978). As EPA pointed out, comparing unnormalized performance is like asking which baseball pitcher is the better performer, the one who has given up 6 earned runs or the one who has given up 20. Unless and until the figure is normalized over 9 innings pitched, the question is meaningless. 70 FR at 59451 n. 101.

EPA sees nothing in the statute which precludes use of normalization in determining who best performers are for purposes of MACT floor determinations. Section 112(d)(3) does not specifically address the issue (the terms ''best performing'' and ''best controlled'' being amenable to an interpretation allowing comparisons of normalized emissions to assess which source is ''better'' or ''best''). The issue of normalization was not presented in *Brick MACT,* so that EPA likewise does not view the opinion as precluding the approach.

H. Potential Implications to the Compliance Date Provisions if Standards Are Remanded to EPA

The compliance date of the final rule is October 14, 2008. As discussed above, we are contemplating requesting the Court to remand several standards so that we can reexamine them in a future rulemaking, a process that likely would be concluded well after the compliance date of the rule. It is not our intent to ask the Court to vacate any standards, including those standards that may have to be revised in a future rulemaking. As a result, sources would need to comply with the standards promulgated in October 2005 according to the compliance date provisions codified under § 63.1206(a). See *NRDC* v. *EPA,* 489 F.3d 1364, 1373–74 (D.C. Cir. 2007).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 21, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–19097 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

[29] EPA used the Straight Emissions approach here for data-specific reasons explained at section 7.5.3.2 of Volume III of the TSD.

Notices

Federal Register
Vol. 72, No. 187
Thursday, September 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

September 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 Forms: Applications, Periodic Reporting, Notices.

OMB Control Number: 0584–0064.

Summary of Collection: The Food Stamp Act of 1977 (the Act) establishes a program whereby needy households may apply for and receive food stamp benefits. The Act requires certain reporting and recordkeeping requirements in administering the program. The Act specifies national eligibility standards and imposes certain administrative requirements on State agencies in administering the program. Information must be collected from households to assure that they are eligible for the program and that they receive the correct amount of food stamp benefits. Information collected is limited to that necessary for the administration and enforcement of the Food Stamp Program. The Food and Nutrition Service (FNS) will use an application to collect information.

Need and Use of the Information: FNS will collect information to determine the eligibility of households for the food stamp program and to determine the correct benefit levels for eligible households. The social security number will be used to check the identity of household members, to prevent duplicate participation, to make mass food stamp changes, and to verify information. If information is not collected to certify households in accordance with the Act or changing the frequency of information or reporting requirements as they relate to the application, certification, and continue eligibility of households would result in a direct violation of the Act and its implementing regulations. Further, benefits could be overissued or underissued for a long period of time if necessary information is not collected or actions are not taken timely.

Description of Respondents: State, Local, and Tribal Government; Individuals or household.

Number of Respondents: 21,577,336.

Frequency of Responses: Recordkeeping; reporting: On occasion; monthly; quarterly.

Total Burden Hours: 24,017,997.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–19070 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0103]

Notice of Request for Extension of Approval of an Information Collection; Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the interstate spread of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry.

DATES: We will consider all comments that we receive on or before November 26, 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–2007–0103 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–2007–0103, 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–2007–0103.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations to prevent the interstate spread of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry, contact Dr. Glen Garris, Director, National Veterinary Stockpile, National Center for Animal Health Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–5875. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS's Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Number: 0579–0116.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

In connection with this mission, APHIS regulates the interstate movement of certain poultry, birds, and other items from premises and areas that may be quarantined because of exotic Newcastle disease (END) and chlamydiosis. The regulations contained in 9 CFR part 82 restrict the interstate movement of poultry, birds, and other items (such as eggs, carcasses, vehicles, containers, and coops) to help prevent the spread of END and chlamydiosis and require the use of certain information collection activities, including the completion of applications (for a permit or special permit) with information on the health status of the birds or poultry being moved; the number and types of birds or poultry being moved in a particular shipment; the shipment's point of origin; the shipment's destination; the reason for the interstate movement; and items such as vehicles, cages, and equipment. Permit applicants are also required, under certain conditions, to notify a Federal or State representative of a bird's health status or to submit a declaration or affidavit to those representatives.

The information collected by APHIS provides useful traceback information in the event infected birds or poultry are discovered and an investigation must be launched to determine where the birds or poultry originated. This information is critical to prevent the interstate spread of END and chlamydiosis, which are highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: U.S. producers and shippers, and State animal health protection authorities.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 6.

Estimated total annual burden on respondents: 6 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19069 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0091]

Notice of Request for Extension of Approval of an Information Collection; Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of animals and animal products and byproducts to protect against the introduction of bovine spongiform encephalopathy into the United States.

DATES: We will consider all comments that we receive on or before November 26, 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–2007–0091 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–2007–0091, 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–2007–0091.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of animals and animal products and byproducts to prevent the introduction of bovine spongiform encephalopathy into the United States, contact Dr. Freeda Isaac, Assistant Director of Imports, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–6479. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products.

OMB Number: 0579–0234.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease affecting the central nervous system of cattle.

With some exceptions, APHIS' regulations prohibit or restrict the importation of live ruminants and certain ruminant products and byproducts from the following three categories of regions with regard to BSE: (1) Those regions in which BSE is known to exist; (2) those regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance; and (3) those regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts.

To help ensure that BSE is not introduced into the United States, the regulations allow, under specified conditions, the importation of certain live ruminants and ruminant products and byproducts. These requirements necessitate the use of several information collection activities, including certification statements for the importation of ruminants and ruminant products, permits for animals destined for immediate slaughter or for movement to designated feedlots; the placing of seals on certain conveyances, the identification of individuals authorized to break the seals, and agreements entered into by slaughtering establishments or feedlots with APHIS; identification of animals; a certificate of processing from the government of the exporting region regarding the source of all raw material of animal origin in the imported products; and an APHIS Veterinary Services' veterinary import permit.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.349469965 hours response.

Respondents: U.S. importers; foreign exporters of animals and animal products and byproducts; full-time, salaried veterinary officials of exporting regions; herd owners; feedlot and slaughter facility personnel; APHIS accredited and State veterinary authorities.

Estimated annual number of respondents: 9,800.

Estimated annual number of responses per respondent: 17.32653061.

Estimated annual number of responses: 169,800.

Estimated total annual burden on respondents: 229,140 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 21st day of September 2007 .

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19090 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0112]

Availability of a Draft Pest Risk Assessment for Lemons From Argentina; Extension of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are extending the comment period for our notice of availability and request for comments regarding a draft pest risk assessment that has been prepared relative to our consideration of a request to allow the importation into the continental United States of fresh lemons from Argentina. 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 December 11, 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–2007–0112 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–2007–0112, 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–2007–0112.

Reading Room: You may read any comments that we receive on the draft pest risk assessment 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. Juan Roman, Import Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On August 13, 2007, we published in the **Federal Register** (72 FR 45216–45217, Docket No. APHIS–2007–0112) a notice of availability and request for comments. That document notified the public that a draft pest risk assessment had been prepared by the Animal and Plant Health Inspection Service relative to our consideration of a request to allow the importation into the continental United States of fresh lemons from Argentina. The notice made the draft pest risk assessment available to the public for review and comment.

Comments on the notice were required to be received on or before October 12, 2007. We are extending the comment period on Docket No. APHIS–2007–0112 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19089 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC National Universal Product Code (NUPC) Database

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public, and other public agencies to comment on a proposed information collection. This notice announces the Food and Nutrition Service's (FNS) intention to request Office of Management and Budget approval of the voluntary information collection process to be used in the National Universal Product Code (NUPC) database, an electronic national repository of Special Supplemental Nutrition Program for Women, Infants, and Children Program (WIC) eligible foods that have been authorized or approved by WIC State agencies. Section 203(e)(12) of the Child Nutrition and WIC Reauthorization Act of 2004 requires the Secretary to establish an NUPC database for use by State agencies in carrying out the program.

DATES: Written comments on this notice must be received on or before November 26, 2007.

ADDRESSES: Comments may be sent to Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on 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.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 520.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Patty Davis, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: The WIC National Universal Product Code (NUPC) database.

OMB Number: To be assigned.

Expiration Date: To be determined.

Type of Request: New information collection.

Abstract: The mandated NUPC database will serve as a repository of Universal Product Codes pertaining to WIC Program foods. The database will be accessible on a voluntary basis to both food manufacturers and WIC Program State agencies. It will provide a standardized format for manufacturers to electronically submit product information for consideration for inclusion in WIC State agency authorized food lists. The system will automatically screen products entered by manufacturers for compliance with minimum Federal regulatory requirements. State agencies will be able to review and select for approval those products that have successfully been screened. Each WIC State agency's list of approved foods will be available via the NUPC database. The database will initially be populated with product information that is available from the WIC State agencies currently operating an Electronic Benefits Transfer system. We assume this will provide product information for the majority of foods

that are currently authorized by WIC State agencies.

Comments are being solicited on whether the NUPC will decrease the burden on WIC State agencies and manufacturers by providing a uniform data source for submitting products for WIC review and eligibility. The burden hours associated with this collection burden will be for updates to existing products and the addition of new products as they become available and authorized. We estimate that for this burden reporting period, 1,000 manufacturers will spend a total of 125 burden hours to report new product information and update existing product information when necessary; 20 State agencies (40 users) will spend a total of 5 burden hours to report new product information, update existing product information, and, upload/download products to their State agency approved list, and 2 Federal users will spend a total of ½ hour to report new infant formula product information and update formula product information when necessary. The total number of burden hours for this reporting period is 130.50 hours.

Affected Public: Manufacturers, WIC State agencies, and Federal government.

Estimated Number of Respondents: 1,022.

Number of Responses per Respondent: 2.

Estimated Total Annual Responses: 2,044.

Hours per Response: 0.063.

Estimated Total Annual Burden: 131.

Dated: September 12, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–19050 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Green Mountain National Forest; Vermont; Deerfield Wind Project

AGENCY: Forest Service, USDA.

ACTION: Revision, notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is processing an application for a special use authorization from Deerfield Wind, LLC for the installation and operation of wind turbines on National Forest System (NFS) lands managed by the Green Mountain National Forest (GMNF). This notice revises the ''responsible official'', updates the expected dates for the release of the EIS, makes minor modifications to certain parts of the proposed action, and asks for comments on those modifications.

DATES: Comments concerning the scope of the analysis, specifically in regard to the modifications to the original proposed action, should be received by October 19, 2007. The draft environmental impact statement is now expected in January 2008 and the final environmental impact statement is expected in July 2008.

ADDRESSES: Send written comments to Bob Bayer, Project Coordinator, Manchester Ranger District, USDA Forest Service, 2538 Depot Street, Manchester Center, VT 05255.

FOR FURTHER INFORMATION CONTACT: Bob Bayer, Project Coordinator, Manchester Ranger District, USDA Forest Service, 2538 Depot Street, Manchester Center, VT 05255; 802–362–2307 ext. 218; e-mail: *rbayer@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The original notice of intent to prepare the Deerfield Wind Project EIS was published in the **Federal Register** on July 15, 2005 (Vol. 70, No. 135, page 409750). Revisions are as noted here. The responsible official is now Meg Mitchell, Forest Supervisor, Green Mountain and Finger Lakes National Forest. The expected dates for the release of the EIS is as noted above. The proposed action has been clarified as follows.

Modifications to the Proposed Action

The Deerfield Wind Project is now proposed to consist of 17 wind turbines with a rotor size of 87 or 88 meters in diameter for a total turbine height from ground to the top of the blade tip at about 400 to 410 feet and a name plate power rating of 2.0 or 2.1 megawatts (MW), depending upon which model of turbine is selected. The original notice proposed 20 to 30 turbines approximating 340–370 feet in height with a power rating of between 1.5 to 2.0 MW per turbine. The site will now be capable of producing 34 or 35.7 MW whereas the original proposal called for a site capacity of 30 to 45 MW of electricity. Access to the western project area will be from the north along a private road known as the Putnam Road, and will extend westerly onto Forest Service land, rather than from the south end of the project site as originally proposed. A storage and maintenance building and a new substation will be sited along the northern access road. An alternative to connect to an existing Green Mountain Power Company substation on private land on the east side of Route 8 is no longer feasible due to capacity issues.

Responsible Official

Meg Mitchell, Forest Supervisor, Green Mountain and Finger Lakes National Forests, 231 North Main Street, Rutland, VT 05701–2417.

Comments Requested

This revised notice of intent continues the process of gathering comments which guides the development of the environmental impact statement. The primary purpose is to gather public comments, issues, and concerns regarding the proposed action. Comments, issues and concerns will be used to help formulate alternatives to the proposed action. Please make your written comments as specific as possible as they relate to the modifications of the proposed action. There is no need to re-submit comments or thoughts that you have already submitted during the formal scoping process held in July–August of 2005. Those people new to the process at this time may feel free to provide a broader range of comments. Include your name, address, and, if possible, telephone number and e-mail address. Comments received in response to this solicitation, including the names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 127(d), any person may request that a submission be withheld from the public record by showing how the Freedom of Information Act permits such confidentiality. Persons requesting such confidentiality should be aware that confidentiality is granted in only very limited circumstances. The Forest Service will inform the requester of its decision regarding a request for confidentiality. Where the request is denied, the submission will be returned, and the requester notified that the comments may be resubmitted with or without name and address.

Dated: September 20, 2007.

Steve Roy,

Acting Forest Supervisor.

[FR Doc. 07–4747 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or the Agency, invites comments on this information collection for which Rural Development intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 26, 2007.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5159, South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784 FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to: Michele L. Brooks, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5159, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078, FAX: (202) 720–8435.

Title: 7 CFR part 1776, ''Household Water Well System Grant Program''

OMB Control Number: 0572–0139

Type of Request: Revision of a currently approved information collection.

Abstract: Rural Development supports the sound development of rural communities and the growth of our economy without endangering the environment. Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Household Water Well System (HWWS) Grant Program makes grants to qualified private non-profit organizations which will help homeowners finance the cost of private wells. As the grant recipient, non-profit organizations will establish a revolving loan fund lending program to provide water well loans to individuals who own or will own private wells in rural areas. The individual loan recipients may use the funds to construct, refurbish, and service their household well systems for an existing home.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 144 hours per response.

Respondents: Non-profit institutions.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 17.5

Estimated Total Annual Burden on Respondents: 1,112 Hours.

Copies of this information collection can be obtained from Gale Richardson, Management Analyst, Program Development and Regulatory Analysis, at (202) 720–0992; FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 21, 2007.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E7–19055 Filed 9–26–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Oceanic and Atmospheric Administration, Office of Education, Educational Partnership Program (EPP) and Ernest F. Hollings Undergraduate Scholarship Program.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 10,020.

Number of Respondents: 2,885.

Average Hours per Response: Undergraduate scholarship applications, 8 hours; graduate sciences program applications, 10 hours; references, 1 hour; alumni updates, 1 hour; student tracker database forms, 16 hours.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA) Educational Partnership Program (EPP) collects, evaluates and assesses student data and information for the purpose of selecting successful candidates, generating internal NOAA reports and articles to demonstrate the success of its program. EPP requires applicants to its student scholarship programs to complete an application for NOAA undergraduate and graduate scholarship programs. Part of the application package requires references (*e.g.*, academic professors and advisors) to complete a NOAA student scholar reference form in support of the scholarship application. NOAA EPP student scholar alumni are also requested to provide information for NOAA internal tracking purposes. In addition, the collected student data supports NOAA EPP's program performance measures.

Affected Public: Individuals or households; not-for-profit institutions; State, Local or Tribal Government.

Frequency: Annually or triennially.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk

Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 21, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–19036 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0498.

Type of Request: Regular submission.

Burden Hours: 2,579.

Number of Respondents: 756.

Average Hours per Response: Logbook reports, 1 hour; vessel monitoring system (VMS) reports, 24 seconds; and pre-trip reports, 5 minutes.

Needs and Uses: The owners of vessels that fish out of West Coast ports for highly migratory species such as tuna, billfish, and sharks are required to submit information about their fishing activities. The National Marine Fisheries Service and the Pacific Fishery Management Council use the information to monitor the fisheries and determine the effects and effectiveness of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). Catch and effort statistics from logbooks are essential for evaluating if the objectives of the FMP are being achieved and for evaluating the impacts of potential changes in management to respond to new information or new problems in the fisheries. VMS units will facilitate enforcement of closures associated with the longline fishery.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 21, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–19038 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coast Pilot Report.

Form Number(s): NOAA 77–6.

OMB Approval Number: 0648–0007.

Type of Request: Regular submission.

Burden Hours: 50.

Number of Respondents: 100.

Average Hours per Response: 30 minutes.

Needs and Uses: NOAA produces the *U.S. Coast Pilot,* a series of nine books that supplement marine nautical charts. The *Coast Pilot* contains information essential to navigators in U.S. coastal and intra-coastal waters but that cannot be shown graphically on paper nautical charts. The Coast Pilot Report form is offered to the public as a means for recommending changes to the publication.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 21, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–19039 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: NTIA/FCC Web-based Frequency Coordination System.

Form Number(s): None.

OMB Control Number: 0660–0018.

Type of Request: Regular submission.

Burden Hours: 750.

Number of Respondents: 3,000.

Average Hours per Response: 15 minutes.

Needs and Uses: This web-based system provides a means for non-federal applicants to rapidly determine the availability of radio frequency spectrum in a specific location, or the need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The system helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security.

Affected Public: Business or other for-profit organizations, state or local government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5806, or *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: September 21, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–19041 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees; Notice of Public Meetings

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations (CACPA). The Committee will address policy, research, and technical issues related to the 2010 Decennial Census Programs, Economic and Demographic program areas, the American Community Survey, and the 2010 Census Integrated Communications Campaign. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

The Census Bureau also is giving notice of the following Census Advisory Committee (CAC) meetings: A special Joint Census Advisory Committee meeting of the CACs on Race and Ethnic Populations (REAC) and the 2010 CAC. This special Joint Advisory Committee Meeting will focus on early planning strategies for the Census Bureau's 2010 Census Integrated Communications Campaign. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: October 18–19, 2007. On October 18, the CACPA meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5:30 p.m. On October 19, the special Joint Advisory Committee Meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m.

ADDRESSES: The meetings will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H153, Washington, DC 20233, telephone: (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, American Indian and Alaska Native Populations, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each, appointed by the Secretary of Commerce. The Committees provide an outside-user perspective about how census research, design, and implementation plans for the 2010 re-engineered decennial census, the American Community Survey, and related decennial programs improve census participation, data quality, and accuracy for these population groups. The Committees also advise the Census Bureau on ways census data products can best be disseminated to diverse race and ethnic populations and other users.

The 2010 CAC is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers broader policy and technical goals of the decennial census, including the American Community Survey, from the perspective of outside data users, state, local, and tribal entities, special populations, and other organizations having a substantial interest and expertise in the conduct and outcome of the decennial census.

The CACPA is composed of 36 members appointed by the Presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairman of the Board of the American Marketing Association. The Committee advises the Director, U.S. Census Bureau, on the full range of Census Bureau programs and activities in relation to each committee's areas of expertise and focus.

All the Committees discussed in this notice have been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, section 10(a)(b)).

A brief period will be set aside for public comment. However, individuals with extensive statements for the record must submit them in writing to Ms. Jeri Green, Committee Liaison Officer, 4600 Silver Hill Road, Room 8H153, Washington, DC 20233, or e-mail to *jeri.green@census.gov* at least three working days prior to the meetings. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, preferably two weeks prior to the meeting.

Dated: September 21, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–19082 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of the Eleventh New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 27, 2007.

SUMMARY: On April 30, 2007, the Department of Commerce (''the Department'') published the *Preliminary Results* of the new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), covering the period November 1, 2005, through April 30, 2006. *See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Reviews*, 72 FR 21219 (April 30, 2007) (''*Preliminary Results*''). The period of review (''POR'') is November 1, 2005, through April 30, 2006. [1] Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for these reviews are listed in the ''Final Results of the Reviews'' section below.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely case briefs from Weifang Hongqiao International Logistics Co., Ltd. (''Hongqiao'') on May 22, 2007, and from Petitioners [2] on June 15, 2007. The

[1] On April 23, 2007, we issued a memorandum extending the end of the POR from April 30, 2006, to May 4, 2006, to capture entries of two of the new shippers' merchandise into the United States market which happened after April 30, 2006. See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Reviews of Fresh Garlic from the People's Republic of China, dated April 23, 2007 (''POR Expansion Memo'').

[2] Petitioners are the Fresh Garlic Producers Association (''FGPA'') and its individual members. The individual members of the FGPA are

Department received timely rebuttal briefs from Shandong Wonderland Organic Food Co., Ltd. (''Wonderland'') and Shenzhen Xinboda Industrial Co., Ltd. (''Xinboda'') on June 22, 2007. On June 27, 2006, the Department issued a questionnaire to the foreign market researcher (''FMR'') responsible for providing the garlic bulb prices as submitted by Petitioners in their April 3, 2007, surrogate value submission.

On June 28, 2007, we extended the time limit for the completion of the final results of these reviews. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for Final Results of New Shipper Reviews*, 72 FR 37195 (July 9, 2007). On July 11, 2007, we received the response to the Department's June 27, 2006, FMR questionnaire.

On August 10, 2007, we reopened the record and provided parties an opportunity to comment on the FMR's July 11, 2007, response. On August 15, 2007, we received a supplemental brief from Petitioners with regard to the FMR's July 11, 2007, response. No other party submitted comments.

Analysis of Comments Received

All issues raised in the case, rebuttal, and supplemental briefs by parties to these reviews are addressed in the ''Antidumping Duty Order on Fresh Garlic from the People's Republic of China: Issues and Decision Memorandum for the Eleventh New Shipper Reviews,'' dated September 20, 2007, which is hereby adopted by this notice (''Issues and Decision Memo''). A list of the issues which parties raised and to which we respond in the Issues and Decision Memo is attached to this notice as an Appendix. The Issues and Decision Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room B–099, and is accessible on the Web at *http://www.trade.gov/ia*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of information on the record of these reviews, and comments received from the interested parties, we have made changes to the margin calculations for all respondents. We have revalued one of the surrogate values (garlic bulb prices) used in the *Preliminary Results*. For further details see Issues and Decision Memo at Comment 1.

In addition, we have made a company-specific change since the *Preliminary Results*. Specifically, we have incorporated a post-preliminary results clarification/correction to Hongqiao's margin calculation with respect to mesh bags. For further details on this company-specific change, *see* Issues and Decision Memo at Comment 3.[3]

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) Mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Normal Value Methodology

The Department's general policy, consistent with section 773(c)(1) of the Tariff Act of 1930, as amended (the ''Act''), is to calculate normal value (''NV'') for non-market economy companies using the factors of production (''FOP'') that a respondent consumes in order to produce a unit of the subject merchandise. There are circumstances, however, in which the Department will modify its standard FOP methodology, choosing to apply a surrogate value to an intermediate input instead of the individual FOPs used to produce that intermediate input. First, in some cases, a respondent may report factors used to produce an intermediate input that accounts for an insignificant share of total output. When the potential increase in accuracy to the overall calculation that results from valuing each of the FOPs is outweighed by the resources, time, and burden such an analysis would place on all parties to the proceeding, the Department will value the intermediate input directly using a surrogate value. *See, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003) (''*Fish Fillets*'') and accompanying Issues and Decision Memorandum at Comment 3.

Also, there are circumstances in which valuing the FOPs used to yield an intermediate product would lead to an inaccurate result because the Department would not be able to account for a significant element of cost adequately in the overall factors buildup. In this situation, the Department would also value the intermediate input directly. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews,* 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

In the *Preliminary Results,* we found that respondents in these proceedings were unable to accurately record and substantiate the complete costs of growing garlic based on our analysis of the information on the record. *See Preliminary Results,* 71 FR at 71520; *see also* Memorandum to the File through James C. Doyle, Director, Office 9 and Alex Villanueva, Program Manager, Office 9 from Irene Gorelik, Analyst, Office 9: New Shipper Review of the Antidumping Duty Order on Fresh Garlic From the People's Republic of China: Intermediate Input Methodology, dated April 23, 2007 (''Intermediate Product Memo''). In order to eliminate the distortions in our calculation of NV for all of the reasons identified in the Intermediate Product Memo, we have applied an intermediate-product

Christopher Ranch LLC, The Garlic Company, Valley Garlic, and Vessey and Company, Inc.

[3] The specific calculation changes can be found in: ''Analysis for the Final Results of the 11th Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Weifang Hongqiao International Logistics Co., Ltd. (''Hongqiao'') dated September 20, 2007.

valuation methodology to all companies for these final results of review. Using this methodology, we calculated NV by starting with a surrogate value for the garlic bulb (i.e., the ''intermediate product''), adjusted for yield losses during the processing stages, and adding the respondents' processing costs, which were calculated using their reported usage rates for processing fresh garlic. In future reviews, should a respondent be able to provide sufficient factual evidence that it maintains the necessary information in its internal books and records that would allow us to establish the completeness and accuracy of the reported FOPs, we will revisit this issue and consider whether to use its reported FOPs in the calculation of NV. For further details, *see* Intermediate Product Memo.

In addition, we have revised the calculation of the garlic bulb surrogate value. In the *Preliminary Results* we used prices for Super-A garlic to value the respondents' garlic bulb input using Azadpur Agricultural Produce Marketing Committee's (''APMC'') ''Market Information Bulletin'' (the ''Bulletin''). The Bulletin is published by Azadpur APMC on each trading day and contains, among other things, a list of all fruits and vegetables sold on the previous trading day, the amount (by weight) of each fruit or vegetable sold on that day and a low, high and modal price for each commodity sold. For these final results, however, using respondents' size data on the record, and a clarification to the definition of grades A and Super A, the Department calculated a surrogate value based on the most appropriate Bulletin data, *i.e.*, the average of grades A and Super-A garlic bulb prices, as opposed to only utilizing the Super A prices (as was done in the Preliminary Results). Specifically, we averaged data points for A and Super A grade garlic values (from which we deducted a market fee and deflated to the POR) to capture respondents' inputs of garlic which was greater than 40mm in diameter. *See* Issues and Decision Memo at Comment 1.

For a complete explanation of the Department's analysis, and for a more detailed analysis of these issues with respect to each respondent, *see* Intermediate Product Memo and Issues and Decision Memo at Comments 1 and 3.

Final Results of the Reviews

The Department has determined that the following final dumping margins exist for the period November 1, 2005, through April 30, 2006: [4]

FRESH GARLIC FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Produced by Jinxiang Dingtai Garlic Product Co., Ltd. and Exported by Weifang Hongqiao International Logistics Co., Ltd.	18.56.
Produced and Exported by Jinxiang Tianma Freezing Storage Co., Ltd.	21.79.
Produced and Exported by Shandong Wonderland Organic Food Co., Ltd.	17.31.
Produced by Zhengzhou Dadi Garlic Industry Co., Ltd. and Exported by Shenzhen Xinboda Industrial Co., Ltd.	0.00 (*de minimis*).

The Department will disclose calculations performed for these final results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer-specific assessment rates for garlic from the PRC via *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Hongqiao, Wonderland, Tianma, and Xinboda entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Tianma, produced and exported by Wonderland, produced by Dadi and exported by Xinboda, or produced by Dingtai and exported by Hongqiao, the cash-deposit rate will be that established in the final results of these reviews; (2) for subject merchandise exported by Hongqiao but not manufactured by Dingtai and for subject merchandise exported by Xinboda but not manufactured by Dadi, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 376.67 percent); and (3) for subject merchandise exported by Wonderland or Tianma, but manufactured by any other party, the cash deposit rate will be the PRC-wide rate (*i.e.*, 376.67 percent).

If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results of this administrative review and new shipper reviews are issued and published in accordance with sections 751(a)(2)(C) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: September 20, 2007.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Garlic Bulb Surrogate Value
A. Product Specificity
B. Broad Market Average
C. Public Availability
D. Contemporaneity

[4] For liquidation purposes the Department will instruct Customs and Border Protection (''CBP'') to use the period November 1, 2005, through May 4, 2006, for two of the new shippers for whom we extended the POR. See POR Expansion Memo.

E. Tax and Duty Exclusivity
Comment 2: Surrogate Financial Ratios
Comment 3: Hongqiao Margin Calculation

[FR Doc. E7–19128 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Extension of Time Limit for Final Results of the Tenth Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

Background

On July 19, 2007, the Department of Commerce (''the Department'') issued the preliminary results of this new shipper review. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review,* 72 FR 45734 (August 15, 2007) (''*Preliminary Results*'').

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

On August 30, 2007, the Department sent a supplemental questionnaire to the respondent in this review, Guangxi Jisheng Foods, Inc. (''Jisheng''), regarding information Jisheng and its importer had placed on the record about their respective legal structure. Additionally, as stated in the *Preliminary Results,* the Department intends to verify, as provided in section 782(i)(3) of the Act, sales and cost information submitted by the respondent, Jisheng. *See Preliminary Results,* 72 FR at 45735. As a result of the extraordinarily complicated issues raised in this review segment, including Jisheng's and its importer's legal structure, and the additional time needed to evaluate Jisheng's response to our questions, and analyze the information that will be gathered at Jisheng's sales and cost verification, it is not practicable to complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days until December 16, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). However, because December 16, 2007, falls on a Sunday, the final results will be due on December 17, 2007, the next business day.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 17, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19107 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 27, 2007.

SUMMARY: The Department of Commerce (''the Department'') has received a request from Dujiangyan Xingda Foodstuff Co., Ltd. (''Xingda''), a producer and exporter of preserved mushrooms, to conduct a new shipper review (''NSR'') of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). Since this request meets the statutory and regulatory requirements for initiation, the Department is initiating a NSR of Xingda, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d).

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3936 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999). Thus, the antidumping duty order on certain preserved mushrooms from the PRC has a February anniversary month. The Department received a request for a NSR from Xingda on August 30, 2007, which is during the semiannual anniversary month. *See* 19 CFR 351.214(d)(2).

Xingda identified itself as a producer and exporter of preserved mushrooms. Pursuant to section 751(a)(2)(B)(i)(I) of the Act, and 19 CFR 351.214(b)(2)(i), Xingda certified that it did not export preserved mushrooms to the United States during the period of investigation (''POI''). Pursuant to section 751(a)(2)(B)(i)(II) of the Act, and 19 CFR 351.214(b)(2)(iii)(A), Xingda also certified that it has never been affiliated with any exporter or producer that exported preserved mushrooms to the United States during the POI. Furthermore, the company also certified that its export activities are not controlled by the government of the PRC, satisfying the requirement of 19 CFR 351.214(b)(2)(iii)(B).

Pursuant to 19 CFR 351.214(b)(2)(iv), Xingda submitted documentation establishing the date on which the subject merchandise was first entered for consumption in the United States, the volume of that first shipment and any subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States. The Department queried the U.S. Customs and Border Protection (''CBP'') entry database, which confirmed that Xingda had officially entered subject merchandise into the United States via assignment of an entry date in the Customs database by CBP.

Initiation of Review

Based on the information on the record, and in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we have determined that

Xingda has met the statutory and regulatory requirements for the initiation of a NSR. Therefore, we are initiating a NSR for Xingda. *See* Memorandum to the File, from Thomas Martin, International Trade Compliance Analyst, through Abdelali Elouaradia, Director, Office 4, AD/CVD Operations, ''Initiation of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China,'' dated September 21, 2007. We intend to issue the preliminary results of this review not later than 180 days after the date on which this review is initiated, and the final results of this review within 90 days after the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(h)(i).

Pursuant to 19 CFR 351.214(g)(1)(i)(B), the period of review (''POR'') for a NSR initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for the NSR of Xingda is February 1, 2007, through July 31, 2007.

In cases involving non–market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Accordingly, we will issue a questionnaire to Xingda, including a separate rates section. The review will proceed if the responses provide sufficient indication that Xingda is not subject to either *de jure* or *de facto* government control with respect to its exports of preserved mushrooms. However, if Xingda does not demonstrate its eligibility for a separate rate, then the company will be deemed not separate from other companies that exported during the POI and the NSR will be rescinded as to the company.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in NSRs. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) in lieu of a cash deposit is not available in this case. Importers of subject merchandise produced and exported by Xingda must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide rate of 198.63 percent.

Interested parties that require access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: September 21, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–19135 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Weather Modification Activities Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 26, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Williams, R/LC, 1315 East-West Hwy, Silver Spring, MD 20910–3282, phone (301) 734–1196 or *karen.williams@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 6(b) of Public Law 92–205 requires that persons who engage in weather modification activities (e.g., cloud seeding) provide reports prior to and after the activity. They are also required to maintain certain records. The requirements are detailed in 15 CFR part 908. NOAA uses the data for scientific research, historical statistics, international reports, and other purposes.

II. Method of Collection

Paper forms and recordkeeping are used.

III. Data

OMB Number: 0648–0025.

Form Number: NOAA Forms 17–4 and 17–4A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 55.

Estimated Time per Response: 30 minutes per report; 5 hours per year for record keeping.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annual Cost to Public: $275.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 21, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–19046 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Elkhorn Slough, California National Estuarine Research Reserve Revised Management Plan

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Availability for the Revised Management Plan for the Elkhorn Slough National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is announcing the availability of the updated Elkhorn Slough National Estuarine Research Reserve Management Plan.

The Elkhorn Slough National Estuarine Research Reserve was designated in 1979 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The Reserve has been operating under a management plan approved in 1985. Pursuant to 15 CFR 921.33(c), a state must revise its management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve.

This plan contains important revisions to the original management plan developed for the Reserve. For the revision, the Reserve used a collaborative approach, which focused on integrating the Reserve's programs in order to better achieve conservation success. The plan describes the Reserve's long-term conservation goals and details the process involved in identifying those goals. It also maps out the objectives and strategies that the Reserve will use over the next five years in order to move toward accomplishing its goals. The plan also provides an overview of the Reserve's research and monitoring, education, stewardship, coastal training, volunteer, and administration programs and describes the Reserve's plan for public access, acquisition, and facilities.

FOR FURTHER INFORMATION CONTACT: Alison Krepp at (301) 713–3155 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Elkhorn Slough National Estuarine Research Reserve Management Plan, please visit *http://www.elkhornslough.org/*.

Dated: September 21, 2007.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E7–19052 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB64

Marine Mammals; File No. 10019

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Jonathon Millman, 268 Mast Road, Durham, New Hampshire 03824, has been issued a permit to conduct commercial/educational photography of pinnipeds in Maine.

ADDRESSES: The permit 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

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 10, 2007, notice was published in the **Federal Register** (72 FR 45013) that a request for a commercial/educational photography permit to take harbor seals (*Phoca vitulina*) and gray seals (*Halichoerus grypus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes Level B harassment of 200 harbor seals and 50 gray seals during one to two filming sessions around the Isle of Shoals, Maine. Filming will take place above and below water and footage obtained will be used for the New Hampshire Public Television's ''Windows to the Wild'' series. The permit expires on November 1, 2007.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 24, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–19145 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public meeting (via conference call).

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The purpose of the conference call is to allow Panel members to deliberate and vote on recommendations conceptualized during a meeting in Seattle, Washington, on September 14, 2007. Written public comments should be submitted to Captain Steven Barnum, Designated Federal Officer (DFO), by October 11, 2007.

Date and Time: The conference call will covene at 2 p.m. Eastern Time, October 15, 2007, and end at or about 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Captain Steven Barnum, NOAA, Designated Federal Officer (DFO), Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West

Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Steven.Barnum@noaa.gov* or *Hydroservices.panel@noaa.gov*; and for more information visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*.

SUPPLEMENTARY INFORMATION: The conference call is available to the public through the following, toll free call-number: (888) 791–6044 participant passcode HSRP. Interested members of the public may call this number and listen to the meeting. Persons with hearing impairments may follow the proceedings by calling the Federal Relay Service [TTY (800) 877–8339, Voice (866) 377–8642 or Voice Carry-Over (877) 877–6280] and provide the Service with the conference call number and participant passcode. Be sure to notify the operator that it is a ''Conference Call'' before you provide call number and participant passcode.

Matters To Be Considered: A vote is required for recommendations related to NOAA Hydrographic Services Role in the Integrated Ocean Observing System (IOOS). The recommendation letter and HSRP position will be posted before the conference call; please visit *http://nauticalcharts.noaa.gov/ocs/hsrp.htm*.

Dated: September 20, 2007.

Captain Steven Barnum,

Director, Office of Coast Survey, National Oceanic and Atmospheric Administration.

[FR Doc. 07–4749 Filed 9–26–07; 8:45 am]

BILLING CODE 3510–JE–M

COMMODITY FUTURES TRADING COMMISSION

Petition of the Chicago Mercantile Exchange, Inc. for Exemptive Relief, Pursuant to Section 4(c) of the Commodity Exchange Act, From the Requirement That the China Foreign Exchange Trade System and National Interbank Funding Center or its Members Register as Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Re-opening of comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') published on August 23, 2007, a notice of proposed order and request for comment regarding a petition filed with the Commission by the Chicago Mercantile Exchange, Inc. (''CME'') applying for exemptive relief, pursuant to Section 4(c) of the Commodity Exchange Act.[1] CME's petition applies for exemptive relief from the requirement that the China Foreign Exchange Trade system and National Interbank Funding Center (''CFETS'') or its members register as futures commission merchants (''FCMs''). An interested party has requested that the comment period be extended by two weeks due to the novelty of the issues involved. The Commission is extending the comment period to October 9, 2007.

DATES: Comments must be received on or before October 9, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving*. Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov*. Include ''CME Petition for Exemption from FCM Registration on Behalf of CFETS'' in the subject line of the message.
- *Fax:* 202/418–5521.
- *Mail:* Send to David S. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/*.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov*; Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on September 24, 2007 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–19222 Filed 9–26–07; 8:45 am]

BILLING CODE 6351–01–P

[1] 72 FR 48262 (August 23, 2007).

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. The committee will discuss the Department of the Navy Historical Advisory Subcommittee's report and recommendations. The meeting will be open to the public.

DATES: Tuesday, October 16th, 2007 at 10 a.m.

ADDRESSES: The meeting will be held on the 5th Floor, Suite 5000, 1777 North Kent Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela Bennett at 703–588–7889 or Ms. Carolyn Thorne at 703–588–7890 for information, and/or upon arrival at the building in order to be admitted.

Dated: September 20, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4754 Filed 9–26–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB)

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting:

Name of Committee: Reserve Forces Policy Board (RFPB).

Dates: October 30–31, 2007.

Time: (30th) 8 a.m.–4:30 p.m.; (31st) 8 a.m.–2:30 p.m.

Location: Meeting address (30th) Army Navy Country Club, 1700 Army Navy Drive, Arlington, VA 22202; (31st) Pentagon Room 3E733, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Purpose of the Meeting: An open quarterly meeting of the Reserve Forces Policy Board and annual meeting of the Reserve Forces Policy Board Alumnae.

Agenda: Discussion of homeland security and other issues relevant to the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. To request a seat,

contact the DFO in advance at (703) 697–4486, or by e-mail, *marjorie.davis@osd.mil* and/or *donald.ahern@osd.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

FOR FURTHER INFORMATION CONTACT: Col Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Dated: September 20, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–4753 Filed 9–26–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Meeting

AGENCY: Department of the Air Force, U.S. Air Force Academy Board of Visitors.

ACTION: Notice of meeting.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Cannon House Office Building, Washington, DC, on 17 October 2007. The purpose of this meeting is to review morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements should be no longer than two type-written pages and must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(c), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

DATES: Meeting sessions will begin at 9 a.m. on October 17, 2007, at 437 Cannon House Office Building, Room 122, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Or to attend this BoV meeting, contact Mr. Scotty Ashley, USAFA Programs Manager, Directorate of Airman Development and Sustainment, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 695–3594.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–19074 Filed 9–26–07; 8:45 am]

BILLING CODE 5001–05–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0013, FRL–8473–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal); EPA ICR No. 2103.03; OMB No. 2040–0253

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before October 29, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2003–0013, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania

Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tara Johnson, Water Security Division, Office of Ground Water and Drinking Water, Mailcode: 4608T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–6186; fax number: 202–566–0055; e-mail address: *Johnson.tara@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 25, 2007 (72 FR 40851), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2003–0013, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal).

ICR numbers: EPA ICR No. 2103.03, OMB Control No. 2040–0253.

ICR Status: This ICR is scheduled to expire on September 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Bioterrorism Act requires each community water system serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. These requirements are mandatory under the statute. EPA will use the information collected under this ICR to determine whether community water systems have conducted vulnerability assessments and prepared or revised emergency response plans in compliance with that Act. EPA is required to protect all vulnerability assessments and all information derived from them from disclosure to unauthorized parties and has established an Information Protection Protocol describing how that will be accomplished.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 237 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Community Water Systems serving a population of more than 3,300 people.

Estimated Number of Respondents: 80.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 8,994.

Estimated Total Annual Cost: $710,460, including $294 in annual O&M costs.

Changes in the Estimates: There is a decrease of 2,904,935 hours in the total estimated respondent burden compared with that identified in the OMB Inventory of Approved Burdens. This decrease reflects EPA's need to collect documents that were included in the original estimate, but still remain to be submitted to the Agency.

Dated: September 21, 2007

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. E7–19124 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2007–0142; FRL–8473–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; OMB Control Numbers 2040–0009, 2040–0110 and 2040–0258

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that three Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew three existing approved collections. The ICRs, which are abstracted below, describe the nature of the information collection and their estimated burden and cost.

DATES: Additional comments may be submitted on or before October 29, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2007–0142, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA

Docket Center, Environmental Protection Agency, Water Docket, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5627; fax number: (202) 564–9544; e-mail address: *letnes.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION:

For All ICRs

EPA has submitted the ICRs listed under Section A to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 27, 2007 (72 FR 35227), EPA sought comments on these ICRs pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on these ICRs should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for these ICRs under Docket ID No. EPA–HQ–OW–2007–0142, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

These ICRs are scheduled to expire on September 30, 2007. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

A. List of ICRs Submitted

(1) Concentrated Aquatic Animal Production Effluent Guidelines (Renewal), EPA ICR Number 2087.03, OMB Control Number 2040–0258, expiration date 09/30/2007.

(2) National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment/Certification Information (Renewal), EPA ICR Number 1427.08, OMB Control Number 2040–0110, expiration date 09/30/2007.

(3) National Pretreatment Program (Renewal), EPA ICR Number 0002.14, OMB Control Number 2040–0009, expiration date 09/30/2007.

B. Individual ICRs

(1) Concentrated Aquatic Animal Production Effluent Guidelines (Renewal), EPA ICR Number 2087.03, OMB Control Number 2040–0258, expiration date 09/30/2007.

Abstract: This ICR requests OMB renewal of the approval for the Concentrated Aquatic Animal Production (CAAP) Effluent Guidelines. The rule establishes specific reporting requirements for a segment of CAAP facilities through NPDES permits. The rule covers facilities which are defined as CAAP facilities (see 40 CFR 122.24 and 40 CFR part 122 Appendix C) and produce at least 100,000 pounds per year in flow through, recirculating, and net pen systems.

The rule includes special mandatory reporting and recordkeeping requirements which are the subject of this ICR. CAAP facility owners or operators are also required to file reports with the permitting authority when drugs with special approvals are applied to the production units or a failure in the structural integrity occurs in the aquatic animal containment system.

When CAAP facilities apply either an Investigational New Animal Drug (INAD) or a drug that has been prescribed extra-label by a veterinarian to treat the aquatic animals at their facility, the owner or operator must report this use to the permitting authority. In addition, the owner or operator of a CAAP facility must notify the permitting authority upon agreeing to participate in an INAD study.

Whenever a structural failure occurs in the aquatic animal containment system, the owner or operator must report this to the permitting authority. For the purposes of this requirement, the aquatic animal containment system is defined as the unit(s) that contain(s) the aquatic animals and in which their culture takes place, as well as the wastewater handling and treatment units associated with aquatic animal production.

CAAP facilities subject to this regulation are also required to develop and implement a Best Management Practices (BMP) plan that ensures that the regulatory requirements will be met. Upon completion of this BMP plan, the owner or operator must certify to the permitting authority that the plan has been developed.

CAAP facilities are also expected to keep records of the feed inputs along with an estimate of the number and weight of the animals being raised. These records are to be used to calculate the feed conversion ratios for the facility. Records must also be kept documenting the frequency of facility inspections, maintenance and repairs, and cleaning of the rearing units at flow through and recirculating facilities or changing the nets at net pen facilities.

This information collection may contain CBI, especially the reporting requirements associated with investigational drug use. If this is the case, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2 and EPA's Security Manual. However, CWA section 308(b) specifically States that effluent data may not be treated as confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 180.4 hours per respondent per year, or 60.2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions;

develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are a subset of facilities engaged in aquatic animal production defined to 40 CFR part 451.

Estimated Number of Respondents: 245 (200 facilities and 45 States).

Frequency of Response: Once every five years, on occasion, on-going.

Estimated Total Annual Hour Burden: 44,196 hours.

Estimated Total Annual Cost: $971,500, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 804 hours (1.8%) in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects EPA's corrections to the 2004 ICR and is not the result of changes to the requirements covered by this ICR.

(2) National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment/Certification Information (Renewal), EPA ICR Number 1427.08, OMB Control Number 2040–0110, expiration date 09/30/2007.

Abstract: The purpose of this ICR is to calculate the burden and costs associated with the data requirements necessary for a permitting authority (either an authorized State or EPA) to determine whether an existing NPDES or sewage sludge permittee is in compliance with the conditions of its permit.

A permitting authority collects information necessary to determine a permittee's compliance with specific permit requirements during the effective term of a given permit. Compliance assessment reporting requirements include routine submittals (e.g., annual certifications and reports submitted when a compliance schedule milestone is reached) and non-routine submittals (e.g., required when certain conditions occur, such as an unanticipated bypass). NPDES staff may use this information to determine if follow-up activities are necessary.

This ICR includes burden hours and costs associated with noncompliance reports for Concentrated Animal Feeding Operations (CAFOs) not accounted for in the NPDES Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations ICR (EPA ICR No. 1989.04; OMB No. 2040–0250).

Five additional effluent limitations guidelines development ICRs were set to expire in the next three years prior to the next renewal of this Compliance Assessment/Certification ICR. The burden for direct dischargers associated with those five ICRs has been incorporated into the Compliance Assessment/Certification ICR. The five ICRs include:

1. Milestone Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1877.03, OMB Control No. 2040–0202;

2. Best Management Practices (BMPs) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1829.03, OMB Control No. 2040–0207;

3. Baseline Standards and Best Management Practices for the Coal Mining Point Source Category (40 CFR part 434)—Coal Remining Subcategory and Western Alkaline Coal Mining Subcategory, EPA ICR No. 1944.03, OMB Control No. 2040–0239;

4. Voluntary Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 2015.02, OMB Control No. 2040–0242; and

5. Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 1878.02, OMB Control No. 2040–0243.

Where information submitted in conjunction with this ICR contains trade secrets or similar CBI, the respondent has the authority to request that this information be treated as CBI. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2. Any claim of confidentiality must be asserted at the time of submission. However, CWA section 308(b) specifically States that effluent data may not be treated as confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are most facilities required to have NPDES permit coverage, including but not limited to POTWs, PrOTWs, manufacturing and commercial dischargers, mining operations, and CAFOs.

Estimated Number of Respondents: 450,471 (450,425 facilities and 46 States).

Frequency of Response: Every five years, annual, semiannual, quarterly, monthly, on occasion.

Estimated Total Annual Hour Burden: 2,066,677 hours.

Estimated Total Annual Cost: $92,353,878, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 195,157 hours (10.4%) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is mostly the result of the increase in the number of expected stormwater construction and other non-stormwater general permittees and the inclusion of noncompliance for CAFO permittees in this ICR. It is not the result of changes to the requirements covered by this ICR.

(3) National Pretreatment Program (Renewal), EPA ICR Number 0002.14, OMB Control Number 2040–0009, expiration date 09/30/2007.

Abstract: This ICR calculates the burden and costs associated with managing and implementing the National Pretreatment Program as mandated under CWA sections 402(a) and (b) and 307(b). This ICR includes all existing tasks under the National Pretreatment Program, as amended by the EPA's recent Streamlining Rule. It integrates key elements from two

existing ICRs whose approvals are due to expire shortly: (1) Information Collection Request for the National Pretreatment Program, OMB Control No. 2040–0009, EPA ICR No.: 0002.11, June 7, 2005, and (2) Revision of the Information Collection Request for the National Pretreatment Program (Pretreatment Streamlining ICR) (40 CFR part 403), OMB Control No. 2040–0009, EPA ICR No. 0002.12, September 22, 2005.

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The CWA requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the NPDES permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. Data collected from IUs during implementation of the pretreatment program include the mass, frequency, and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or Local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved State or EPA. These data may then be entered into the NPDES databases by the approved State or by EPA.

Four additional effluent limitations guidelines development ICRs were set to expire within the next 3 years, before the next renewal of this Pretreatment Program ICR. It was EPA's intention to transfer some of the burden and cost from those ICRs into the Pretreatment Program ICR during the previous ICR renewal cycle, but final action was not taken until March 23, 2007. Therefore, the burden and cost associated with indirect dischargers from those four ICRs is incorporated into this Pretreatment Program ICR as part of the renewal process. The four ICRs are the following:

1. Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning Point Source Category (40 CFR part 442), EPA ICR No. 2018.02, OMB Control No. 2040–0235.

2. Voluntary Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 2015.02, OMB Control No. 2040–0242.

3. Best Management Practices (BMPs) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1829.03, OMB Control No. 2040–0207.

4. Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 1878.02, OMB Control No. 2040–0243.

The following reporting requirements may contain CBI, proprietary information, or information containing compromising trade secrets:

- Pretreatment Baseline Monitoring Report (BMR)
- IU Compliance Schedule Report
- POTW and IU Maintenance of Monitoring Records
- Pretreatment Categorical Determination Request
- Pretreatment Fundamentally Different Factors (FDF) Variance Request

In such cases, the respondent has the right to request that the information be treated as CBI. EPA and its agents will handle all data so designated in accordance with the requirements at 40 CFR 403.14(a). The pretreatment regulations, however, stipulate at 40 CFR 403.14(b) that industrial effluent data shall be made available to the public without restriction.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Various industrial categories, POTWs, Local and State governments.

Estimated Number of Respondents: 24,740 (35 States, 1,512 POTWs and 23,193 industrial users)

Frequency of Response: On occasion, semi-annually, annually, and as needed.

Estimated Total Annual Hour Burden: 1,797,087 hours.

Estimated Total Annual Cost: $82,467,367, includes $2,003,205 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 181,045 (9.2%) hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. There are burden increases reflected in this ICR due to increases in the estimates of State respondents, number of approved programs, and incorporation of burden from other ICRs. However, the main change in burden is reflected in a decrease in the number of Significant Industrial Users (SIUs). EPA revised the estimated number of SIUs and pretreatment programs after extensive consultation with the EPA regions and a thorough examination of Permit Compliance System (PCS) data. This resulted in an overall decrease in the burden of this ICR.

Dated: September 21, 2007.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. E7–19126 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8474–1]

Acid Rain Program: Notice of Annual Adjustment Factors for Excess Emission Penalty

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of annual adjustment factors for excess emissions penalty.

SUMMARY: Under the Acid Rain Program, affected units must hold enough allowances to cover their sulfur dioxide emissions and meet an emission limit for nitrogen oxides. Under 40 CFR 77.6, units that do not meet these requirements must pay a penalty without demand to the Administrator based on the number of excess tons emitted times $2000 as adjusted by an annual adjustment factor that must be published in the **Federal Register**.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2007 is 1.6364. This value is derived using the Consumer Price Index (''CPI'') for 1990 and 2007 (as defined at 40 CFR part 72, the 2007 CPI is based on the August 2006 CPI for all urban consumers), and corresponds to a penalty of $3273 per excess ton of sulfur dioxide or nitrogen oxides emitted.

The annual adjustment factor for adjusting the penalty for excess emissions of sulfur dioxide and nitrogen oxides under 40 CFR part 77 for compliance year 2008 is 1.6687. This value is derived using the Consumer Price Index (''CPI'') for 1990 and 2008 (as defined at 40 CFR part 72, the 2008 CPI is based on the August 2007 CPI for all urban consumers), and corresponds to a penalty of $3337 per excess ton of sulfur dioxide or nitrogen oxides emitted.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Clean Air Markets Division (6204J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 343–9077 or *miller.robertl@epa.gov*.

Dated: September 20, 2007.

Larry F. Kertcher,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. E7–19142 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–0942; FRL–8474–4]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects' research.

DATES: The public meeting will be held from October 24, 2007 from approximately 8:30 a.m. to approximately 3:30 p.m.; October 25, 2007 from approximately 8 a.m. to approximately 6:30 p.m.; and October 26, 2007 from approximately 8 a.m. to approximately 3 p.m. Eastern Time.

Location: Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process.

Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Crystal Rodgers-Jenkins, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5275; fax: (202) 564–2070; e-mail addresses: *rodgers-jenkins.crystal@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2007–0942, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ord.docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0942. 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.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 a.m. to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early October 2007. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/*. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION**. Public comments received on the document titled, ''Scientific and Ethical Approaches for Observational Exposure Studies,'' may be listed under Docket ID No. EPA–HQ–ORD–2007–0972 or Docket ID No. EPA–HQ–ORD–2007–0942.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2007–0942 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to October 17, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern time, October 17, 2007 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, October 17, 2007. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

A. Topics for Discussion

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.29. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of

research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

The October 24–26, 2007 meeting of the Human Studies Review Board will address scientific and ethical issues surrounding:

• Review of EPA draft document *Scientific and Ethical Approaches for Observational Exposure Studies.* The document, prepared by researchers in EPA's National Exposure Research Laboratory, identifies the types of issues that should be considered in planning and implementing observational human exposure studies and provides information and resources to assist EPA researchers in these studies.

• A published report of a completed clinical trial measuring the effects of single and repeated treatments with sodium azide on blood pressure in human subjects. Sodium azide is a pesticidally active ingredient being proposed as a replacement for the fumigant methyl bromide.

• A research proposal from Carroll-Loye Biological Research to evaluate the field efficacy in repelling mosquitoes of three registered products containing picaridin.

• A research proposal from Carroll-Loye Biological Research to evaluate the laboratory efficacy in repelling ticks of three registered products containing picaridin.

• A research proposal from Insect Control & Research, Inc. to evaluate the laboratory efficacy in repelling mosquitoes of the genus *Culex* of two registered products containing picaridin.

• A report of a completed field study by Carroll-Loye Biological Research of the mosquito repellent efficacy of a registered product containing Oil of Lemon Eucalyptus.

• Three closely related product-specific reports from a single completed field study by Carroll-Loye Biological Research of the mosquito repellent efficacy of four pesticides, all containing Deet.

• At the Board's request, discussion on the frequency and duration of exposure of subjects to potential mosquito landings.

In addition, EPA will report to the Board on its consideration of issues relating to the design of sampling strategies for handler research programs proposed by the Agricultural Handlers Exposure Task Force and the Antimicrobials Exposure Assessment Task Force II.

Finally, the Board may also discuss planning for future HSRB meetings.

B. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION.**

Dated: September 21, 2007.

George Gray,

EPA Science Advisor.

[FR Doc. E7–19125 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8474–3]

Notice of Availability of the External Review Draft of a ''Framework for Determining a Mutagenic Mode of Action for Carcinogenicity: Using EPA's 2005 Cancer Guidelines and Supplemental Guidance for Assessing Susceptibility From Early-Life Exposure to Carcinogens''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Document Availability for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the External Review Draft of the ''Framework for Determining a Mutagenic Mode of Action for Carcinogenicity: Using EPA's 2005 *Cancer Guidelines and Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens'' (or Framework).* EPA is releasing this draft document solely for the purpose of seeking public comment prior to external peer review. Following the period for public comment, the document will be reviewed by an external panel of experts. The date and other details about the external review will be published in a separate **Federal Register** notice. EPA will consider both the public and the external peer review comments when revising the draft *Framework.* Members of the public may obtain the draft guidance from *http://www.regulations.gov;* or *http://www.epa.gov/osa/mmoaframework;* or from Dr. Resha Putzrath via the contact information below.

The purpose of the *Framework* is to expand and clarify discussions found in the *Cancer Guidelines and Supplemental Guidance* on characteristics to be evaluated for a chemical's potential for a mutagenic mode of action (MOA). These documents can be obtained from *http://www.epa.gov/cancerguidelines.* This *Framework* document is not a prescriptive guide on how any particular type of assessment should be conducted within an EPA program or regional office. Rather, it is a science-based document that is intended to help EPA's risk assessors determine whether data support a finding of a mutagenic MOA for carcinogenicity. It discusses mutagenicity only within the context of a mutagenic MOA for carcinogenicity and not for other adverse endpoints that involve mutations. EPA's Risk Assessment Forum oversaw the development of this draft document.

EPA's *Cancer Guidelines* emphasize using MOA information in interpreting and quantifying the potential cancer risk to humans. The *Supplemental Guidance* discusses the use of age-dependent adjustment factors (ADAFs) with the derived cancer slope factors (and appropriate age-specific estimates of exposure) in the development of risk estimates if the weight of evidence supports a mutagenic MOA. This default approach is used only when appropriate chemical-specific data are not available on susceptibility from early-life exposures.

ADDRESSES: The draft document is available electronically through the EPA Office of the Science Advisor's Web site at: *http://www.epa.gov/osa/mmoaframework.*

FOR FURTHER INFORMATION CONTACT: For more information, contact Dr. Resha Putzrath, Office of the Science Advisor, Mail Code 8105–R, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–3229; fax number: (202) 564–2070, e-mail: *putzrath.resha@epa.gov.*

SUPPLEMENTARY INFORMATION: In response to requests from numerous stakeholders following EPA's release of the *Supplemental Guidance* in 2005, the Risk Assessment Forum has prepared a framework document that expands and clarifies characteristics used to determine a chemical's potential for a mutagenic MOA for carcinogenicity. This determination affects consideration of adjusting cancer potencies via the ADAFs when exposures of these carcinogens occur to children. The *Framework* is meant to complement EPA's 2005 *Cancer Guidelines and*

Supplemental Guidance. In order to use the *Framework* properly, the chemical of interest must already have a weight-of-evidence determination for carcinogenicity. The *Framework* does not provide an approach to hazard identification. Rather, it gives information useful to determining whether MOAs by which the chemical causes cancer include mutagenicity as an early key event; ''key event'' is a term of art described in the mode-of-action framework in the *Cancer Guidelines.*

Dated: September 21, 2007.

George M. Gray,

EPA Science Advisor.

[FR Doc. E7–19119 Filed 9–26–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

September 19, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 29, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC, or via Internet at *Cathy.Williams@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,750.

Estimated Time per Response: 1–17 hours.

Frequency of Response: Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 193,500 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality required for this information collection.

Needs and Uses: 47 CFR 76.1713 states cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19037 Filed 9–26–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 07–197; FCC 07–165]

Kurtis J. Kintzel, Keanan Kintzel, and All Entities by Which They Do Business Before the Federal Communications Commission—Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing by directing Buzz Telecom Corporation, Business Options, Inc., U.S. Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel to show cause in an adjudicatory proceeding before an administrative law judge why their operating authority should not be revoked, and whether they should be required to refrain from providing any interstate common carrier services in the future without first obtaining prior Commission consent as a result of their apparent repeated and/or willful violations of the Commission's rules and provisions of the Communications Act of 1934, as amended (the ''Act''), relating to the provision of interstate common carrier services. The hearing will be held at a time and place to be specified in a subsequent order.

DATES: Petitions by persons desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed no later than October 29, 2007. See **Summary of the Order** section below for dates that named parties should file appearances.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, and copies thereof shall be served on the Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–

C330. Each document that is filed in this proceeding must display on the front page the document number of this hearing, ''EB Docket No. 07–197.''

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Investigations and Hearings Division, Enforcement Bureau, (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause and Notice of Opportunity for Hearing, FCC–165, released on September 10, 2007 (the ''Order''). The full text of the Order is available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Thursday, or from 8 a.m. to 11:30 a.m. on Friday, at the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate document number, FCC 07–165. The Order also is available on the internet at the Commission's Web site through its Electronic Document Management System (EDOCS). The Commission's internet address for EDOCS is: *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html*. Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format). Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Summary of the Order

In the Order, the Federal Communications Commission commences a hearing proceeding before an administrative law judge to determine, among other things, whether (i) The authority granted to Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are principals and/or do business, to operate as common carriers should be revoked and, (ii) Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are or may be principals and/or by which they do, or may do business, should be required to refrain from providing any interstate common carrier services in the future without first obtaining prior Commission consent. Entities providing interstate common carrier services owned and controlled by Kurtis J. and Keanan Kintzel apparently willfully and repeatedly violated multiple terms of a Consent Decree to which they were signatories and apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act relating to the provision of interstate common carrier services. Such apparent violations, and a lengthy history of noncompliance before the Commission, raise material and substantial questions regarding the basic qualifications of the Kintzel brothers to engage in the provision of interstate common carrier services now and in the future.

Information has come to the Commission's attention that Business Options, Inc. (''BOI'') violated certain provisions of the Consent Decree in EB Docket No. 03–85 (''Consent Decree''). BOI entered into that Consent Decree prior to final disposition of an evidentiary hearing wherein it was to be determined, among other things, whether BOI had intentionally provided incorrect or misleading information to the Commission; whether BOI had engaged in unlawful ''slamming'' activities by changing consumers' long distance providers without authorization in violation of section 258 of the Act, 47 U.S.C. 258, and 64.1120(a)(1) of the Commission's rules, 47 CFR 64.1120(a)(1); whether BOI failed to file registration statements required under 64.1195 of the Commission's rules, 47 CFR 64.1195; whether BOI discontinued service to the public in violation of section 214 of the Act, 47 U.S.C. 214, and 63.71 of the Commission's rules, 47 CFR 63.71; whether BOI had properly filed Telecommunications Reporting Worksheets; and whether BOI made all required contributions to the Universal Service Fund (''USF'') and Telecommunications Relay Services Fund (''TRS''), respectively. The terms of the Consent Decree specifically applied to all entities owned, directed, or controlled by the Kintzel brothers, and was intended to ensure their future compliance with sections 214, 254, and 258 of the Act, 47 U.S.C. 214, 254, 258, and related Commission rules. The Consent Decree contemplated a voluntary contribution to the United States Treasury in the total amount of $510,000 to be paid in 48 scheduled monthly installments; payment of all outstanding universal service and TRS debts; and timely payment of all future universal service and TRS assessments. In addition, the Kintzel brothers agreed to henceforth obtain all appropriate and necessary authorizations prior to discontinuing service in any state and to implement procedures regarding marketing of services to new customers and verification procedures related to these marketing efforts. The Consent Decree also required the filing of regular reports with the Commission relating to compliance with various Commission rules and Consent Decree requirements.

In the fall of 2006, the Enforcement Bureau received information indicating that the Kintzel brothers had discontinued making the required regularly scheduled monthly installment payments toward satisfaction of their voluntary contribution under the 2004 Consent Decree. The information also suggested that an entity controlled by the Kintzel brothers, and subject to the terms of the Consent Decree, Buzz Telecom Corporation (''Buzz''), had unlawfully discontinued service to the public, and failed to pay required universal service and TRS assessments. During the last quarter of 2006, the Commission also received a number of consumer complaints alleging that Buzz, like BOI, had engaged in prohibited slamming and/or cramming activities. The Enforcement Bureau, on December 20, 2006, initiated an investigation of, and directed a Letter of Inquiry (''LOI'') to, Buzz and BOI requiring the production of various documents and responses to interrogatories concerning these allegations.

In the response to the LOI provided by Kurtis Kintzel on behalf of Buzz and BOI (the ''LOI Response''), Kintzel admitted that the voluntary contribution of $510,000 had not been completely satisfied, and that $192,600 was past due and that they had discontinued service to all customers in each state where they had been providing services despite having failed to request and obtain Commission authorization to do so. In the LOI Response, Kintzel misrepresented to the Enforcement Bureau that the entities that he and his brother controlled were up to date and in compliance with their universal service and TRS contribution obligations. The LOI Response also failed to provide any information about the multiple slamming and cramming complaints the Commission had received from consumers. Despite a follow-up communication to Kintzel requesting the same information, Kintzel again failed to provide the requested information. In addition, despite the Enforcement Bureau's request, Kintzel failed to produce information about slamming and cramming complaints that Buzz had received directly from consumers. The Commission continues to receive complaints alleging that Buzz executed a change to a subscriber's telephone

exchange or telephone toll service without authorization in apparent violation of section 248 of the Act, 47 U.S.C. 248, and 64.1120 of the Commission's rules, 47 CFR 64.1120.

Thus, pursuant to sections 4(i) and 214 of the Act, 47 U.S.C. 154(i), 214, the Order directs directing Buzz, BOI, U.S. Bell Corporation (''US Bell''), Link Technologies (''Link''), AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel to show cause in an adjudicatory proceeding before an administrative law judge why (i) The operating authority bestowed on them pursuant to section 214 of the Act, 47 U.S.C. 214, should not be revoked and, (ii) Kurtis J. Kintzel, Keanan Kintzel, and any and all entities in which they are or may be principals and/or by which they do, or may do business, should be required to refrain from providing any interstate common carrier services in the future without first obtaining prior Commission consent, as a result of their repeated violation of the Commission's rules and provisions of the Act, upon the following issues:

(a) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(d) of the Consent Decree by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority;

(b) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(f) of the Consent Decree by failing to make required universal service contributions by the date indicated on invoices from the Universal Service Adminstrative Company (''USAC'');

(c) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 14(g) of the Consent Decree by failing to make required TRS contributions by the date indicated on invoices received from the National Exchange Carriers Association (''NECA'');

(d) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated Paragraph 15 of the Consent Decree by failing to make required voluntary contributions to the Commission in a timely manner;

(e) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated § 63.71 of the Commission's rules, 47 CFR 63.71, by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority;

(f) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated § 54.706 of the Commission's rules, 47 CFR 54.706, by failing to make required universal service contributions by the date indicated on invoices from USAC;

(g) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated § 64.604(c)(5)(iii)(A) of the Commission's rules, 47 CFR 64.604(c)(5)(iii)(A), by failing to make required TRS contributions by the date indicated on invoices received from NECA;

(h) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated sections 218 and/or 403 of the Act, 47 U.S.C. 218, 403, by failing to respond fully, completely, and in a timely manner to one or more Commission inquiries;

(i) Whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel willfully and/or repeatedly violated section 258 of the Act, 47 U.S.C. 258, and 64.1120 of the Commission's rules, 47 CFR 64.1120, by changing a subscriber's provider of telephone exchange or telephone toll service without authorization and/or without following the verification procedure's outlined in § 64.1120 of the Commission's rules;

(j) In light of the evidence adduced pursuant to the foregoing issues, whether the authority conferred by section 214 of the Act, 47 U.S.C. 214, upon Buzz, BOI, U.S. Bell, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel to provide interstate common carrier services should be revoked;

(k) In light of the evidence adduced pursuant to the foregoing issues, whether Buzz, BOI, U.S. Bell, Link, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel should be ordered to henceforth cease, desist and otherwise refrain from providing interstate common carrier services of any kind without prior written application to and consent from the Commission.

The hearing will be held at a time and place to be specified in a subsequent order. Copies of the Order are being sent to Buzz Telecom Corporation, Business Options, Inc., U.S. Bell Corporation, Link Technologies, AVATAR, Kurtis J. Kintzel and Keanan Kintzel via Certified Mail, Return Receipt Requested, and by e-mail.

To avail themselves of the opportunity to be heard, Buzz Telecom Corporation, Business Options, Inc., U.S. Bell Corporation, Link Technologies, AVATAR, and/or their principals Kurtis J. Kintzel and/or Keanan Kintzel, in person or by their attorney, are directed by the Order, pursuant to 47 CFR 1.91(c), to file with the Commission, by October 1, 2007, a written appearance stating that they will appear on the date fixed for hearing and present evidence on the issues specified herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19020 Filed 9–26–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 07–3759]

Reminder to Video Programming Distributors and the Public of the January 1, 2008, Requirements for the Closed Captioning of English ''Pre-rule'' Nonexempt Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission reminds video programming distributors—including broadcasters, cable operators, and satellite television services—and the public of the upcoming closed captioning benchmark for ''pre-rule'' English language nonexempt video programming.

DATES: Effective January 1, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amelia Brown (202) 418–2799 (voice), (202) 418–7804 (TTY), *Amelia.Brown@fcc.gov;* or Traci Randolph, (202) 418–0569 (voice), (202) 418–0537 (TTY), *Traci.Randolph@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of document DA 07–3759, released August 28, 2007. The full text of document DA 07–3759 and copies of any subsequently filed documents

relating to this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 07–3759 and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 07–3759 can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro.*

Synopsis

The Commission reminds video programming distributors and the public of the upcoming closed captioning benchmark for ''pre-rule'' English language nonexempt video programming. As of January 1, 2008, 75% of all nonexempt pre-rule English language programming must be captioned per channel, per calendar quarter. Pre-rule video programming is programming that was first published or exhibited *before* January 1, 1998 (for analog programming) or before July 1, 2002 (for digital programming). Nonexempt programming is video programming that is not exempt pursuant to a self-implementing exemption found in 47 CFR 79.1(d) of the Commission's rules, or pursuant to an exemption based on the undue burden standard found in 47 CFR 79.1(f) of the Commission's rules, and, accordingly, is subject to closed captioning requirements. These closed captioning requirements are separate from video programming distributors' obligations to make emergency information accessible to persons with hearing and vision disabilities.

Federal Communications Commission.

Nicole McGinnis,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. E7–18862 Filed 9–26–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 12, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Michael L. Frei, Pickstown, South Dakota; to join a group acting in concert by acquiring voting shares of Commercial Holding Company, and thereby indirectly acquire voting shares of Commercial State Bank, both of Wagner, South Dakota.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Joseph M. Sullivan, as co–trustee; to retain voting shares of Grant County Bank Employee Stock Ownership Plan, and thereby indirectly retain voting shares of Resource One, Inc., and Grant County Bank, all of Ulysses, Kansas.

Board of Governors of the Federal Reserve System, September 24, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–19094 Filed 9–26–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 23, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Grant County Bank Employee Stock Ownership Plan, to become a bank holding company by retaining 25.60 percent of the voting shares of Resource One, Inc., and thereby indirectly retain voting shares of Grant County Bank, all of Ulysses, Kansas.

Board of Governors of the Federal Reserve System, September 24, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–19095 Filed 9–26–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nomination for Appointment to the Advisory Committee on Minority Health; Extension

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice; extension.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** of July 17, 2007, Vol 72, No. 136, pages 39068 through

39069. The notice solicits nominations for appointment to the Advisory Committee on Minority Health. This notice is for the purpose of extending the period for nominations for an additional 45 days.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on November 13, 2007.

ADDRESSES: All nominations should be mailed or delivered to Dr. Garth Graham, Deputy Assistant Secretary for Minority Health, Office of Minority Health, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Baltimore, Executive Director, Advisory Committee on Minority Health, (240) 453–2882.

Dated: September 18, 2007.

Mirtha R. Beadle,

Deputy Director, OMH.

[FR Doc. E7–19084 Filed 9–26–07; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Monday, October 15, 2007 and Tuesday, October 16, 2007. The meeting will be held from 9 a.m. to approximately 5 p.m. on both days.

ADDRESSES: Department of Health and Human Services, Room 800, Hubert H. Humphrey Building; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Barnes, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW., Room 727G, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205–2311. More detailed information about PACHA can be obtained by accessing the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to: (a) Promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 21 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV and AIDS.

The agenda for this Council meeting is being developed. The meeting agenda will be posted on the Council's Web site when it is drafted.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished online by accessing the PACHA Web site, *http://www.pacha.gov.*

Members of the public will have the opportunity to provide comments at the meeting. Pre-registration is required for public comment. Any individual who wishes to participate in the public comment session must register online at *http://www.pacha.gov;* registration for public comment will not be accepted by telephone. Public comment will be limited to three minutes per speaker.

Any members of the public who wish to have printed material distributed to PACHA members for discussion at the meeting should submit, at a minimum, one copy of the materials to the Committee Manager, PACHA no later than close of business on October 12, 2007. Contact information for the PACHA Committee Manager is listed above.

Dated: September 24, 2007.

Mary (Marty) McGeein,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. E7–19083 Filed 9–26–07; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–06BS]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

OWCD Professional Training Program Online Application System—New—The Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Career Development Division (CDD), Office of Workforce and Career Development (OWCD), is to prepare an applied public health workforce through training and service. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy and other related professions seek opportunities to broaden their knowledge and skills to improve the science and practice of public health. Each year CDC's professional training

programs accept applications from potential candidates for review and selection.

The purpose of this project is to efficiently and effectively recruit and select qualified individuals to participate in the CDD professional training programs by collecting information through an online application management system.

This online application provides the CDD with the information necessary to recruit qualified professionals to participate in public health professions training programs to build critical public health workforce capacity in epidemiology, preventive medicine, prevention effectiveness/health economics, public health informatics, and public health management and leadership. Further benefit from this online application is the reduction of duplicate candidate records as well as agency resources to administer and process paper records.

The application process includes the following: Submission of the responses to the questions in the online application; submission of academic transcripts, professional credentials, and letters of recommendation; a review by selected programmatic staff and expert panel members; selection of qualified candidates for interview; interview of candidates; and selection of trainees for programs.

The online application questions ask for demographic data, academic history, professional experience, references and description of professional goals. The application questions and data collected are necessary to the application process to determine programmatic eligibility and to ensure that the most highly qualified candidates are chosen for the training programs.

With the exception of their time, the cost to the candidates is minor. One expense depends on their academic institutions since they must obtain and submit all of their academic transcripts. Another expense depends on the cost to obtain and submit other professional credentials including professional licenses and certifications. The final expense is the cost to submit letters of recommendation.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Fellowship and Training Candidates	600	1	1	600

Dated: September 19, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–19073 Filed 9–26–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committee, Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Veterinary Medicine Advisory Committee (VMAC), Center for Veterinary Medicine (CVM).

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations received on or before October 30, 2007, will be given first consideration for membership on the Veterinary Medicine Advisory Committee. Nominations received after October 30, 2007, will be considered for nomination to the committee should nominees still be needed.

ADDRESSES: All Nomination for membership should be sent electronically to *CV@FDA.HHS.GOV*, or by mail to Advisory Committee Oversight & Management Staff, 5600 Fisher Lane, HF–4, rm. 15A–12, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is Aleta Sindelar, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9004, FAX: 240–276–9020, e-mail: *Aleta.Sindelar@FDA.HHS.GOV*. Information about becoming a member on a FDA advisory committee can also be obtained by visiting FDA's Web site by using the following link *http://www.fda.gov/oc/advisory/default.htm*.

SUPPLEMENTARY INFORMATION: FDA is requesting nomination for voting members on the Veterinary Medicine Advisory Committee.

I. Function of the Veterinary Medicine Advisory Committee

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production, and makes appropriate recommendations to the Commissioner of Food and Drugs regarding scientific issues and regulatory policies.

II. Criteria for Voting Member

FDA is requesting nominations of voting members with appropriate expertise in the following veterinary specialties: companion animal medicine, food animal medicine (avian, bovine, porcine and minor species), microbial food safety and risk assessment, biometrics, toxicology, pathology, pharmacology, animal science, epidemiology.

III. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one the advisory committee. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, and their current business address and telephone number and e-mail address if available. Each nomination shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5

U.S.C. app.2) and 21 CFR part 14 relating to advisory committees.

Dated: September 13, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–19130 Filed 9–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0155]

Guidance for Industry: Toxicity Grading Scale for Healthy Adult and Adolescent Volunteers Enrolled in Preventive Vaccine Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Toxicity Grading Scale for Healthy Adult and Adolescent Volunteers Enrolled in Preventive Vaccine Clinical Trials,'' dated September 2007. The guidance document provides sponsors of vaccine trials with recommendations on assessing the severity of clinical and laboratory abnormalities in healthy adult and adolescent volunteers enrolled in clinical trials. In particular, the guidance includes toxicity grading scale tables to use as a guideline for selecting the assessment criteria. The guidance announced in this notice finalizes the draft guidance of the same title dated April 2005.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Toxicity Grading Scale for Healthy Adult and Adolescent Volunteers Enrolled in Preventive Vaccine Clinical Trials,'' dated September 2007. The guidance provides sponsors of vaccine trials with toxicity grading scale tables as a guideline when selecting the criteria to assess the severity of clinical and laboratory abnormalities in healthy adult and adolescent volunteers enrolled in clinical trials of a preventive vaccine. FDA recommends the incorporation of such appropriate, uniform criteria into the investigational plan, case report forms, and study reports and correspondence with FDA, sponsors, monitors, investigators, and institutional review boards. The parameters in the tables are not necessarily applicable to every clinical trial of healthy volunteers. The parameters monitored should be appropriate for the specific study vaccine. In addition, the use of toxicity grading scales to categorize adverse events observed during clinical trials does not replace regulatory requirements to monitor, investigate, and report adverse events.

In the **Federal Register** of May 2, 2005 (70 FR 22664), FDA announced the availability of the draft guidance of the same title dated April 2005. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. A summary of changes includes: (1) Clarification of the clinical toxicity parameters and (2) revision of laboratory parameter limit values based on additional published data. The guidance announced in this notice finalizes the draft guidance dated April 2005.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: September 20, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19155 Filed 9–26–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket No. FEMA–2007–0008]

National Advisory Council; Notice of Federal Advisory Committee Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice announces the date, time, location and agenda for the inaugural meeting of the National Advisory Council (NAC). At the meeting, members will be introduced and sworn in and the Chair and Vice Chair will be introduced. Members will also receive briefings on the status of the reorganized Federal Emergency Management Agency (FEMA) and its programs, and to discuss the vision, priorities and structure for the NAC. The meeting will be open to the public.

DATES: *Meeting Dates:* Monday, October 22, 2007, 9:45 a.m. to 5 p.m. and Tuesday, October 23, 2007, 9 a.m. to 4:30 p.m. A public comment period will

take place on October 23, 2007 between 3:15 p.m. and 4:30 p.m.

Comment Date: Written comments or requests to make oral presentations must be received by October 15, 2007.

ADDRESSES: The meeting will be held in Ballroom B/C of the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should reach Alyson Price at the address listed below and must be received by October 15, 2007. All submissions received must include the docket number FEMA–2007–0008 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov. Include docket number in the subject line of the message.

Facsimile: (866) 466–5370.

Mail: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472.

Hand Delivery/Courier: National Advisory Council, DFO c/o Rules Docket Clerk, Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the docket number: FEMA–2007–0008. Comments received will also be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may want to read the Privacy Act Notice located on the Privacy and Use Notice link on the Administration Navigation Bar of the Web site *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received by the National Advisory Council, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, Federal Emergency Management Agency, 500 C Street, SW., (E Street, 3rd Floor), Washington, DC 20472, telephone 202–646–3746, fax 202–646–3061, and e-mail *Alyson.Price@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The NAC will be holding its first meeting on Monday and Tuesday, October 22 and 23, 2007, in Ballroom B/C of the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

Agenda of Council Meeting, October 22–23, 2007

The tentative agenda includes the following:

Monday, October 22, 2007

(1) Introduction of the Chair and Vice Chair;
(2) Introduction and swearing-in of members;
(3) FEMA Administrator's vision for the NAC;
(4) Introduction of FEMA leadership;
(5) FEMA programs overview; and
(6) Review of FEMA Strategic Plan.

Tuesday, October 23, 2007

(1) Summary of previous day;
(2) Structure and assignment of Subcommittee Chairs;
(3) Discussion Wrap-up/Next Steps;
(4) Public comment period; and
(5) Travel instructions/paperwork.

A public comment period will take place on October 23, 2007, between 3:15 p.m. and 4:30 p.m.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Alyson Price of their anticipated special needs as early as possible. Members of the public who wish to make comments on Tuesday, October 23 between 3:15 p.m. and 4:30 p.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to three minutes. For those wishing to submit written comments, please follow the procedure noted above.

Dated: September 20, 2007.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–19063 Filed 9–26–07; 8:45 am]

BILLING CODE 9110–21–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meetings

TIME AND DATE: October 1, 2007. 9 a.m.–1 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open to the public except for the portion specified as closed session as provided in 22 CFR part 1004.4(b) and (f).

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the January 22, 2007, Meeting of the Board of Directors.
- President's Report.
- Program Update.
- Operations Update.
- External Affairs.
- Congressional Affairs.
- Advisory Council.

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the January 22, 2007, Meeting of the Board of Directors.
- President's Report.
- Program Update.
- Operations Update.
- External Affairs.
- Congressional Affairs.
- Advisory Council.

PORTIONS TO BE CLOSED TO THE PUBLIC:

- Closed session as provided in 22 CFR part 1004.4(b) and (f).

Dated: September 19, 2007.

Jennifer R. Hodges,

General Counsel, (703) 306–4320.

[FR Doc. 07–4804 Filed 9–25–07; 3:15 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0094; Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on September 30, 2007. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 29, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395–6566

(fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0094.

Title: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species, 50 CFR 13 and 17.

Service Form Numbers: 3–200–54, 3–200–55, and 3–200–56.

Type of Request: Revision of currently approved collection.

Affected Public: Individuals/households, businesses, State and local agencies, private organizations, and scientific and research institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for application forms and notifications; annually for reports.

Estimated Annual Nonhour Burden: $55,000 for fees associated with permit applications.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3–200–54 – permit application	11	11	3 hours	33
3–200–54 – annual report	64	64	8 hours	512
3–200–54 – notification of incidental take	1	1	1 hour	1
3–200–54 – notification of change in landowner	1	1	1 hour	1
2–200–55 – permit application	579	579	4 hours	2,316
3–200–55 – annual report	1,034	1,034	8 hours	8,272
3–200–55 – notification of escape of living wildlife	1	1	1 hour	1
3–200–56 – permit application	60	60	3 hours	180
3–200–56 – annual report	748	748	10 hours	7,480
Totals	2,499	2,499		18,796

Abstract: Our Endangered Species Program uses information that we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws, including:

(1) Endangered Species Act (16 U.S.C. 1531 et seq.).

(2) Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).

(3) Lacey Act (16 U.S.C. 3371 et seq.).

(4) Bald and Golden Eagle Protection Act (16 U.S.C. 668).

(5) Marine Mammal Protection Act (16 U.S.C. 1374).

Service regulations implementing these statutes and treaties are in Chapter I, Subchapter B of Title 50 of the Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited. This IC includes the following permit application forms and the reporting requirements for each permit:

(1) FWS Form 3–200–54 - Enhancement of Survival Permits Associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances.

(2) FWS Form 3–200–55 - Permits for Scientific Purposes, Enhancement of Propagation or Survival (i.e, Recovery) and Interstate Commerce.

(3) FWS Form 3–200–56 - Incidental Take Permits Associated with a Habitat Conservation Plan..

Comments: On March 16, 2007, we published in the **Federal Register** (72 FR 12629) a notice of our intent to request that OMB approve this ICR. In that notice, we solicited comments for 60 days, ending on May 15, 2007. We received one comment. The comment did not address issues surrounding the proposed collection of information or the cost and hour burden estimates. The commenter objected to hunting permits, which are not part of this information collection. We have not made any changes to this collection as a result of this comment.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: August 22, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E7–19132 Filed 9–26–07; 8:45 am]

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0092; Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on September 30, 2007. We 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. However, under OMB regulations, we may continue to

conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before October 29, 2007.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395–6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0092.

Title: Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement, 50 CFR 13 and 14.

Service Form Number(s): 3–200–2 and 3–200–3.

Type of Request: Revision of currently approved collection.

Affected Public: Individuals, businesses, and scientific institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually for reports.

Estimated Annual Nonhour Burden: $1,567,300 for fees associated with permit applications.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3–200–2 – application	1,173	1,173	1 hour	1,173
3–200–2 recordkeeping	1,173*	1,173*	.25 hour	293
3–200–2 report	5	5	1 hour	5
3–200–3 – application	14,500	14,500	1 hour	14,500
3–200–3 recordkeeping	14,500*	14,500*	.25 hour	3,625
Totals	15,678	15,678		19,596

**Not included in total because the respondents for the recordkeeping requirement are the same as those for the application.*

Abstract: The Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without obtaining prior permission as deemed necessary for enforcing the ESA or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)).

This information collection includes the following permit/license application forms:

(1) FWS Form 3–200–2 (Designated Port Exception Permit). Under 50 CFR 14.11, it is unlawful to import or export wildlife or wildlife products at ports other than those designated in 50 CFR 14.12 unless you qualify for an exception. These exceptions allow qualified individuals, businesses, or scientific organizations to import or export wildlife or wildlife products at a nondesignated port:

(a) When the wildlife or wildlife products will be used as scientific specimens.

(b) To minimize deterioration or loss.

(c) To relieve economic hardship.

To request an import or export of wildlife or wildlife products at nondesignated ports, applicants must complete FWS Form 3–200–2. Designated port exception permits are valid for 2 years.

Once a designated port exception permit is issued, we may require the permittee to file a report on activities conducted under authority of the permit.

(2) FWS Form 3–200–3 (Import/Export License). It is unlawful to import or export wildlife or wildlife products for commercial purposes without first obtaining an import/export license (50 CFR 14.91). Applicants must complete FWS Form 3–200–3 to request this license. We use the information that we collect on the application as an enforcement tool and management aid to: (a) monitor the international wildlife market and (b) detect trends and changes in the commercial trade of wildlife and wildlife products. Import/export licenses are valid for 1 year.

We require import/export licensees to maintain records that accurately describe each importation or exportation of wildlife or wildlife products made under the license, and any additional sale or transfer of the wildlife or wildlife products. In addition, licensees must make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. We believe the burden associated with these recordkeeping requirements is minimal because the records already exist. Importers and exporters must complete FWS Form 3–177 (Declaration for Importation or Exportation of Fish or Wildlife) for all imports or exports of wildlife or wildlife products. This form provides an accurate description of the imports and exports. OMB has approved the information collection for FWS Form 3–177 and assigned OMB Control Number 1018–0012, which expires January 31, 2010. Normal business practices should produce records (e.g., invoices or bills of sale) needed to document additional sales or transfers of the wildlife or wildlife products.

Comments: On April 23, 2007, we published in the Federal Register (72 FR 20131) a notice of our intent to request that OMB approve this ICR. In that notice, we solicited comments for 60 days, ending on June 22, 2007. We received one comment. The comment did not address issues surrounding the proposed collection of information or the cost and hour burden estimates. We have not made any changes to this collection as a result of the comment.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying

information from public review, we cannot guarantee that it will be done.

Dated: August 22, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E7–19144 Filed 9–26–07; 8:45 pm

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Togiak National Wildlife Refuge, Dillingham, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Revised Comprehensive Conservation Plan, Draft Revised Public Use Management Plan, and Environmental Assessment for Togiak National Wildlife Refuge; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we) announce that the Draft Revised Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) and Draft Revised Public Use Management Plan (PUMP) and EA for Togiak National Wildlife Refuge is available for public comment. This Draft CCP/PUMP/EA describes how the Service intends to manage the Togiak Refuge for the next 15 years.

DATES: We must receive written comments on the draft CCP/PUMP/EA by January 18, 2008.

ADDRESSES: To provide written comments or to request a paper copy or a compact disk of the Draft CCP/PUMP/EA, contact Maggi Arend, Planning Team Leader, Division of Comprehensive Planning and Policy, MS 231, 1011 East Tudor Road, Anchorage, AK 99503–6199, phone 907–786–3393, fax 907–786–3965 or electronically at *fw7_togiak_planning@fws.gov*. You may also view or download the plan at: *http://alaska.fws.gov/nwr/planning/togpol.htm.* Copies of the Draft plan may be viewed at the Togiak Refuge Office in Dillingham, Alaska; local area libraries, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Maggi Arend at the above address or phone number.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh *et seq.*, 43 U.S.C. 1602 *et seq.*) requires development of a CCP for all national wildlife refuges in Alaska. The Draft CCP for Togiak Refuge was developed consistent with Section 304(g) of ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act (16 U.S.C. 668dd *et seq.*). The purpose of developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish, wildlife, and habitat management and conservation; legal mandates; and Service policies. Plans define long-term goals and objectives toward which refuge management activities are directed and identify which uses may be compatible with the purposes of the refuge. They identify wildlife-dependent recreation opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Comprehensive conservation plans are updated in accordance with planning direction in Section 304(g) of ANILCA and with NEPA (42 U.S.C. 4321 *et seq.*).

Togiak Refuge was established as Cape Newenham National Wildlife Refuge in 1969 to protect and preserve the outstanding wildlife values, including bird colonies and important habitat for other terrestrial and marine wildlife. The refuge was expanded to 4,156,522 acres and established as Togiak National Wildlife Refuge in 1980 by ANILCA. The Togiak Refuge CCP was approved in 1987. The PUMP was approved in 1991 and incorporated the State of Alaska Special Land Use Designation for the management of State lands within the boundary of the refuge and including the lower Goodnews River drainage. The current document includes revisions of each of these three plans. The core planning team, which developed the range of alternatives for the CCP/PUMP, included representatives of the State of Alaska and five recognized Native Alaskan tribes from the vicinity of the refuge.

Comprehensive Plan

This Draft CCP describes and evaluates two alternatives for managing Togiak Refuge for the next 15 years.

Alternative 1: This alternative encompasses policy development, changes, and clarifications made in the years since the implementation of the original Comprehensive Plan in 1987. It also includes a refuge vision statement, goals, objectives, and certain strategies which will guide refuge management into the future. Restrictions on helicopter use for recreational purposes would be maintained.

Alternative 2 (Current Management): Under this alternative, the Refuge would continue to implement current management as outlined in the 1987 Comprehensive Plan. The Refuge would continue to be managed much as it is today, but without goals and objectives.

Public Use Plan

The Draft Public Use Management Plan describes and evaluates five alternatives for managing public use on Togiak Refuge. These alternatives address four issues: public use at Cape Peirce Wildlife Viewing Area; unguided recreational opportunites in the Kanektok and Goodnews river watersheds; human waste management; and commercial sport fishing guide opportunities.

Alternative A: This alternative would carry forward existing management into the future. At Cape Peirce, management would emphasize wildlife viewing that complements the research and study of fish, wildlife, plants, and their habitats and would continue current limits on visitors to the area. There would be no limits on unguided recreational users on the Kanektok and Goodnews rivers and no additional management of human waste disposal. Commercial sport fishing guide opportunities would remain at current levels.

Alternative B: This alternative makes limited adjustments to current management. At Cape Peirce, management would remain the same except that 50% of permits would be allocated to the general public. Unguided use of the Kanektok River watershed would be limited to the same levels currently allowed for guided use. On the Goodnews River, unguided use would be limited to the current level of use. Commercial sport fishing guide opportunities would be expanded on the middle fork of the Goodnews River.

Alternative C (the preferred alternative): Under this alternative, adjustments would be made to management in each of the issue areas. At Cape Peirce, management would facilitate wildlife viewing that complements the protection and preservation of the area's natural and cultural resource values and opportunities for visitation would be doubled. The allocation of permits would be the same as Alternative B, but at low use levels the refuge manager may waive the requirement for permits. Minimal facilities could be constructed for public health and safety. Limits on the unguided recreational use of the Kanektok and Goodnews rivers would be established for the peak use periods

only. The refuge would work with partners to facilitate the voluntary use of approved disposal sites for human waste. Guided motorized access to the North Fork Goodnews River would be limited from current maximum allowable levels but would be above current use levels.

Alternative D: This alternative would provide additional opportunities for commercially guided recreation throughout the refuge. At Cape Peirce, opportunities for visiting the area would be doubled from current levels and would be commercially guided. Unguided recreation on the Kanektok and Goodnews rivers would remain unrestricted. Additional commercial sport fishing guide opportunities would be provided on the Goodnews, Togiak, Osviak, and Matogak rivers.

Alternative E: This alternative would reduce the level of use on the Kanektok and Goodnews rivers and implement a human waste pack out program on the Kanektok River. It would also provide additional opportunities for public use at Cape Peirce. Commercial sport fishing guide opportunities would be continued at current levels.

Public Availability of Comments

Before including your name, 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.

Dated: September 21, 2007.

Thomas O. Melius,

Regional Director, U.S. Fish & Wildlife Service, Anchorage, Alaska.

[FR Doc. E7–19086 Filed 9–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Virgin River Habitat Conservation and Recovery Program, Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service), advises the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) regarding the proposed Virgin River Habitat Conservation and Recovery Program (VRHCRP) and issuance of an incidental take permit (Permit) for endangered and threatened species in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (Act). The intent of the VRHCRP is to provide a recovery strategy for five species in the Lower Virgin River Basin. The VRHRCP would be used as a tool when conducting future section 7 consultations, implementing recovery actions and preparing habitat conservation plans for new and existing development.

We provide this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS.

DATES: Written comments from all interested parties must be received on or before October 29, 2007. Public meetings will be held on October 16 and 17, 2007 from 4 to 6 p.m.

ADDRESSES: The public meetings will be held at the following locations: October 16, 2007 from 4 to 6 p.m. at the Federal Interagency Building, 4701 North Torrey Pines Dr., Las Vegas, NV 89130; and October 17, 2007 from 4 to 6 p.m. at Mesquite City Hall, 10 East Mesquite Blvd., Mesquite, NV 89027.

Information, written comments, or questions related to the preparation of the EIS and NEPA process should be sent to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, Fish and Wildlife Service, 4701 North Torrey Pines Dr., Las Vegas, NV 89130; or fax (702) 515–5231.

FOR FURTHER INFORMATION CONTACT: Amy LaVoie, Nevada Fish and Wildlife Office, Fish and Wildlife Service, 4701 North Torrey Pines Dr., Las Vegas, Nevada 89130, or at (702) 515–5230.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Amy LaVoie (See **ADDRESSES**) at (702) 515–5230 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in other formats upon request.

Background

The Service together with the Bureau of Land Management, City of Mesquite, Clark County, National Park Service, Nevada Department of Wildlife, Southern Nevada Water Authority, and Virgin Valley Water District propose to develop the VRHCRP. The intent of the VRHCRP is to provide a recovery strategy for five species in the Lower Virgin River Basin: Virgin River chub (*Gila seminuda*), woundfin (*Plagopterus argentissimus*), southwestern willow flycatcher (*Empidonax traillii extimus*), Yuma clapper rail (*Rallus longirostris yumanensis*), and yellow-billed cuckoo (*Coccyzus americanus*). Species may be added or deleted during the course of the development of the VRHCRP based on further analysis, new information, agency consultation, and public comment. The VRHRCP would be used by the participating agencies as a tool when conducting future section 7 consultations, implementing recovery actions and preparing habitat conservation plans.

The area to be addressed within the proposed VRHCRP would be all lands within the the 100-year floodplain of the Virgin River and its tributaries (including ephemeral washes) from the Mesquite Diversion (located approximately 2 miles upstream of the Nevada/Arizona border) to the confluence of Lake Mead, as defined by a line from the southern end of Lower Mormon Mesa, through Fish Island, to Little Bitter Wash. In addition, some recovery actions may be expanded to include all land within the 100-year floodplain of the Virgin River and its tributaries from the Mesquite Diversion upstream to the base of the Virgin River Gorge in Arizona or to the location of the future non-native fish barrier to be established by the Virgin River Resource Management and Recovery Program (Utah program).

The VRHCRP would contain a habitat conservation plan (HCP) for the City of Mesquite and Clark County (Permit Applicants). The HCP would result in take authorization for otherwise lawful actions, such as municipal and private development that may incidentally take or harm animal species or their habitats within the HCP area. Conservation measures to offset the effects on the covered species from proposed development activities would be developed and implemented. The applicants propose to expand the city limits of Mesquite and unincorporated Clark County in and near the township or area of Bunkerville and Riverside, and implement conservation measures for the resulting development activities,

along with existing activities currently undertaken by the Permit Applicants with the potential to affect federally listed species. These activities may include new and existing development activities in upland and riparian areas; ongoing water supply and flood control activities; ongoing agricultural and livestock practices; and the ongoing management of trails, parks, and open spaces. The Permit Applicants intend to request a Permit for incidental take of federally listed threatened or endangered species, as well as other species identified in the VRHCRP.

Section 9 of the Act and Federal regulations prohibit the ''take'' of wildlife species listed as endangered or threatened (16 U.S.C. 1538). The Act defines the term ''take'' as: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed species, or to attempt to engage in such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding feeding, and sheltering [50 CFR 17.3(c)]. Pursuant to section 10(a)(1)(B) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Environmental Impact Statement

The EIS will consider the proposed action, no action, and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS. Alternatives considered for analysis in an EIS may include variations in the scope of proposed activities; variations in the location, amount, and types of conservation measures and/or recovery actions; variations in activity duration; or a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomic conditions, and other environmental issues that could occur with implementation of the proposed action or other alternatives. For all potentially significant impacts, the EIS identifies avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Environmental review of the EIS will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR Section 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action. Written comments from interested parties are invited to ensure that the full range of issues related to the permit application is identified. Comments will only be accepted in written form. You may submit written comments by mail, facsimile transmission, or in person (see **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 21, 2007.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 07–4781 Filed 9–26–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Shakopee Mdewakanton Sioux Community

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs, U.S. Department of the Interior has made a final determination to acquire real property ''in trust'' for the Shakopee Mdewakanton Sioux Community.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Forrest, Deputy Director of Trust Services, Bureau of Indian Affairs, 1849 C Street, NW., MS 4620–MIB, Washington, DC 20240; telephone: 202–208–5831.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the decision by the authorized representative of the Secretary of the Interior to acquire land ''in trust'' at least 30 days prior to signatory acceptance of land ''in trust''. The purpose of the 30-day waiting period is to afford interested parties the opportunity to seek judicial review of administrative decisions to take land ''in trust'' for Tribes or individual Indians before transfer of title to the properties occurs. On June 7, 2007, the Assistant Secretary—Indian Affairs issued a Notice of Decision to accept approximately 752.41 acres of land ''in trust'' for the Shakopee Mdewakanton Sioux Community under the authority of Section 5 of the Indian Reorganization Act of 1934, 25 United States Code (U.S.C.) 465.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, shall acquire title in the name of the United States of America in trust for Shakopee Mdewakanton Sioux Community no sooner than 30 days after the initial date this notice is published in the **Federal Register**.

The land is referred to as Parcels 1, 2, 3 & 4, herein and is described as:

752.41 Acres—Fourth Principal Meridian, Scott County, Minnesota

SMSC Trust Acquisition
PARCEL NUMBER 1
Legal Description excluding land transferred to Scott County.
Containing 569.01 acres more or less.

Parcel 1: The West Half of the Southwest Quarter of Section 15, Township 115, Range 22, Scott County, Minnesota.

Also

Those parts of Government Lots 4 and 5, and that part of the Southwest Quarter of the Northwest Quarter, all in Section 15, Township 115, Range 22, Scott County, Minnesota, lying southerly of the centerline of County Road 16, EXCEPT those parts lying northerly of a line 75.00 feet southerly of the following described line:

Commencing at the Northwest corner of the Northwest Quarter of the Northeast Quarter of Section 16, Township 115 North, Range 22 West; thence South 89 degrees 29 minutes 40 seconds East on an assumed bearing along the North line of said Northwest Quarter of the Northeast Quarter a distance of 1128.54 feet, to the point of beginning of said line to be described; thence easterly and southeasterly for a distance of 1794.93 feet along a non-tangential curve concave to the South, having a radius of 4107.00 feet and a central angle of 25 degrees 02 minutes 26 seconds, the chord of said curve bears South 69 degrees 10 minutes 09 seconds East a chord distance of 1780.68 feet; thence South 56 degrees 38 minutes 56 seconds East a distance of 494.50 feet, thence easterly and southeasterly for a distance of 879.71 feet along a tangential curve concave to the North, having a radius of 3842.72 feet and a central angle of 13 degrees 07 minutes 00 seconds; thence South 69 degrees 45 minutes 56 seconds East for a distance of 1445.00 feet of said line there terminating.

Abstract Property

Parcel 2: The Northeast Quarter of the Northeast Quarter of Section 16, Township 115, Range 22, Scott County, Minnesota, EXCEPT that part which lies northerly of a line 75.00 feet southerly of and parallel with the following described Line A and which lies southerly of the following described *Line B:*

LINE A: Commencing at the Northwest corner of the Northwest Quarter of the Northeast Quarter of said Section 16; thence South 89 degrees 29 minutes 40 seconds East on an assumed bearing along the North line of said Northwest Quarter of the Northeast Quarter for a distance of 1128.54 feet, to the point of beginning of said line to be described; thence easterly and southeasterly for a distance of 1794.93 feet along a non-tangential curve concave to the South, having a radius of 4107.00 feet and a central angle of 25 degrees 02 minutes 26 seconds, the chord of said curve bears South 69 degrees 10 minutes 09 seconds East a chord distance of 1780.68 feet; thence South 56 degrees 38 minutes 56 seconds East a distance of 494.50 feet; thence easterly and southeasterly for a distance of 879.71 feet along a tangential curve concave to the North, having a radius of 3842.72 feet and a central angle of 13 degrees 07 minutes 00 seconds; thence South 69 degrees 45 minutes 56 seconds East for a distance of 1445.00 feet and said line there terminating.

LINE B: Commencing at the northeast corner of the Northeast Quarter of the Northeast Quarter of said Section 16, thence on an assumed bearing of South 00 degrees 41 minutes 40 seconds West along the east line of said Northeast Quarter of the Northeast Quarter, a distance of 343.57 feet to it's intersection with the northerly right of way line of County Road 16, the point of beginning of the line to be described; thence northwesterly along a non-tangential curve, concave to the south, a distance of 274.52 feet, radius of 1764.54 feet, delta angle of 8 degrees 54 minutes 50 seconds, a chord bearing of North 69 degrees 33 minutes 24 seconds West, a chord distance of 274.52 feet, along said northerly right of way line of County Road 16, thence North 74 degrees 00 minutes 50 seconds West, a distance of 397.14 feet, along said northerly right of way line of County Road 16, to it's intersection with a line that is 75 feet northerly of and parallel with the above described Line A, thence northwesterly along a non-tangential curve, concave to the south, a distance of 499.44 feet, radius of 4182.00 feet, delta angle of 6 degrees 50 minutes 34 seconds, a chord bearing of North 72 degrees 43 minutes 14 seconds West, a chord distance of 499.15 feet, along said parallel line, to it's intersection with the north line of the Northeast Quarter of the Northeast Quarter, thence North 89 degrees 29 minutes 40 seconds West, along said north line, a distance of 208.51 feet to the northwest corner of the Northeast Quarter of the Northeast Quarter and there terminating.

Also

The South Half of the Northeast Quarter and the North Half of the Southeast Quarter, except the Westerly 100 feet thereof, and the Southeast Quarter of the Southeast Quarter, all in Section 16, Township 115, Range 22, Scott County, Minnesota.

Abstract Property

Parcel 3: The Northeast Quarter of the Northeast Quarter (NE ¼ of the NE ¼) of Section 21, Township 115, Range 22, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

Parcel 4: The Northwest Quarter of the Northwest Quarter (NW ¼ of the NW ¼) of Section 22, Township 115, Range 22, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

Parcel 5: The South Three-fourths of the East one-half of the Southwest Quarter (S ¾ of the E ½ of the SW ¼) of Section 15, Township 115, Range 22, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

Parcel 6: The Northeast Quarter of the Northwest Quarter (NE ¼ of the NW ¼) of Section 22, Township 115, Range 22, Scott County, Minnesota. EXCEPTING THEREFROM, the following described tract: Commencing at the Northeast corner of said Northeast Quarter of the Northwest Quarter; thence South (assumed bearing) along the East line thereof a distance of 621.16 feet to the point of beginning of the tract of land to be described; thence continuing South along said East line a distance of 349.75 feet; thence North 89 degrees 48 minutes 10 seconds West, a distance of 501.20 feet; thence North 4 degrees 18 minutes 10 seconds West, a distance of 326.00 feet; thence North 87 degrees 29 minutes 48 seconds East, a distance of 526.17 feet to the point of beginning, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

SMSC Trust Acquisition
PARCEL NUMBER 2
Legal Description excluding land transferred to Scott County
Containing 77.00 acres more or less

The East Half of the Northeast Quarter (E ½ of NE ¼) of Section 22, Township 115, Range 22, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

Abstract Property

SMSC Trust Acquisition
PARCEL NUMBER 3
Legal Description excluding land transferred to Scott County
Containing 104.40 acres more or less

The East half of the Southeast Quarter of Section 33, Township 115, Range 22, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

and

That part of the West 24.00 acres of the Northwest Quarter of the Southwest Quarter of Section 34, Township 115, Range 22, Scott County, Minnesota lying West of the East 16.00 acres of said Northwest Quarter of the Southwest Quarter, according to the United States Government Survey thereof and situate in Scott County, Minnesota.

SMSC Trust Acquisition
PARCEL NUMBER 4
Legal Description excluding land transferred to Scott County
Containing 2.00 acres more or less

The West 249.00 feet of the South 350.00 feet, as measured along the South and West lines respectively, of Outlot O, The Wilds, according to the recorded plat thereof, and situate in Scott County, Minnesota.

Abstract Property

Dated: June 28, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–19139 Filed 9–26–07; 8:45 am]

BILLING CODE 4310–W7–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–481]

Industrial Biotechnology: Development and Adoption by the U.S. Chemical and Biofuel Industries

AGENCY: United States International Trade Commission.

ACTION: Deadline for filing written submissions.

SUMMARY: The Commission has set February 1, 2008, as the deadline for filing written submissions in

investigation No. 332–481, *Industrial Biotechnology: Development and Adoption by the U.S. Chemical and Biofuel Industries.*

DATES: February 1, 2008: Deadline for filing written submissions.

July 2, 2008: Transmittal of Commission report to the Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usit.gov*.

FOR FURTHER INFORMATION CONTACT: Project Leader, David Lundy (202–205–3439 or *david.lundy@usitc.gov*); Deputy Project Leader, Elizabeth Nesbitt (202–205–3355 or *elizabeth.nesbitt@usitc.gov*); or Deputy Project Leader, Laura Polly (202–205–3408 or *laura.polly@usitc.gov*). For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *william.gearhart@usitc.gov*. The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

Background: The Commission's notice instituting the investigation, issued on November 28, 2006, asked that parties with an interest in this matter file post-hearing briefs and statements by May 2, 2007. In view of the relatively lengthy duration of this investigation, the Commission did not at that time set a final deadline for filing written submissions, beyond that for post-hearing briefs and statements. The Commission is now setting such a deadline. The Commission will consider submissions from parties who have not filed submissions, as well as new, amended, or supplemental submissions from parties who have already filed submissions, provided they are received by the Secretary on or before the close of business February 1, 2008. Submissions must be made in accordance with the procedures set out in the Commission's notice of November 28, 2006, including with respect to the number of copies filed, method of filing, and marking of any confidential business information. A copy of the November 28 notice can be accessed at *http://www.usitc.gov/secretary/fed_reg_notices/332/332–481..1164741875.pdf*.

The Commission is particularly interested in receiving written submissions from the public that provide information relating to the report that the Senate Committee on Finance has requested the Commission to prepare in this investigation. As stated in the Commission's notice published on November 28, 2006, the Committee requested that the Commission prepare a report that focuses on firms in the U.S. chemical industry that are developing bio-based products (e.g., fibers and plastics) and renewable chemical platforms, as well as U.S. producers of liquid biofuels, and specifically that the report—

1. Describe and compare government policies in the United States and key competitor countries throughout the world relating to the development of products by these industries;

2. Analyze the extent of business activity in these industries, including, but not limited to, trends in production, financial performance, investment, research and development, and impediments to development and trade;

3. Examine factors affecting the development of bio-based products, including liquid biofuels, and renewable chemical platforms being developed by the U.S. chemical industry, including, but not limited to, globalization of supply chains, capital investment sources, strategic alliances, intellectual property rights, and technology transfer mechanisms;

4. Determine, to the extent feasible, how the adoption of industrial biotechnology processing and products impacts the productivity and competitiveness of firms in these industries; and

5. Assess how existing U.S. government programs may affect the production and utilization of agricultural feedstocks for liquid biofuels as well as bio-based products and renewable chemical platforms being developed by the U.S. chemical industry.

Issued: September 21, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19067 Filed 9–26–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–599]

In the Matter of Certain Lighting Control Devices Including Dimmer Switches and/or Switches and Parts Thereof; Notice of Commission Decision Not To Review Initial Determination Granting in Part Complainant's Motion To Amend the Amended Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 8) granting in part and denying in part complainant's motion to amend the Amended Complaint.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 5, 2007, the Commission instituted this investigation, based on a complaint filed by Lutron Electronics Co., Inc. (''Lutron'') of Coopersburg, Pennsylvania. This is Lutron's second motion to amend the complaint; its first was filed prior to the Commission's determination to institute this

investigation. The Amended Complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and/or switches and parts thereof by reason of infringement of claims 1, 36, 65, 83, 85, 89, 90, 94, 112, 114, 116, 118, 119, 123, 149, 178, 193, 195, 197, 199 and 200 of U.S. Patent No. 5,637,930 (''the '930 patent''); claims 44, 47, and 49 of U.S. Patent No. 5,248,919 (''the 919 patent''); claims 1–5, 8–10, 12 and 22 of U.S. Patent No. 5,982,103 ('' the 103 patent''); claims 151, 152, and 155–157 of U.S. Patent No. 5,905,442 (''the 442 patent''); and claims 1, 3 and 14 of U.S. Patent No. 5,736,965 (''the 965 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue a limited exclusion order and a cease and desist order. The complaint named two firms as respondents: Leviton Manufacturing Company, Inc. (''Leviton'') of Little Neck, New York, and Control4 Corporation (''Control4'') of Salt Lake City.

On June 26, 2007, Lutron sought to amend its Amended Complaint and corresponding Notice of Investigation to add certain claims, to withdraw certain claims, and to seek a general exclusion order.

On August 21, 2007, the ALJ issued Order No. 8, an ID, denying Lutron's motion to the extent that it sought to add claims 41, 43, 54, 58, 70, 72, 99, 101, 183, 185, 215, 216, 217 and 220 of the '930 patent, but granting the motion to the extent that it sought to (1) Withdraw claims 1, 85, 114, 123, and 195 of the '930 patent; (2) substitute claim 65 for claim 1 of the '930 patent as the representative claim applied to the domestic product for the patent; (3) substitute certain exhibits; (4) withdraw claims 3 and 4 of the '103 patent; (5) add claims 23, 24, and 27 of the '103 patent; and (6) add seek a general exclusion order.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19068 Filed 9–26–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–451 and 731–TA–1126–1128 (Preliminary)]

Certain Lightweight Thermal Paper From China, Germany, and Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations No. 701–TA–451 and 731–TA–1126–1128 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Germany, and Korea of certain lightweight thermal paper,[1] provided for in subheadings 4811.90.8040 and 4811.90.9090 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 5, 2007. The Commission's views are due at Commerce within five business days thereafter, or by November 13, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–707–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 19, 2007, by Appleton Papers, Inc., Appleton, WI.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the

[1] As defined in the petition, ''certain lightweight thermal paper'' is thermal paper with a basis weight of 70 grams per square meter (''g/m^2'') (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions; with or without a base coat on one or both sides; with thermal active coating(s) on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts.

investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 10, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher Cassise (202–708–5408) not later than October 5, 2007, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 15, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19066 Filed 9–26–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Meeting by Teleconference Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency will hold a public meeting on October 4, 2007 at 10 a.m. eastern time by teleconference. The subject of the meeting will be implementation of the provisions of the seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999 (*United States* v. *Caterpillar*, Case No. 1:98CV02544; *United States* v. *Navistar International Transportation Corporation*, Case No. 1:98CV02545; *United States* v. *Cummins Engine Company*, Case No. 1:98CV02546; *United States* v. *Detroit Diesel Corporation*, Case No. 1:98CV02548; *United States* v. *Volvo Truck Corporation*, Case No. 1:98CV02547; *United States* v. *Mack Trucks, Inc.*, Case No. 1:98CV01495; and *United States* v. *Renault Vehicles Industries, S.A.*, Case No. 1:98CV02543). In supporting entry by the court of the decrees, the United States committed to meet periodically with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. Future meetings will be announced here and on EPA's Diesel Engine Settlement Web site at: *http://www.epa.gov/compliance/resources/cases/civil/caa/diesel/index.html.*

Interested parties should contact the Environmental Protection Agency at the address listed below prior to the meeting to reserve a telephone line and receive instructions for the call.

Agenda

1. Panel Remarks—10 a.m.

Remarks by DOJ and EPA regarding implementation of the provisions of the diesel engine consent decrees.

2. Public comments and questions.

FOR FURTHER INFORMATION CONTACT: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, *e-mail: wick.anne@epa.gov.*

Karen S. Dworkin,

Assistant Chief, Environment & Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 07–4744 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation Relating to Proofs of Claim Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on September 12, 2007, a proposed Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re. Asarco LLC.*, No. 05–21207 (Bankr. S.D. Tex.). The proposed Stipulation entered into among the United States on behalf of the Environmental Protection Agency, State of New Mexico, City of El Paso, and Asarco LLC (''Asarco'') provides, *inter alia,* that the United States estimates that the cost to Asarco for completion of residential soils cleanups after May 1, 2007 at the El Paso Site in El Paso, Texas, will not exceed $4,770,000, and that Asarco's estimated liability to the United States with respect to all other response actions or costs that may be incurred at the El Paso Site after May 1, 2007 will not exceed $50,000 per year. These estimates are premised on the assumption that Asarco will perform the remaining work required for soil remediation, and the Stipulation is also without prejudice to the positions of the United States, Asarco, and the City of El Paso regarding the injunctive order for work with respect to the El Paso Site.

The Department of Justice will receive comments relating to the proposed Stipulation for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re. Asarco LLC,* DJ Ref. No. 90–11–3–08633.

The proposed Stipulation may be examined at the Office of the United

States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, and at the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. During the public comment period, the proposed Stipulation may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Stipulation may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $1.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4742 Filed 9–26–07; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 17, 2007, a proposed consent decree with defendant Cardinal Electric Motor Repair, Inc. (''Cardinal'') was lodged in the civil action *United States* v. *B & D Electric Co., Inc., et al.,* Civil Action No. 05–00063, in the United States District Court for the Eastern District of Missouri.

In this action the United States seeks, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, recovery of costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site (''the Site''), in Cape Girardeau, Missouri. The proposed consent decree will resolve the United States' claims against defendant Cardinal under section 107 of CERCLA, 42 U.S.C. 9607, at the Site. Under the terms of the proposed consent decree, defendant Cardinal will make a cash payment of $10,500 to the United States. In return, the United States will grant Cardinal a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendant Cardinal Electric Motor Repair, Inc. in *United States* v. *B & D Electric Co., Inc., et al.,* D.J. Ref. 90–11–2–614/1.

The proposed consent decree may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102 and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4740 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 17, 2007, a proposed consent decree with defendants B&D Electric, Inc. (''B&D''); Flanders Electric Motor Service, Inc. (''Flanders''); and T&R Electric Supply Co., Inc. (''T&R'') was lodged in the civil action *United States* v. *B&D Electric Co., Inc., et al.*, Civil Action No. 05–00063, in the United States District Court for the Eastern District of Missouri.

In this action the United States seeks, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, recovery of costs incurred in response to releases of hazardous substances at the Missouri Electric Works Superfund Site (''the Site''), in Cape Girardeau, Missouri. The proposed consent decree will resolve the United States' claims against defendants B&D, Flanders, and T&R under section 107 of CERCLA, 42 U.S.C.. 9607, at the Site. Under the terms of the proposed consent decree, defendants will make the following cash payments to the United States: B&D will pay $17,000, Flanders will pay $147,000, and T&R will pay $26,000. In return, the United States will grant B&D, Flanders, and T&R a covenant not to sue under CERCLA with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdo1.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the proposed consent decree with defendants B&D Electric, Inc.; Flanders Electric Motor Service, Inc.; and T&R Electric Supply Co., Inc. in *United States* v. *B&D Electric Co., Inc., et al.*, D.J. Ref. 90–11–2–614/1.

The proposed consent decree may be examined at the office of the United States Attorney, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102 and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent__Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the

Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4741 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 13, 2007, a proposed Consent Decree in *United States of America* v. *Darcars of New Carrollton, Inc.*, Civil Action No. 2:07–cv–1235 was lodged with the United States District Court for the Western District of Pennsylvania.

In this action the United States sought to recover response costs from the defendant incurred by the United States in responding to releases or threatened releases of hazardous substances at or from the Breslube Penn Superfund Site (the ''Site'') which is located in Moon Township, Allegheny County, Pennsylvania. The proposed Consent Decree resolves the liability of Darcars of New Carrollton, Inc. (''Darcars''), under Section 107(a)(3) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607(a)(3). Based on the amount of waste Darcars contributed to the Site, and EPA's volumetric ranking of waste at the Site, Darcars will pay $2,720.83 to resolve its liability. Darcars had timely expressed an intention to participate in the Third Round *De Minimus* Consent Decree entered by the Court on May 5, 2006, but was inadvertently excluded from that settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Darcars of New Carrollton, Inc.,* D.J. Ref. 90–11–3–1762/5.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 700 Grant Street, Suite 400, Pittsburgh, PA 15219, and at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4745 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Consistent with Section 22(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 14, 2007, a proposed Consent Decree with NextiraOne, LLC, d/b/a Black Box Network Services, and Report Investment Corporation, in *United States* v. *NextiraOne, LLC, et al.*, Civ. No. 07–20654, was lodged with the United States District Court for the Southern District of Florida, Miami Division.

In this action, the United States seeks under Section 122 of CERCLA to enforce obligations in two administrative orders to pay past and oversight costs incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Anaconda Aluminum Co./Milgo Electronics Corp. National Priorities List Site (''Site'') in Miami, Florida. Under the proposed Consent Decree, the Defendants will pay $325,000.00 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *NextiraOne, LLC, et al.*, (S.D. Fla.) (DOJ Ref. Nos. 90–11–2–07899/1 and 90–11–2–07899/3).

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Florida, 99 NE. 4th Street, Miami, Florida 33132–2111 (contact Ann M. St. Peter-Griffith, Esq., 305–961–9419), and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Nadine Orrell, Esq., 404–562–9701). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *NextiraOne, LLC, et al.*, (S.D. Fla.) (DOJ Ref. Nos. 90–11–2–07899/1 and 90–11–2–07899/3), and enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ellen Mahan,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4743 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 21, 2007, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration

(DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Remifentanil (9739)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 26, 2007.

Dated: September 21, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–19099 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on August 30, 2007, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, [Raw Opium (9600)], poppy straw, concentrate of poppy straw, and coca leaves.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 29, 2007.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: September 21, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–19100 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 24, 2007, ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The company plans to manufacture Phenylacetone to be used in the manufacture of Amphetamine for distribution to its customers. The bulk 2,5-Dimethoxyamphetamine will be used for conversion into non-controlled substances.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 26, 2007.

Dated: September 21, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–19131 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 30, 2007, Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 26, 2007.

Dated: September 21, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–19106 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kamir Garces-Mejias, M.D.; Revocation of Registration

On September 6, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Kamir Garces-Mejias, M.D. (Respondent), of San Juan, Puerto Rico. The Order immediately suspended Respondent's Certificate of Registration, BG2453075, as a practitioner, on the ground that Respondent's continued registration during the pendency of the proceeding ''would constitute an imminent danger to the public health and safety,'' because Respondent had issued numerous prescriptions for controlled substances to persons who sought the drugs through internet sites and without ''establish[ing] legitimate physician-patient relationships.'' Show Cause Order at 6. The Order also sought the revocation of Respondent's registration and the denial of any pending applications for renewal or modification of the registration. *Id.* at 1.

More specifically, the Show Cause Order alleged that Respondent was a participant in a scheme run by Mr. Johar Saran, the owner of Carrington Health System/Infiniti Services Group (CHS/ISG) of Arlington, Texas. *Id.* at 5. According to the allegations, CHS/ISG operated several DEA-registered pharmacies, which obtained their registrations through sham-nominees and which were used to order large amounts of highly abused controlled substances from licensed distributors. *Id.* The Show Cause Order alleged that the controlled substances were then diverted to CHS/ISG, where they were used to fill approximately 3,000 to 4,000 orders per day which had been placed by persons through various Web sites. *Id.*

The Show Cause Order further alleged that Respondent ''participated in [this] scheme by authorizing drug orders under the guise of practicing medicine.'' *Id.* The Show Cause Order alleged that Respondent ''did not see [the] customers, had no prior doctor-patient relationships with the Internet customers, did not conduct physical exams,'' and did not ''create or maintain patient records.'' *Id.* The Show Cause Order also alleged that between May 19 and May 27, 2005, Respondent issued 188 prescriptions to persons located in thirty-three different States, and that eighty-six percent of the prescriptions were for hydrocodone, a controlled substance. *Id.* at 6.

On September 21, 2005, the Show Cause Order was personally served on Respondent. On October 7, 2005, Respondent, through her counsel, requested a hearing on the allegations. This letter was returned, however, by UPS as undelivered. Thereafter, on October 14, 2005, Respondent, through her counsel, against requested a hearing. Respondent also asserted that she ''may be the victim of a theft identity and [that] someone may have used, without her authorization, one of her prescriptions.'' Letter of Resp.'s Counsel at 1 (Oct. 14, 2005). Respondent also denied having ever ''participated in any Web site related to Mr. Johar Saran's scheme.'' On November 16, 2005, based on Respondent's claim that she may have been the victim of identity theft, I stayed the Immediate Suspension of her registration.

In the meantime, the matter had been placed on the docket of this Agency's Administrative Law Judges (ALJ) and assigned to Judge Gail Randall. On October 26, 2005, the ALJ ordered the parties to file their pre-hearing statements. Following my decision staying the suspension order, the Government moved to stay the filing of pre-hearing statements. On November 18, 2005, the ALJ granted the motion.

In a December 4, 2006 joint status report, the parties informed the ALJ that they were unable to resolve the matter without a hearing. The Government thus requested that the matter be set for hearing. On December 13, 2006, the ALJ issued a Second Order for Pre-Hearing Statements. The Order directed that the Government file its statement on or before January 10, 2007, and that Respondent file her statement on or before January 31, 2007.

On January 5, 2007, the Government filed its statement. Respondent did not, however, comply with the ALJ's order. Accordingly, on February 15, 2007, the ALJ issued an additional order which directed Respondent to file her statement by February 28, 2007. The order also gave notice that Respondent's failure to comply could be deemed a waiver of her right to a hearing. *See* Third Order for Respondent's Prehearing Statement 1 (citing 21 CFR 1301.43(e)). Respondent also failed to comply with this order.

Thereafter, on March 5, 2007, the Government moved to terminate the proceeding and requested that the ALJ find that Respondent had waived her right to a hearing. On March 7, 2007, the ALJ found that Respondent had waived her right to a hearing under 21 CFR 1301.43(e), granted the Government's motion, and ordered that the proceeding be terminated.

On March 12, 2007, Respondent's counsel received a copy of the ALJ's termination order and moved for reconsideration. The basis for the motion was that Respondent's counsel ''is a solo practitioner in the island of Puerto Rico with an extensive practice on civil and federal criminal cases.'' Respondent's Req. for Reconsideration at 2. Respondent's counsel maintained that since January 6, 2007, he had ''had an extremely busy Court calendar,''

which ''include[d] three * * * major criminal * * * jury trials before the United States District Court for the District of Puerto Rico.'' *Id.* Respondent's counsel also maintained that he had ''been involved in preparation for numerous appeals at the First Circuit Court of Appeals and the handling of other criminal and civil matters filed in the State and Federal Courts.'' *Id.* at 3. Respondent's counsel further stated that it had not been his ''intention to be disrespectful or to willfully disobey the orders issued by the ALJ.'' *Id.*

The ALJ was not persuaded. The ALJ observed that in the three months prior to her order terminating the case, she had issued numerous other orders in the proceeding, three of which had required a response, and that each order had been sent by both facsimile and first-class mail to Respondent's counsel. Order Denying Request for Reconsideration at 1–2. The ALJ noted that ''[n]one of my orders, prior to the Termination Order * * * ha[d] elicited a response from the Respondent despite the deadlines to respond.'' *Id.* at 2. The ALJ also noted that ''at no point did the Respondent request a written extension of time.'' *Id.* The ALJ thus concluded that ''Respondent's failure to pursue her case remains a waiver of her right to a hearing pursuant to 21 CFR 1301.43(e),'' and denied Respondent's request for reconsideration. *Id.*

Thereafter, Respondent filed a second motion for reconsideration. As grounds for the motion, Respondent asserted that her motion should be evaluated using the same standards that the federal courts apply under Rule 55(c) of the Federal Rules of Civil Procedure. Resp.'s Second Mot. for Reconsid. at 2. Respondent contends that the Agency has not been prejudiced by her failure to comply with the ALJ's orders; that her counsel is a solo practitioner who participated in three federal criminal trials between January 8th and February 20, 2007, which left him with ''literally no time for other meritorious cases''; that Respondent has meritorious defenses; and that Respondent's failure to timely respond to the ALJ's orders was her attorney's fault. *See generally id.* Respondent thus contends that she has shown good cause to set aside the ALJ's termination order.

Thereafter, the ALJ ordered the Government to respond. The Government argued that having terminated the proceeding, the ALJ no longer had jurisdiction. Gov. Response to Respondent's Mot. Requesting Rescission of Termination Order. The Government also argued that Respondent had not demonstrated good cause to set aside the termination order. According to the Government, the ALJ's order for pre-hearing statements gave Respondent's counsel seven weeks to file her pre-hearing statement, and that during that period, Respondent's counsel took nearly a two-week vacation. Moreover, the ALJ's Third Order had given Respondent's counsel an additional thirteen days to file her pre-hearing statement and Respondent's counsel still had eight days to do so following the conclusion of his third trial.

Finding ''the Government's argument compelling,'' the ALJ denied Respondent's motion. Order Denying Resp.'s Motion at 2. The ALJ reasoned that even if she still had jurisdiction, Respondent had not ''provide[d] due cause for her failure to proceed in a timely fashion.'' *Id.* The ALJ thus held to her earlier decision that ''Respondent's 'failure to pursue her case remains a waiver of her right to [a] hearing pursuant to 21 CFR 1301.43(e),' '' and denied the motion. *Id.* (quoting Termination Order).

The investigative file was then forwarded to me for final agency action. Having considered the various pleadings, I conclude that Respondent has not shown ''good cause'' for failing to comply with the ALJ's orders and thus find that Respondent has waived her right to a hearing. *See* 21 CFR 1301.43(d). Before proceeding to make factual findings regarding the allegations of the Show Cause Order, a discussion of Respondent's motion is warranted.

In seeking to set aside the ALJ's termination order, Respondent invokes various court decisions construing Rule 55(c) of the Federal Rules of Civil Procedure. Respondent's argument is misplaced. Agency proceedings brought under section 304 of the Controlled Substances Act are not governed by the Federal Rules of Civil Procedure, but rather, DEA's regulations and the rules set forth in the applicable provisions of the Act. *See* 21 CFR 1301.41. Indeed, this Agency has never held that the good cause standard of 21 CFR 1301.43(d), which addresses conduct constituting a waiver of the right to a hearing, is to be construed in the same manner as the federal courts interpret the good cause standard under F.R.C.P. 55(c) for setting aside the entry of a default.

Moreover, Respondent has not demonstrated good cause. Respondent argues that her ''default in submitting timely response to the orders issued by [the ALJ] was not willful.'' Resp.'s Second Mot. at 6. Respondent further contends that there was ''no culpable conduct'' on her part and that she was not ''*personally* at fault'' because it was her attorney's responsibility to respond to the ALJ's orders and he was preoccupied with other matters. *Id.* The omissions of Respondent's counsel are, however, fairly charged to Respondent. Moreover, even if her counsel's failure to respond to the ALJ's orders does not rise to the level of willfulness, it is still sufficiently culpable to preclude a finding that there is good cause to set aside the ALJ's Termination Order.

As the First Circuit has explained, Respondent's claim ''that [her] attorney was preoccupied with other matters * * * has been tried before, and regularly has been found wanting.'' *De la Torre* v. *Continental Ins. Co.*, 15 F.3d 12, 15 (1st Cir. 1994) (citing *Mendez* v. *Banco Popular de Puerto Rico*, 900 F.2d 4, 7 (1st. Cir. 1990) (other citations omitted)). As the First Circuit has also noted: ''Most attorneys are busy most of the time and they must organize their work so as to be able to meet the time requirements of matters they are handling or suffer the consequences.'' *Torre*, 15 F.3d at 15 (quoting *Pinero Schroeder* v. *FNMA*, 574 F.2d 1117, 1118 (1st Cir. 1978)).

Relatedly, the Supreme Court has observed that clients are ''accountable for the acts and omissions of their attorneys.'' *Pioneer Inv. Servs. Co.* v. *Brunswick Assoc. Limited Partnership*, 507 U.S. 380, 396 (1993). As the Court has further explained, one who ''voluntarily chose this attorney as [her] representative in the action * * * cannot * * * avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of [her] lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.'' *Id.* at 397 (quoting *Link* v. *Wabash Ry. Co.*, 370 U.S. 626, 633–34 (1962) (other citation and int. quotations omitted)). Accordingly, that Respondent was not personally at fault in failing to respond to the ALJ's orders is irrelevant.

As for the contention that the conduct of Respondent's counsel was not willful, it is still sufficiently culpable to preclude a finding that good cause exists to set aside the Termination Order. Here, the ALJ issued her second order for pre-hearing statements on December 13, 2006. This Order was faxed to Respondent's counsel the following day (as well as mailed) and gave him seven weeks to submit his filing. While Respondent's counsel could not find the time to comply with the ALJ's order, by his own admission

he was able to take ''his annual vacation from December 24, 2006 to January 6, 2007.'' Resp. Second Mot. at 3. Surely, if one can find time to take vacation, he can also find time to file a necessary pleading and comply with the ALJ's orders.

Moreover, even after Respondent's counsel failed to comply with the January 31, 2007 deadline, the ALJ granted him a second chance. On February 15, 2007, the ALJ issued her Third Order for Respondent's Pre-hearing Statement, which gave Respondent's counsel until February 28, 2007 to file the statement. The Third Order also gave notice that Respondent's failure to comply could be deemed a waiver of her right to a hearing. This Order was also served on Respondent's counsel by both First Class Mail and facsimile.

Respondent's counsel again failed to comply with the ALJ's order. Indeed, Respondent's counsel did not submit his pre-hearing statement until after being served with the ALJ's Termination Order. While Respondent's counsel contends that he was involved in three federal criminal jury trials between January 8, 2007, and February 20, 2007, which ''left literally no time for other meritorious cases,'' and that it was not his ''intention to disregard'' the ALJ's orders, Resp. Sec. Mot. at 4, he offers no explanation for why he failed to comply with the ALJ's order following the conclusion of the third trial. Nor does he offer any explanation for why he did not contact the ALJ and request an extension during the two-and-a-half months that elapsed between the issuance of the Second Order and the deadline of the Third Order.[1] Cf. *Kirk* v. *INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting contention that procedural default should be excused because party's counsel had ''been involved in three hearings over the last three weeks which required a great deal of time'').

Accordingly, even if the conduct of Respondent's counsel was not willful or intentional, it clearly was culpable in that it amounted to a reckless disregard of the ALJ's orders. ''Litigants must act punctually and not casually or indifferently if a judicial system is to function effectively.'' *McKinnon* v. *Kwong Wah Restaurant*, 83 F.3d 498, 504 (1st Cir. 1996). This language is equally applicable to administrative proceedings. Respondent has therefore failed to show good cause to set aside the Termination Order.[2]

Accordingly, I hereby enter this final order without a hearing. *See id.* § 1301.43(e). Based on relevant material in the investigative file, I make the following findings.

Findings

Respondent currently holds DEA Certificate of Registration, BG2453075, which authorizes her to dispense controlled substances in Schedules II though V. Respondent's registration does not expire until September 30, 2008. Respondent's registered location is Torrecillap-2, Lomas De Carolina, Carolina, in Puerto Rico. According to the investigative file, Respondent is licensed to practice medicine in both Puerto Rico and Michigan.

Respondent came to the attention of DEA during an investigation of Johar Saran, the owner of a majority stake in Carrington Healthcare Systems/Infiniti Services Group (CHS/ISG) of Arlington, Texas. According to the investigative file, CHS/ISG used several internet facilitation centers (IFCs) to solicit orders for controlled substances, which it then dispensed through numerous DEA registered pharmacies which CHS/ISG controlled. Under the scheme, a person seeking a controlled substance would go to a Web site, complete a questionnaire, and request a particular drug. The information would be forwarded to an IFC, which then sent the information on to a physician who would review the customer's information and authorize a prescription.

Thereafter, an employee of CHS/ISG would access the Web site and download the prescriptions. The prescriptions were then filled by CHS/ISG at its Arlington, Texas facility and sent to the purchaser using either FedEx or UPS.

According to the investigative file, the IFCs that serviced CHS/ISG used at least 59 physicians including Respondent to write controlled-substance prescriptions. The records of CHS/ISG indicated that on the dates of May 19, 24, 26, and 27, 2005, it filled a total of 188 controlled substance prescriptions which were issued by Respondent for persons who were located in at least thirty-three different States.

The prescriptions included 161 for drugs containing hydrocodone, 19 for Xanax, 5 for phentermine, 2 for acetaminophen with codeine, and 1 for diazepam. Moreover, Respondent issued the prescriptions to persons in such far-flung locations as Alaska (2 Rxs), California (21 Rxs), Colorado (3 Rxs), Florida (13 Rxs), Maryland (5 Rxs), Massachusetts (7 Rxs), Mississippi (4 Rxs), New Jersey (11 Rxs), New York (7 Rxs), Ohio (7 Rxs), Oklahoma (2 Rxs), Texas (9 Rxs), Virginia (13 Rxs), and Washington (5 Rxs).

The investigative file also establishes that on June 14, 2005, a UPS facility in Pittston, Pennsylvania, notified DEA investigators that an individual had attempted to pick up four packages that it suspected contained narcotic drugs and which were addressed to four different persons at four different addresses. Instead, UPS turned the packages over to DEA. Each of the packages contained ninety tablets of generic Lorcet, 10/650, a schedule III controlled substance containing hydrocodone and acetaminophen. Respondent was listed as the prescribing physician on two of the bottles, which were to be dispensed to persons allegedly residing in Plymouth and Dallas, Pennsylvania.

DEA personnel were later contacted by a person who claimed to have ordered the drugs off the internet for herself, her daughter and her father. This person further stated that to obtain the prescriptions she had completed an on-line medical evaluation. When asked by a DEA investigator whether she had used fictitious names to pick up the drugs at UPS, the person would neither confirm nor deny doing so.

The investigative file also included the sworn declaration of a detective (TFO) who served on the Northern Vermont Drug Task Force from January 2003 until October 2005. According to the TFO, on July 20, 2005, he was advised by UPS in Rutland, Vermont, that it had two packages which were addressed to a person (J.S.) whom it suspected was purchasing controlled substances over the internet. UPS opened the packages (which were shipped COD) and found that they contained hydrocodone.

Later that day, the TFO went to UPS to confront J.S., who had arrived to pick up the packages. After being notified by a UPS employee that J.S. had picked up one of the packages,[3] the TFO identified himself and questioned him regarding its contents. J.S. claimed that he did not know specifically what was in the envelope but claimed to have a prescription for it. During the interview,

[1] He also offers no explanation as to why, in the period between the dismissal of the indictment in *United States* v. *Bretton-Castillo* and the beginning of the trial in *United States* v. *Cedeno-Perez*, he could not find the time to either file the pre-hearing statement or seek an extension.

[2] Respondent also asserts that I should consider ''whether the entry of termination would bring about a harsh or unfair result which would have a lifetime effect [on her] capacity to earn her living.'' Resp. Sec. Motion at 7. An order of revocation does not, however, impose a permanent prohibition on a practitioner's ability to obtain a new registration.

[3] According to the affidavit, J.S. did not have sufficient funds to pay for the second package.

J.S. also stated that he had refused the second package because he did not know anything about it. J.S. also told the TFO that he purchased the drugs over the internet because it was cheaper and he did not have health insurance; he also claimed that his local physician had sent his medical records to the prescriber. The TFO subsequently interviewed J.S.'s local doctor, who denied sending the records to another physician.

The next day, the TFO obtained a warrant to search both packages. The search revealed that one of the packages held a bottle which contained 90 tablets of hydrocodone, listed Respondent as the prescribing physician, and was dated July 17, 2005. The bottle gave the name and address of the dispensing pharmacy as ASI–2129 S. Great Southwest Parkway, Suite 304, Grand Prarie, TX. The TFO subsequently determined that the pharmacy was named Avatar Corporation.

The following day, the TFO contacted the pharmacy. A pharmacy employee confirmed that Avatar was a closed-door pharmacy which filled mail-order prescriptions. The pharmacy employee stated that Avatar filled prescriptions issued by Respondent on a regular basis and provided her phone number. The pharmacy employee also told the TFO that Respondent had a web page which was run by person named Juan Almeida.

The TFO called Respondent's phone number and heard a recording by Respondent which gave a second phone number. The TFO called that number and left a voice mail message.

Several hours later, Respondent called the TFO and spoke with him. Respondent denied issuing the prescription to J.S. and stated that she was in Puerto Rico. The TFO then asked Respondent how her name came to be on the prescription; Respondent answered that ''they have my signature on the Web site.''

Having heard Respondent's denial, the TFO called the pharmacy again. The pharmacy employee reaffirmed that Respondent sent Avatar prescriptions on a regular basis.

Later that day, the TFO was contacted by Mr. Almeida. Mr. Almeida told the TFO that he was a co-worker of Respondent and had been given his number by her. Mr. Almeida told the TFO that he managed a Web site where people could fill-out an online application to obtain medications; the applications were then reviewed by Respondent who determined whether to issue a prescription. When the detective told Mr. Almeida that Respondent had denied issuing prescriptions over the internet, Mr. Almeida said that she certainly did and that the prescriptions were then faxed to the pharmacy. Mr. Almeida eventually provided the detective with the name of the Web site. When the detective asked Mr. Almeida whether the Web site had any process in place to verify the on-line applications, he became defensive and claimed that it was no different than when a person went to see a physician.

On September 6, 2006, DEA investigators interviewed Respondent in the presence of her attorney. During the interview, Respondent denied having ever reviewed questionnaires and having ever prescribed controlled substances over the internet. Respondent further asserted that she was the victim of identity theft and claimed that her DEA registration had been misused.

Respondent further denied issuing the prescriptions to the two Pennsylvania residents which were intercepted by UPS. She also denied having knowledge of the ASI/Avatar pharmacy and denied knowing the employee who had provided information to the TFO.

As for her relationship with Mr. Almeida, Respondent stated that she had talked on the telephone with him regarding a job advertisement which had appeared in the ''El Nuevo Dia'' sometime in January 2005, and which had sought physicians for services related to the internet. Respondent further stated that Mr. Almeida was located in Miami and had initially answered her phone call in response to the advertisement, but then transferred her call to one Dr. Rodriguez.

Respondent maintained that she asked Dr. Rodriguez whether the job had something to do with prescribing medication or was associated with a hospital. Respondent stated that Rodriguez told her that it was not hospital related. Respondent told investigators that after speaking with Dr. Rodriguez she sent in a resume which listed her DEA number. Respondent further told investigators that Dr. Rodriguez never called her back.

During the interview, the investigators presented copies of the prescriptions which listed Respondent as the prescribing physician, and asked her whether the signature on the prescriptions was hers. Respondent acknowledged that the signature was hers but denied issuing the prescriptions. She also denied knowing the patients listed on the prescriptions. Finally, Respondent denied knowing Johar Saran.

The investigative file also contains an e-mail dated July 24, 2005 to Joe Saran and signed by Mr. Almeida. In the e-mail, Mr. Almeida related that he had been informed by the ASI/Avatar employee ''that certain law enforcement officials were asking questions about an individual they apprehended who[] allegedly possessed an excessive amount of hydro.'' The e-mail specifically referenced J.S. Mr. Almeida then stated that he had ''pulled his records and confirmed that he [J.S.] is legitimate in that he is who[] he said he was on the medical'' questionnaire and that his ''DOB and address match.''

Next, the e-mail recounted that the ASI/Avatar employee had ''provided Law Enforcement officials with my telephone number as well as'' that of Respondent and specifically referenced the TFO. According to the e-mail, ''[s]hortly thereafter, [Respondent] was contacted by a task force officer who[] asked a series of questions.'' Continuing, Mr. Almeida wrote that he was ''not sure'' that Respondent ''was the best at answering questions unannounced, but nonetheless, she answered in the affirmative, that if he possessed prescription drugs with her name on it that it was likely prescribed by her, but that she had to review her records in order to confirm any thing further.'' The e-mail added that when the TFO had asked Respondent if she ''had seen'' J.S., ''she replied by stating she is in Puerto Rico.''

Mr. Almeida then proceeded to describe his subsequent telephone conversation with the TFO. According to the e-mail, Mr. Almeida discussed the process by which ''an individual goes on the net to purchase prescription drugs.'' The e-mail further stated that Mr. Almeida told the TFO that following the ''verification of id'' by the Web site, ''the request is transferred to the doctor for review.'' Mr. Almeida further related that he had told the TFO that ''[d]octors are the ones making the decision whether or not to prescribe the medication based on the question[naire] provided,'' and ''that calls are made by the doctors to [the] patients.''

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to ''dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render [her] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are * * * considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). In this case, I am unpersuaded by Respondent's defense of identity theft and her denial of involvement in the scheme. Rather, I conclude that Factors Two and Four establish that allowing Respondent to continue to dispense controlled substances would be inconsistent with the public interest. Accordingly, I will order that Respondent's registration be revoked and that any pending renewal application be denied.

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Respondent's Compliance with Applicable Laws

The central issue in this case is whether the prescriptions Respondent issued through Web sites associated with CHS/ISG complied with Federal law. As explained below, the evidence conclusively demonstrates that Respondent used her prescribing authority to act as a drug pusher; the only difference between her and a street dealer was that she did not physically distribute the drugs to the customers of CHS/ISG.

Under DEA regulations, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [her] professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' *Id.* As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 126 S.Ct. 904, 925 (2006) (citing *Moore*, 423 U.S. 122, 135, 143 (1975)).

It is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to be acting ''in the usual course of * * * professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *See United States* v. *Moore,* 423 U.S. 122 (1975). Under numerous state standards of medical practice, before issuing a treatment recommendation, a physician must, *inter alia*, physically examine a patient to establish a bona-fide doctor-patient relationship and properly diagnose her patient. *See, e.g.*, Cal. Bus. & Prof. Code 2242.1; Colo. Bd. of Med. Exam'rs, Policy 40–9; Mass. Bd. of Reg. in Med., Policy 03–06; Ohio Admin. Code 4731–11–09; Okla. Bd. of Med. Lic. & Supervision, Policy on Internet Prescribing; Va. Code 54.1–3303.

Relatedly, the American Medical Association has explained that to establish a bonafide doctor-patient relationship, a ''physician shall'':

> i. obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying conditions and/or contraindications to the treatment recommended/provided; ii. have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s); iii. as appropriate, follow up with the patient to assess the therapeutic outcome; iv. maintain a contemporaneous medical record that is readily available to the patient and * * * to his * * * other health care professionals; and v. include the electronic prescription information as part of the patient medical record.

American Medical Association, *Guidance for Physicians on Internet Prescribing; see also William R. Lockridge,* 71 FR 77791, 77798 (2006).

To similar effect are the guidelines issued by the Federation of State Medical Boards of the United States, Inc. *See Model Guidelines for the Appropriate Use of the Internet in Medical Practice.* According to the Guidelines, ''[t]reatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. *Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.'' Id.* at 4 (emphasis added). *Cf.* DEA, *Dispensing and Purchasing Controlled Substances over the Internet*, 66 FR 21181, 21183 (2001) (guidance document) (''Completing a questionnaire that is then reviewed by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship.'').[4]

The investigative file establishes that on four separate days in May 2005, Respondent, who was then practicing in Puerto Rico, issued at least 188 prescriptions for controlled substances to persons located in at least thirty-three different States including, but not limited to, Alaska (2 Rxs), California (21 Rxs), Colorado (3 Rxs), Washington (5 Rxs), Massachusetts (7 Rxs), New Jersey (11 Rxs), New York (7 Rxs), Ohio (7 Rxs), Oklahoma (2 Rxs), Texas (9 Rxs), Virginia (13 Rxs) and Maryland (5 Rxs).[5] The prescriptions were for highly abused drugs including hydrocodone (161 Rxs), Xanax (19 Rxs), phentermine (5 Rxs), acetaminophen with codeine (2 Rxs), and diazepam (1 Rx).

Moreover, the evidence further shows that in June 2005, Respondent issued two hydrocodone prescriptions to persons located in Pennsylvania, and that in July 2005, Respondent issued a hydrocodone prescription to J.S., a person located in Vermont. In both cases, the evidence established that the prescriptions were issued on the basis of an online medical ''evaluation'' and were not based on a face-to-face encounter which included a physical exam. Given the far flung locations of the ''patients,'' which render it most unlikely that Respondent ever physically examined them; the evidence

[4] The guidance document reflects this Agency's understanding of what constitutes a bonafide doctor-patient relationship under state laws and existing professional standards. 66 FR 21182–83.

[5] Under numerous state laws, a physician must typically be licensed in the State where the patient resides in order to prescribe to the patient. See, e.g., Cal. Bus. & Prof. Code section 2052; Cal. Health & Safety Code section 11352(a). Respondent was, however, licensed only in Michigan and Puerto Rico. As I recently noted, ''[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of * * * professional practice,' '' and ''[a] controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA.'' United Prescription Services, Inc., 72 FR 50397, 50407 (2007) (quoting 21 CFR 1306.04(a) and citing 21 CFR 1306.03(a)(1)). The prescriptions Respondent issued were thus illegal under Federal law for this reason as well.

pertaining to the Pennsylvania and Vermont customers; as well as evidence regarding the manner in which the CHS/ISG scheme operated including the statements of Mr. Almeida in both his telephone conversations with the TFO and in his e-mail; I conclude that Respondent issued controlled-substance prescriptions to numerous persons without establishing a valid physician/patient relationship with them and that the prescriptions were not issued for a legitimate medical purpose. *See* 21 CFR 1306.04(a); 21 U.S.C. § 841(a). Respondent thus repeatedly violated federal law. *See Gonzales* v. *Oregon*, 126 S.Ct. at 925; *Moore*, 423 U.S. at 135.

I further reject Respondent's defense of identity theft and her denial of involvement in the scheme. In this regard, I note that an employee of the Avatar pharmacy twice implicated Respondent in the scheme. Moreover, after the TFO spoke with Respondent he was called by Mr. Almeida, who informed the TFO that he was Respondent's co-worker and had been given the TFO's phone number by her. Respondent's act in giving the TFO's phone number to Mr. Almeida begs the question of why she did so if she was not involved in the scheme.

Mr. Almeida admitted to the TFO that he managed a Web site where persons could obtain medications and stated that Respondent reviewed the applications and determined whether to issue the prescriptions. Furthermore, when told by the TFO that Respondent had denied issuing prescription through a Web site, Mr. Almeida stated that she certainly did so. Finally, Mr. Almeida's e-mail to Mr. Saran further implicated Respondent in the scheme. I therefore conclude that there is no merit to Respondent's assertions that she was the victim of identity theft and was not involved in the scheme.

As recognized in *Lockridge* and other agency orders, ''[le]gally there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription.'' 71 FR at 77800 (quoting *Mario Avello*, M.D., 70 FR 11695, 11697 (2005)). *See also Floyd A. Santner, M.D.*, 55 FR 37581 (1990). In short, Respondent's involvement in this scheme did not constitute the legitimate practice of medicine, but rather, drug dealing.

Accordingly, Respondent's experience in dispensing controlled substances and her record of compliance with applicable laws makes plain that her continued registration would ''be inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Moreover, for the same reasons which led me to initially find that Respondent posed ''an imminent danger to the public health or safety,'' *id.* 824(d), I conclude that the public interest requires that her registration be revoked effective immediately. *See* 21 CFR 1316.67.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate Registration, BG2453075, issued to Kamir Garces-Mejias, M.D., be, and it hereby is, revoked. I further order that any pending application of Respondent for renewal of her registration be, and it hereby is, denied. This order is effective immediately.

Dated: September 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–19042 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 07–18]

David L. Wood, M.D.; Dismissal of Proceeding

On January 24, 2007, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to David L. Wood, M.D. (Respondent), of Castle Rock, Colorado. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, AW6977207, as a practitioner, and the denial of any pending applications for renewal or modification of his registration, on the ground that on October 19, 2006, Respondent had entered into a ''Stipulation and Final Agency Order'' with the Colorado Board of Medical Examiners, which ''limited [his] medical license to administrative medicine only.'' Show Cause Order at 1. The Show Cause Order alleged that as a consequence of the state order, Respondent is ''not authorized to administer, dispense or prescribe controlled substances to any person * * * in the State of Colorado, the State in which [he is] registered with DEA.'' *Id.* The Show Cause Order also alleged that the Colorado Board had found that Respondent prescribed Stadol, a schedule IV controlled substance, to a patient in ''large continuous amounts despite the fact that [he knew] that this patient abused Stadol [obtained] from other'' physicians. *Id.* at 2.

On February 21, 2007, Respondent, through his counsel, requested a hearing on the allegations. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who proceeded to conduct pre-hearing procedures.

Thereafter, on March 14, 2007, the Government moved for summary disposition on the ground that the Colorado Board's Order prohibited Respondent from engaging in the practice of clinical medicine, and therefore, Respondent was without authority to handle controlled substances in Colorado. *See* Gov. Mot. for Summ. Judgment at 1–2. As support for its motion, the Government attached a copy of the state order, as well as a February 28, 2007 letter from Ms. Cheryl Hara, Program Director for the Colorado Board, to this Agency. *See id.* at attachments. This letter stated that Respondent's ''stipulation precludes him from patient contact, the administration of or interpretation of patient tests, the evaluations of data for the purpose of furthering individual patient care, the performance of any act that requires the exercise of discretion in the prospective authorization of medical care, not including prospective authorization of diagnostic procedures.'' *See id.* at Attachment II, at 1. The letter further explained that because Respondent ''is precluded from treating patients, family members or himself, there is no clinical or legal basis for [him] to prescribe, dispense or administer drugs of any kind and the Board would view any prescribing, dispensing or administering by [him] as a violation of the terms of this stipulation.'' *Id.*

Respondent opposed the Government's motion arguing that the Colorado Board's Order ''does not suspend, revoke or deny [him his] medical license.'' Respondent's Resp. at 3. Respondent further maintained that his ''medical license status is 'Active-With Conditions' and [that he] may apply to the Board for modification of his practice at any time.'' *Id.* Respondent thus contended that the Order does not support a finding that he ''has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances.'' *Id.* at 2 (quoting 21 U.S.C. 824(a)(3)).

On April 27, 2007, the ALJ granted the Government's motion. Noting that there were no material facts in dispute and that under DEA precedent the ''controlling question * * * is whether the Respondent is currently authorized

to handle controlled substances,'' ALJ Dec. at 3, the ALJ reasoned that if Respondent were to prescribe or dispense a drug, he ''would violate the terms of the [State] Order.'' *Id.* at 4. The ALJ thus concluded that Respondent ''does not have state authority to prescribe or dispense controlled substances, and he is not entitled to maintain his DEA registration.'' *Id.* The ALJ thus recommended that Respondent's registration be revoked. *Id.* at 5.

On June 4, 2007, the ALJ forwarded the record to me for final agency action.[1] At the outset, I note that neither the Show Cause Order nor the record establishes the status of Respondent's registration and whether there is a pending application for renewal. I therefore take official notice of the registration records of this Agency. According to those records, Respondent's registration expired on May 31, 2007, and Respondent did not file a renewal application. I therefore find that Respondent is not currently registered with this Agency.[2]

Under DEA precedent, ''if a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel*, 63 FR 67132, 67133 (1998). Moreover, while I have recognized a limited exception to this rule in cases which commence with the issuance of an immediate suspension order because of the collateral consequences which may attach with the issuance of such a suspension, *see William R. Lockridge*, 71 FR 77791, 77797 (2006), here, no such order has been issued. Because there is neither an existing registration nor an application to act upon, and there is no suspension order to review, this case is now moot.

[1] On May 25, 2007, Respondent filed exceptions to the ALJ's decision. On the same day, the Government moved to strike the exceptions as out-of-time; on June 1, 2007, the ALJ granted the Government's motion but announced that she would forward Respondent's exceptions and the Government's motion to me with the record. In light of the disposition of this case, I conclude that there is no need to decide any issue related to Respondent's exceptions.

[2] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act 80* (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute these facts by filing a properly supported motion for reconsideration within fifteen days of service of this order, which shall begin on the date this order is mailed.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b) and 0.104, I hereby order that the Order to Show Cause be, and it hereby is, dismissed.

Dated: September 19, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–19044 Filed 9–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,773]

Gilmour Manufacturing Company, A Subsidiary of Robert Bosch Tool Company, Somerset, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 29, 2007, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 31, 2007 and published in the **Federal Register** on August 14, 2007 (72 FR 45451).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Gilmour Manufacturing Company, a subsidiary of Robert Bosch Tool Corporation, Somerset, Pennsylvania engaged in the production of lawn and garden products, was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner states that ''even though there are no layoffs planned, there is a strong possibility'' that the employment at the subject firm will decrease in the future.

The workers of the subject firm were previously certified eligible for TAA (TA–W–57,492). This certification expired on July 18, 2007.

When assessing eligibility for TAA, the Department exclusively considers the relevant employment data (for one year prior to the date of the petition and any imminent layoffs) for the facility where the petitioning worker group was employed. In this case, the employment since the expiration of the previous certification was considered. As employment levels at the subject facility increased during the relevant time period and there was no threat of separations during the relevant period, criterion (1) Has not been met. Significant number or proportion of the workers in a firm or appropriate subdivision means at least three workers in a workforce of fewer than 50 workers, five percent of the workers in a workforce of over 50 workers, or at least 50 workers.

Although further layoffs are anticipated in the future, those layoffs are beyond the relevant period of this investigation. As employment levels at the subject facility did not decline in the relevant period, and the subject firm did not shift production to a foreign country, criteria (a)(2)(A)(I.A), (a)(2)(B)(II.A), (a)(2)(A)(I.B), and (a)(2)(B)(II.B) have not been met.

Should conditions change in the future, the company is encouraged to file a new petition on behalf of the worker group which will encompass an investigative period that will include these changing conditions.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of September, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19028 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,153]

ITT Marine & Leisure, Santa Ana, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 18, 2007 in response to a worker petition filed by a state agency representative on behalf of workers of ITT Marine & Leisure, Santa Ana, California.

The petitioning group of workers is covered by an active certification (TA–W–58,928) which expires on March 23, 2008. This certification was amended on September 22, 2006 to cover all workers of ITT Marine & Leisure, Santa Ana, California. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of September 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19024 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,015]

KAC Holdings, D/B/A Kester, Des Plaines, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2007 in response to a petition filed by a State agency representative on behalf of workers of KAC Holdings, d/b/a Kester, Des Plaines, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of September 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19029 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of September 10 through September 14, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,715; Loxcreen Company, Inc., Plastic Division, Woodburn, OR: June 19, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–62,023; Selectrucks Refurbishing Center, Including Leased Workers of Aerotek, Manpower of Utah and Intermountain Staffing, Tooele, UT: August 20, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,886; O'Sullivan Industries, Inc., Lamar, MO: September 24, 2007.

TA–W–61,911; Tembec USA, Inc., On-Site Leased Workers From Kelly Services, St. Francisville, LA: July 31, 2006.

TA–W–61,941; Manufacturers Industrial Group, LLC; On-Site Leased Workers from Atlas Management and Manpower, Lexington, TN: August 2, 2006.

TA–W–61,941A; Manufacturers Industrial Group, LLC; On-Site Leased Workers from Atlas Management and Manpower, Lexington, TN: August 2, 2006.

TA–W–61,942; Best Textiles International, Ltd; Cordele, GA: July 9, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,792; Precision Resource, Inc., Tool and Machine Division, Shelton, CT: July 3, 2006.

TA–W–61,811; Micron Technology, Inc., Research and Development and Mfg., On-Site Leased Workers of Kelly Services, Boise, ID: July 9, 2006.

TA–W–61,811A; Micron Technology, Inc., Micron West Warehouse, Nampa, ID: July 9, 2006.

TA–W–61,811B; Micron Technology, Inc., FAB 1D Manufacturing, Nampa, ID: July 9, 2006.

TA–W–61,811C; Micron Technology, Inc.; Design Center, On-Site Leased Workers of Kelly Services, Coast etc., San Jose, CA: July 9, 2006.

TA–W–61,811D; Micron Technology, Inc., Design Center, Pasadena, CA: July 9, 2006.

TA–W–61,811E; Micron Technology, Inc., Design Center, Minneapolis, MN: July 9, 2006.

TA–W–61,811F; Micron Technology, Inc., Research and Design Center, Corvallis, OR: July 9, 2006.

TA–W–61,811G; Micron Technology, Inc., Research and Design Center, Fort Collins, CO: July 9, 2006.

TA–W–61,811H; Micron Texas Engineering Center, LLC; Design Center, Allen, TX: July 9, 2006.

TA–W–61,811I; Micron Semiconductor Product; Finished Goods Mfg. and Crucial Sales Office, Meridian, ID: July 9, 2006.

TA–W–61,811J; Lexar Media; Freemont, CA: July 9, 2006.

TA–W–61,962, Hanesbrands, Inc., Meacham Road Division, Statesville, NC: August 7, 2006.

TA–W–61,962A; Hanesbrands, Inc., Oak Summit Division, Winston-Salem, NC: September 29, 2007.

TA–W–61,962B; Hanesbrands, Inc., ECD Division, Winston-Salem, NC: August 7, 2006.

TA–W–61,962C; Hanesbrands, Inc., Tamaqua Division, Tamaqua, PA: August 7, 2006.

TA–W–61,962D; Hanesbrands, Inc., Weeks Center Division, Winston-Salem, NC: August 7, 2006.

TA–W–61,962E; Hanesbrands, Inc., Woolwine Division, Stuart, VA: August 7, 2006.

TA–W–61,962F; Hanesbrands, Inc., Northridge Division, Rural Hall, NC: August 7, 2006.

TA–W–61,962G; Hanesbrands, Inc., Laurel Hill Division, Laurel Hill, NC: August 7, 2006.

TA–W–61,962H; Hanesbrands, Inc., Kings Mountain Division, Kings Mountain, NC: August 7, 2006.

TA–W–61,962I; Hanesbrands, Inc., VSC Division, Martinsville, VA: August 7, 2006.

TA–W–61,962J; Hanesbrands, Inc., NYC Design Division, New York, NY: August 7, 2006.

TA–W–61,962K; Hanesbrands, Inc., Eden, NC: August 7, 2006.

TA–W–61,962L; Hanesbrands, Inc., Forest City, NC: August 7, 2006.

TA–W–62,019; Brandon International; Baldwin Park, CA: August 15, 2006.

TA–W–62,026; TI Group Automotive Systems, LLC; NormalDivision, Normal, IL: July 2, 2007.

TA–W–62,038; Albany International Corp., Press FabricDivision, Rensselaer, NY: August 16, 2006.

TA–W–62,048; Tinnerman Palunt Engineered Products, Inc., Mountainside, NJ: August 24, 2006.

TA–W–62,061; International Legwear Group; HildebranDivision, On-Site Leased Workers From Express and Catawba Staffing, Hildebran, NC: September 15, 2007.

TA–W–62,067; Crosible, Inc., U.S. Division, Moravia, NY: August 27, 2006.

TA–W–62,068; TI Automotive Systems, LLC; On-Site Leased Workers of Iforce Staffing, Hebron, OH: August 29, 2006.

TA–W–62,077; ClosetMaid, DoAble Products Division, ASubsidiary of Emerson, Diboll, TX: August 30, 2006.

TA–W–62,083; Chardon Rubber Company; Industrial Rubber Goods Division, On-Site Leased Workers From Kelley Services, St. Joseph, MI: August 30, 2006.

TA–W–61,981; Tekni-Plex, Inc., Bucyrus, OH: August 13, 2006.

TA–W–61,998; Bush Industries, Inc., Mason Drive, Allen Street and Tiffany Street Facilities, Jamestown, NY: August 16, 2007.

TA–W–61,999; Geneon Entertainment (USA), Long Beach, CA: August 13, 2006.

TA–W–62,018; Hirel Systems LLC; On-Site Leased Workers From Employers Overload, Adecco, Hillsboro, OR: August 21, 2006.

TA–W–62,055; Siemens Medical Solutions Incorporated USA; Oncology Care Systems, Concord, CA: August 15, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,973; Hill Hosiery Mill, Inc., Hill Spinning Mill, Thomasville, NC: August 9, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–62,023; Selectrucks Refurbishing Center, Including Leased Workers of Aerotek, Manpower of Utan and Intermountain Staffing, Tooele, UT.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,715; Loxcreen Company, Inc., Plastic Division, Woodburn, OR.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,975; R and R Manufacturing Company, Inc., Taunton, MA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

None.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of September 10 through September 14, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 20, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–19026 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,131]

Neilsen Manufacturing Incorporated, Salem, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 12, 2007 in response to a petition filed by a state representative on behalf of workers at Neilsen Manufacturing Incorporated, Salem, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated. However, all workers of the subject firm are covered by an existing certification, TA–W–58,056, that expires November 8, 2007.

Signed in Washington, DC, this 20th day of September 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19031 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,728]

R and S Vinyl Products Group L.L.C., Clarion, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 31, 2007, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Alternative Trade Adjustment Assistance (ATAA).

The workers of R&S Vinyl Products Group LLC, Clarion, Pennsylvania were certified eligible to apply for Trade Adjustment Assistance (TAA) and denied to apply for ATAA on July 31, 2007. The denial notice was published in the **Federal Register** on August 14, 2007 (72 FR 45451).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The group eligibility criteria for the ATAA program that the Department must consider under Section 246 of the Trade Act are:

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the petitioner requested a review of the

initial petition and to include the ATAA benefits. The petitioner appears to be under the impression that the workers eligibility for ATAA was not investigated in the original investigation.

The Department reviewed the initial investigation and determined that subject workers eligibility for ATAA was investigated. The investigation revealed that workers' skills are transferable to other positions within the commuting area. However, the Department conducted additional investigation on reconsideration and contacted a company official to determine if workers' are eligible for ATAA. Based on a company official's statements it was confirmed that there are several existing and new manufacturing facilities within the commuting area, which are in the process of hiring workers with skills similar to those possessed by the subject worker group. Consequently, the investigation confirmed that workers' skills are easily transferable to other companies.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19027 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,785; TA–W–61,785A]

Risdon International, Inc., Crown Risdon USA, Inc., Including On-Site Leased Workers of Manpower, Inc., Middletown, NY; Risdon International, Inc., Crown Risdon USA, Inc., Danbury, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 28, 2007, applicable to workers of Risdon International, Inc., Middletown, New York and Risdon International, Inc., Danbury, Connecticut. The notice was published in the **Federal Register** on September 11, 2007 (72 FR 51844).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Middletown, New York workers are engaged in the production of cosmetic packaging. The Danbury, Connecticut workers store and distribute products manufactured by Risdon.

New information shows that leased workers of Manpower, Inc. were employed on-site at the Middletown, New York location of Risdon International, Inc. The Department has determined that the Manpower, Inc. workers were sufficiently under the control of Risdon International, Inc. to be considered leased workers.

The State agency reports that following a change in company ownership during 2006, some workers' wages at the subject firm were reported under the Unemployment Insurance (UI) tax account for Crown Risdon USA, Inc. until November 2006.

Based on these findings, the Department is amending this certification to include leased workers of Manpower, Inc. working on-site at the Middletown, New York location of the subject firm and to show a change in ownership.

The intent of the Department's certification is to include all workers of Risdon International, Inc., Middletown, New York and Risdon International, Inc., Danbury, Connecticut who were adversely affected by a shift in production of cosmetic packaging to Mexico.

The amended notice applicable to TA–W–61,785 and TA–W–61,785A are hereby issued as follows:

''All workers of Risdon International, Inc., Crown Risdon USA, Inc., including on-site leased workers of Manpower, Inc., Middletown, New York (TA–W–61,785) and Risdon International, Inc., Crown Risdon USA, Inc., Danbury, Connecticut (TA–W–61,785A), who became totally or partially separated from employment on or after July 3, 2006, through August 28, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 21st day of September 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19032 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,743]

Risdon International, Inc., Crown Risdon USA, Inc., Including On-Site Leased Workers of Jaci Carroll Staffing Services, Inc., Watertown, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 28, 2007, applicable to workers of Risdon International, Inc., Watertown, Connecticut. The notice was published in the **Federal Register** on September 11, 2007 (72 FR 51844).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cosmetic packaging.

New information shows that leased workers of Jaci Carroll Staffing Services, Inc. were employed on-site at the Watertown, Connecticut location of Risdon International, Inc. The Department has determined that the Jaci Carroll Staffing Services, Inc., workers were sufficiently under the control of Risdon International, Inc. to be considered leased workers.

The State agency reports that following a change in company ownership during 2006, some workers' wages at the subject firm were reported under the Unemployment Insurance (UI) tax account for Crown Risdon USA, Inc. until November 2006.

Based on these findings, the Department is amending this certification to include leased workers of Jaci Carroll Staffing Services, Inc. working on-site at the Watertown, Connecticut location of the subject firm and to show a change in ownership.

The intent of the Department's certification is to include all workers of

Risdon International, Inc., Watertown, Connecticut who were adversely affected by a shift in production of cosmetic packaging to Mexico.

The amended notice applicable to TA–W–61,743 is hereby issued as follows:

''All workers of Risdon International, Inc., Crown Risdon USA, Inc., including on-site leased workers of Jaci Carroll Staffing Services, Inc., Watertown, Connecticut, who became totally or partially separated from employment on or after June 22, 2006, through August 28, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 21st day of September 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19033 Filed 9–26–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 9, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 9, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of September 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 9/10/07 and 9/14/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62118	Southern Council of Industrial Workers (Union)	Jackson, MS	09/10/07	08/23/07
62119	Cygne Design (Wkrs)	Commerce, CA	09/10/07	09/07/07
62120	Nifco America (Wkrs)	Canal Winchester, OH	09/10/07	09/06/07
62121	Burly Bear Inc. (Comp)	Valdese, NC	09/10/07	08/31/07
62122	Standayne Automotive Corporation (State)	Windsor, CT	09/10/07	09/06/07
62123	Aerotech (State)	Flint, MI	09/10/07	09/04/07
62124	Milan Screw Products, Inc. (Comp)	Milan, MI	09/10/07	09/01/07
62125	Parlex USA (Wkrs)	Methuen, MA	09/10/07	09/04/07
62126	First American Title Insurance Company (Wkrs)	Pittsburgh, PA	09/11/07	08/30/07
62127	JP Morgan Chase Bank NA (Wkrs)	Lexington, KY	09/11/07	09/10/07
62128	Weiman/Preview (Wkrs)	Christiansburg, VA	09/11/07	09/05/07
62129	Alyeska Pipeline Service Company (Comp)	Anchorage, AK	09/11/07	09/07/07
62130	Carolina Color and Chemical Company (Wkrs)	Charlotte, NC	09/12/07	08/25/07
62131	Neilsen Manufacturing, Inc. (State)	Salem, OR	09/12/07	09/10/07
62132	Charbert (Comp)	Wood River Jct, RI	09/12/07	09/11/07
62133	Spectrum Yarns, Inc. (Comp)	Kings Mountain, NC	09/12/07	09/11/07
62134	Mohawk Home (Comp)	Hiawassee, GA	09/12/07	09/11/07
62135	Children's Apparel Network Limited (State)	New York, NY	09/12/07	08/15/07
62136	AGI In Store (Comp)	Forest City, NC	09/12/07	09/11/07
62137	Drake Extrusion, Inc. (Wkrs)	Ridgeway, VA	09/13/07	09/11/07
62138	Maine Fence Company (Comp)	Pittsfield, ME	09/13/07	09/11/07
62139	Springfield LLC (Comp)	Jericho, NY	09/13/07	09/05/07
62140	R.E. Phelon Company, Inc. (Comp)	Aiken, SC	09/13/07	09/11/07
62141	Conn/Selmer (Wkrs)	Elkhart, IN	09/13/07	09/05/07
62142	Powerwave Technologies (Wkrs)	Santa Ana, CA	09/13/07	09/06/07
62143	Defiance Precision Products Manufacturing (Wkrs)	Defiance, OH	09/14/07	09/13/07
62144	R.J. Reynolds Tobacco Company (Comp)	Blacksburg, SC	09/14/07	09/13/07
62145	Osram Sylvania (IUECWA)	St. Marys, PA	09/14/07	09/13/07
62146	Drive Sol Worldwide Inc. (UAW)	Lyons, OH	09/14/07	09/07/07

[FR Doc. E7–19025 Filed 9–26–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,063]

Tubafor Mill, Inc., Also Known as TMI Forest Products, Morton, Washington; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 29, 2007 in response to a worker petition filed by the Carpenters Industrial Council, Local #2767 on behalf of workers of Tubafor Mill, Inc., also known as TMI Forest Products, Morton, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 20th day of September 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19030 Filed 9–26–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: North Star Beef, Inc./Buffalo Lake, Minnesota.

Principal Product/Purpose: The loan, guarantee, or grant application is on behalf of a new business venture that plans to produce fresh wholesale beef (including kosher), frozen offal, and animal hides; create working capital; and, pay off existing debt. The NAICS industry code for this enterprise is: 311611 Animal (except Poultry) Slaughtering.

DATES: All interested parties may submit comments in writing no later than October 11, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov*; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC, 21st of September 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E7–19045 Filed 9–26–07; 8:45 am]
BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Guidelines & Panel Operations, Jillian Miller at 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Could help minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through Grants.gov.

Supplementary Information: The Endowment requests the review of all of its funding application guidelines and grantee reporting requirements. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. § 3504(h).

Agency: National Endowment for the Arts.

Title: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements.

OMB Number: 3135–0112.

Frequency: Annually.

Affected Public: Nonprofit organizations, government agencies, and individuals.

Estimated Number of Respondents: 5,345.

Estimated Time per Respondent: 25 hours (applications)/8 hours (reports).

Total Burden Hours: 150,409.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): 0.

Description: Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and government arts agencies that apply for funding from the NEA. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the review process. According to OMB Circulars A–102 and A–110, recipients of federal funds are required to report on project activities and expenditures. Reporting requirements are necessary to ascertain that grant projects have been completed, and that all terms and conditions have been fulfilled.

Kathy Plowitz-Worden,

Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. E7–19060 Filed 9–26–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Tuesday, October 2, 2007, at 8:30 a.m.; and Wednesday, October 3, 2007 at 8:15 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

STATUS: Some portions open, some portions closed.

Open Sessions

October 2, 2007

8:30 a.m.–9 a.m.
9 a.m.–9:30 a.m.
9:30 a.m.–10 a.m.
10 a.m.–11:30 a.m.
1 p.m.–1:50 p.m.
2:15 p.m.–2:30 p.m.
2:30 p.m.–4:30 p.m.
4:30 p.m.–5 p.m.

October 3, 2007

8:15 a.m.–8:30 a.m.
9 a.m.–11 a.m.
11 a.m.–12:30 p.m.
2 p.m.–3 p.m.

Closed Sessions

October 2, 2007

1:50 p.m.–2:15 p.m.

October 3, 2007

8:30 a.m.–9 a.m.
1:30 p.m.–1:45 p.m.
1:45 p.m.–2 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov,* (703) 292–7000, *http://www.nsf.gov/nsb/.*

Matters To Be Discussed

Tuesday, October 2, 2007

CPP Subcommittee on Polar Issues

Open: 8:30 a.m.–9 a.m.
- Approval of August Minutes.
- Subcommittee Chairman's Remarks.
- Office of Polar Programs Director's Report.
- Progress and Status of the IceCube Construction Project.

CPP Task Force on Transformative Research

Open: 9 a.m.–9:30 a.m.
- Approval of Minutes for August 2007 Meeting.
- Task Force Chairman's Remarks.
- Further Review of Transformative Research Initiative by NSF.

CPP Task Force on International Science

Open: 9:30 a.m.–10 a.m.
- Approval of Minutes.
- Task Force Chairman Remarks.
- Discussion of the Draft Task Force Report on International Science and Engineering Partnerships.

EHR Subcommittee on Science and Engineering Indicators

Open: 10 a.m.–11:30 a.m.
- Approval of August Minutes.
- Subcommittee Chairman's Remarks.
- Proposed Statistical Appendix.
- Draft Overview Chapter.
- *Science and Engineering Indicators 2008 ''Digest''.*
- *Science and Engineering Indicators 2008 Companion Piece.*
- *Science and Engineering Indicators 2010.*
- Subcommittee Chairman's Summary.

Committee on Audit and Oversight

Open: 1 p.m.–1:50 p.m.
- Approval of Minutes of the August 7, 2007 Meeting.
- Committee Chairman's Opening Remarks.
- Chief Financial Officer's Update.
- OIG Audit Plan for FY 2008.
- Committee Chairman's Closing Remarks.

Closed: 1:50 p.m.–2:15 p.m.
- Approval of Minutes of the July 30, 2007 Executive Closed Teleconference.
- Pending Investigations.

Committee on Programs and Plans

Open: 2:15 p.m.–2:30 p.m.
- Discussion Item: Future Plans and Charge for Proposed Task Force on Sustainable Energy.

Committee on Education and Human Resources

Open: 2:30 p.m.–4:30 p.m.
- Approval of August 2007 Minutes.
- Committee Chairman's Remarks.
- *STEM Education and Human Resources:* America COMPETES.
- Report of Subcommittee on Science and Engineering Indicators.
- Approval of Recommendations for ''Moving Forward to Improve Engineering Education''.
- Preparing the Next Generation of STEM Innovators.
- Involvement of Higher Education STEM Faculty in Preparing K–12 Teachers.
- Approval of Action Plan for STEM Education.
- Board Executive Officer's Report.

Plenary Open

Open: 4:30 p.m.–5 p.m.
- STEM Education Action Plan.

Wednesday, October 3, 2007

Executive Committee

Open: 8:15 a.m.–8:30 a.m.
- Approval of Minutes for August 2007.
- Executive Committee Chairman's Remarks.
- Updates or New Business from Committee Members.

Committee on Programs and Plans

Closed: 8:30 a.m.–9 a.m.
- *NSB Action Item:* EarthScope Facility Operations and Maintenance: FY 2008–FY 2012.

Open: 9 a.m.–11 a.m.

- Approval of August 2007 CPP Minutes.
- Committee Chairman's Remarks.
- *Status Report:*
  - Task Force on International Science.
- *Action Item:* Revision to NSB Thresholds Policy.
- *Discussion Item:* Facilities Operations and Management.
- *Status Reports:*
  - Subcommittee on Polar Issues.
  - Task Force on Transformative Research.
- *Discussion Item:* NSB Policy on Recompetition of NSF Awards.
- *Information Item:* Deep Underground Science and Engineering Laboratory (DUSEL).
- *Information Item:* Advanced Laser Interferometer Gravitational-Wave Observatory (AdvLIGO) Project.
- Committee Chairman's Remarks.

Committee on Strategy and Budget

Open: 11 a.m.–12:30 p.m.

- Approval of CSB Minutes, August 28, 2007.
- Committee Chairman's Remarks.
- Follow-up Discussion of the Report of the NSF Working Group on the Impact of Proposal and Award Management Mechanisms (IPAMM).
- Development of Recommendations on NSF Average Award Size, Duration, and Proposal Success Rate.
- Discussion of CSB ad hoc Task Group on Cost-Sharing.
- Status of NSF FY 2008 Budget Request.

Plenary Executive Closed

Closed: 1:30 p.m.–1:45 p.m.

- Approval of August 2007 Minutes.
- Board Member Proposals.

Plenary Closed

Closed: 1:45 p.m.–2 p.m.

- Approval of August 2007 Minutes.
- Awards and Agreements.
- Closed Committee Reports.

Plenary Open

Open: 2 p.m.–3 p.m.

- Approval of August 2007 Minutes.
- Resolution to Close December 2007 Meeting.
- Chairman's Report.
- Director's Report.
- Open Committee Reports.

Michael P. Crosby,

Executive Officer and Board Office Director.

[FR Doc. E7–19058 Filed 9–26–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Partial Withdrawal of Application for Amendment to Renewed Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Indiana Michigan Power Company (the licensee) to partially withdraw its November 3, 2006, as supplemented by letter dated June 27, 2007, application for proposed amendment to Renewed Facility Operating License Nos. DPR–58 and DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2 (DCCNP–1 and DCCNP–2), located in Berrien County, Michigan.

The proposed amendment would have revised the technical specifications to reflect a plant modification that will replace the reactor coolant system (RCS) resistance temperature detectors (RTDs) and bypass piping with fast-response RTD detectors mounted in thermowells directly in the primary loop piping of DCCNP–2. The proposed TS changes affect the applicable notes in the DCCNP–2 TS surveillance requirement for channel calibration of the overtemperature differential temperature (OTΔT) and overpower differential temperature (OPΔT) reactor trip system (RTS) functions. The proposed change would also affect both units' TS Allowable Values (AV) for OTΔT and OPΔT RTS functions.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 3, 2007 (72 FR 153). However, by letter dated June 27, 2007, the licensee withdrew the proposed changes to the DCCNP–1 and DCCNP–2 AV for OTΔT and OPΔT RTS functions. The proposed changes to DCCNP–2 TS that were not withdrawn by the licensee were approved by Amendment No. 280, dated September 19, 2007.

For further details with respect to this action, see the application for amendment dated November 3, 2006, and the licensee's letter dated June 27, 2007, which partially withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of September 2007.

For the Nuclear Regulatory Commission.

Adrian Muñiz,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–19075 Filed 9–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17052]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 37–11185–04, for Unrestricted Release of a Franklin & Marshall College Facility in Lancaster, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 37–11185–04. This license is held by Franklin & Marshall College (the Licensee), for its Main Campus Facilities located off Harrisburg Pike in Lancaster, Pennsylvania. Issuance of the amendment would authorize release of the Fackenthal Laboratories Building (the Facility) for unrestricted use. The Licensee requested this action in a letter dated June 28, 2007, and responded with additional information by letters dated August 7 and 24, 2007. The NRC

has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's June 28, 2007, license amendment request, resulting in release of the Facility for unrestricted use. License No. 37–11185–04 was issued on October 22, 1979, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material at the Facility for purposes of conducting research and development activities on laboratory bench tops and in hoods. This license, if amended as requested, will continue to authorize the licensee to use unsealed byproduct material at other facilities located on its Main Campus in Lancaster, Pennsylvania.

The Facility is located on the Licensee's 182 acre campus and consists of a 41,215 square foot building containing office, classroom, and laboratory space. Within the Facility, use of licensed materials was confined to laboratories F–214, F–304, and F–306. The area of use totaled 2,522 square feet. The Facility is located in a mixed residential and commercial area.

On January 30, 2003, the Licensee ceased licensed activities at the Facility and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted final status surveys on June 28, August 7, and August 24, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402.

The NRC thus finds that the Licensee's final status survey results are acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402 including the impact of residual radioactivity at previously-released site locations of use. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Commonwealth of Pennsylvania's Department of Environmental Protection, Bureau of Radiation Protection for review on September 4, 2007. On September 9, 2007, the Bureau of Radiation Protection responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species

or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Franklin & Marshall College, Amendment Request Letter dated June 28, 2007 [ML071860199];
6. Franklin & Marshall College, Deficiency Response Letter dated August 7, 2007 [ML072210540];
7. Franklin & Marshall College, Deficiency Response Letter dated August 24, 2007 [ML072410250].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia this 20th day of September 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–19078 Filed 9–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Notice of Intent To Prepare a Generic Environmental Impact Statement for Uranium Milling Facilities

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Revised Notice of Intent (NOI).

SUMMARY: This notice revises a notice published on August 31, 2007 in the **Federal Register** (72 FR 50414) which announced that an additional scoping meeting for the NRC's Generic Environmental Impact Statement (GEIS) would be held in Gallup, New Mexico on September 27, 2007, and that the GEIS scoping comment period was extended to October 8, 2007. The GEIS will assess the potential environmental impacts associated with uranium recovery at milling facilities employing the in-situ leach (ISL) process. The GEIS may also assess the potential environmental impacts of alternative methods of uranium recovery (including the conventional milling process). The purpose of this revised notice is to: (1) Reiterate that an additional scoping meeting will be held in Gallup, New Mexico on September 27, 2007; (2) extend the scoping comment period to October 31, 2007; and (3) announce that site-specific environmental assessments (EAs) that incorporate conclusions from the GEIS (i.e., tiered off the GEIS) will be issued for public comment.

DATES: The NRC has recently held public meetings in Casper, Wyoming, and Albuquerque, New Mexico as part of the public scoping process required by NEPA. In response to public requests, the public scoping period for the GEIS has been extended to October 31, 2007. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent possible.

In addition, the NRC will conduct a third public meeting in Gallup, New Mexico to assist in defining the appropriate scope of the GEIS, including the significant environmental issues to be addressed. The meeting date, time, and location are listed below:

Meeting Date: September 27, 2007, 7 p.m. to 9:30 p.m.

Meeting Location: Best Western Inn and Suites, 3009 West Hwy 66, Gallup, NM 87301–6813, Phone (505) 722–2221.

For this meeting, members of the NRC staff will be available for informal discussions with members of the public from 6 p.m. to 7 p.m. The formal meeting and associated NRC presentation will begin at 7 p.m. For planning purposes, those who wish to present oral comments at the meeting are encouraged to pre-register by contacting Carol Walls of the NRC by telephone at 1 (800) 368–5642, Extension 8028, or by e-mail at *CAW@nrc.gov* no later than September 21, 2007. Interested persons may also register to speak at the meetings. Depending on the number of speakers, each speaker may be limited in the amount of time allocated for their comments so that all speakers have an opportunity to offer comments.

ADDRESSES: Members of the public and interested parties are invited, and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Also, the NRC encourages comments to be submitted electronically to *URLGEIS@nrc.gov.* Please refer to the ''Uranium Recovery GEIS'' when submitting comments.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, or the environmental review process related to this GEIS, please contact: Paul Michalak, Project Manager, Division of Waste Management and Environmental Protection (DWMEP), Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1 (800) 368–5642, extension 7612, or by e-mail at *PXM2@nrc.gov.* For general or technical information associated with the safety and licensing of uranium milling facilities, please contact: William Von Till, Branch Chief, Uranium Recovery Branch, DWMEP, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1 (800) 368–5642, extension 0598, or by e-mail at *RWV@nrc.gov.*

Information and documents associated with the GEIS are available for public review through the NRC electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Documents may also be obtained from the NRC Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, MD 20852–2738.

GEIS related documents can also be found at the following public libraries:

Albuquerque Main Library, 501 Copper NW, Albuquerque, New Mexico 87102, 505–768–5141.

Mother Whiteside Memorial Library, 525 West High Street, Grants, New Mexico 87020, 505–287–4793.

Natrona County Public Library, 307 East Second Street, Casper, Wyoming 82601, 307–237–4935.

Octavia Fellin Public Library, 115 W Hill Avenue, Gallup, New Mexico 87301, 505–863–1291.

SUPPLEMENTARY INFORMATION:

1.0 Background

The NRC is expecting numerous license applications for in-situ leach (ISL) uranium milling facilities in the coming 2–3 years. This GEIS is intended to address the common issues associated with environmental reviews of such milling facilities located in the western United States. Due to environmental issues common to ISL milling facilities, the NRC staff will be addressing these common issues generically to aid in a more efficient environmental review for each separate license application, if and when these applications are submitted.

ISL milling facilities recover uranium from low grade ores that may not be economically recoverable by other methods. In this process, a leaching agent, such as oxygen with sodium bicarbonate, is added to native ground water for injection through wells into the subsurface ore body to dissolve the uranium. The leach solution, containing the dissolved uranium, is pumped back to the surface and sent to the processing plant, where ion exchange is used to separate the uranium from the solution. The underground leaching of the uranium also frees other metals and minerals from the host rock. Operators of ISL facilities are required to restore the ground water affected by the leaching operations. The milling process concentrates the recovered uranium into the product known as ''yellowcake'' (U_3O_8). This yellowcake is then shipped to uranium conversion facilities for further processing in the overall uranium fuel cycle.

One alternative to ISL milling is the conventional uranium milling process that extracts uranium from mined ore. At conventional mills, the ore arrives via truck and is crushed, ground, and leached. In most cases, sulfuric acid is the leaching agent, but alkaline leaching can also be done. The leaching agent not only extracts uranium from the ore but also several other constituents (e.g., vanadium, selenium, iron, lead, and arsenic). Conventional mills extract 90 to 95 percent of the uranium from the ore. These mills are typically in areas of low population density, and they typically process ores from mines within 50 kilometers (30 miles). Conventional mills may also produce significant quantities of waste materials, known as mill tailings, from the ore processing. These tailings are contained in impoundments which can be as large as 250 to 300 acres in extent. It is estimated that roughly 95 percent of the incoming ore ends as mill tailings. These mill tailings contain most of the radioactive progeny of uranium and may be a significant source of radon and radon progeny releases to the environment.

The GEIS will focus on the construction, operation, and decommissioning of ISL mills and also assesses alternative methods of uranium recovery. It is noted that the hardrock mining associated with conventional uranium milling is regulated by other entities (e.g., the U.S. Bureau of Land Management, and various state agencies).

For more information on the uranium fuel cycle, please see Regulating Nuclear Fuel, NUREG/BR–0280, Rev. 1 (which can be found online at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0280/).*

2.0 Alternatives To Be Evaluated

No action—The no-action alternative would be to not build nor license potential uranium milling facilities. Under this alternative the NRC would not approve future license applications. This alternative serves as a baseline for comparison of the potential environmental impacts.

Proposed action—The proposed action is the construction, operation, and decommissioning of an ISL uranium mill. Implementation of the proposed action would require the issuance of an NRC license under the provisions of 10 CFR Part 40.

Alternatives—The conventional milling process is one alternative. Other alternatives not listed in this notice may be identified through the scoping process.

3.0 Environmental Impact Areas To Be Analyzed

The following resource areas have been tentatively identified for analysis in the GEIS:

—*Public and Occupational Health:* Addressing the potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events), and decommissioning;

—*Waste Management:* Addressing the types of wastes expected to be generated, handled, stored are subject to re-use or disposal;

—*Land Use:* Addressing land use plans, policies and controls;

—*Transportation:* Addressing the transportation modes, routes, quantities, and risk estimates;

—*Geology and Soils:* Addressing the physical geography, topography, geology and soil characteristics;

—*Water Resources:* Addressing the surface and ground water hydrology, water use and quality, and the potential for degradation;

—*Ecology:* Addressing wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

—*Air Quality:* Addressing meteorological conditions, ambient background, pollutant sources, and the potential for degradation;

—*Noise:* Addressing ambient noises, sources, and sensitive receptors;

—*Historical and Cultural Resources:* Addressing historical, archaeological, and traditional cultural resources;

—*Visual and Scenic Resources:* Addressing landscape characteristics, man-made features and viewshed;

—*Socioeconomics:* Addressing the demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;

—*Environmental Justice:* Addressing the potential disproportionately high and adverse impacts to minority and low-income populations; and

—*Cumulative Effects:* Addressing the impacts from past, present, and reasonably foreseeable actions at and near the site.

The example under each resource areas is not intended to be all inclusive, nor is this list an indication that environmental impacts will occur. The list is presented to facilitate comments on the scope of the GEIS. Additions to, or deletions from, this list may occur as a result of the public scoping process.

4.0 Tiering

Tiering refers to the coverage of general matters in broader environmental impact statements with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement (40 CFR 1508.28). The NRC intends to use the GEIS to address common issues associated with environmental reviews of ISL uranium milling facilities located in the western United States and then develop site-specific environmental assessments or site-specific environmental impact statements which will tier off the common issues identified and evaluated in the GEIS.

5.0 Scoping Meetings

This NOI is to encourage public involvement in the GEIS process and to solicit public comments on the proposed scope and content of the GEIS. NRC will hold public scoping meetings as described above to solicit both oral and written comments from interested parties.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the GEIS, and to identify the significant issues related to the proposed action. Scoping is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

—Identify public concerns;
—Ensure that concerns are identified early and are properly studied;
—Identify alternatives that will be examined;
—Identify significant issues that need to be analyzed; and
—Eliminate unimportant issues.

The scoping meetings will begin with NRC staff providing a description of NRC's role and mission followed by a brief overview of NRC's environmental review process and goals of the scoping meeting. The bulk of the meeting will be allotted for attendees to make oral comments.

6.0 Scoping Comments

Written comments should be mailed to the address listed above in the **ADDRESSES** section. Scoping comments may also be submitted electronically via e-mail to *URLGEIS@nrc.gov.* The NRC staff will prepare a scoping summary report, in which it will summarize public comments. The NRC will make the scoping summary report and project-related materials available for public review through its electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Further, an NRC Web site will be established in the near future to keep the public abreast of the current schedule and to post important documents.

6.0 The NEPA Process

The GEIS will be prepared according to NEPA and NRC's NEPA implementing regulations contained in 10 CFR part 51.

After the scoping process is complete, the NRC will prepare a draft GEIS. The draft GEIS is scheduled to be published by April 2008. A 45-day comment period on the draft GEIS is planned, and a public meeting(s) to receive comments will be held approximately three weeks after publication of the draft GEIS.

Availability of the draft GEIS, the dates of the public comment period, and information about the public meeting will be announced in the **Federal Register**, on NRC's web page, and in the local news media. The final GEIS is expected to be published in January 2009 and will be incorporate, as appropriate, public comments received on the draft GEIS.

Dated at Rockville, Maryland this 21st day of September, 2007.

For the Nuclear Regulatory Commission.

Gregory Suber,

Branch Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–19081 Filed 9–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04578]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 20–00315–02, for Termination of the License and Unrestricted Release of the Department of the Army, Natick Soldier Center's Facility in Natick, MA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 20–00315–02. This license is held by the Department of the Army, Natick Soldier Center, Research, Development and Engineering Command (the Licensee), for its Soldier Systems Center, located at Kansas Street in Natick, Massachusetts (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated May 31, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of title 10, Code of Federal Regulations (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the License following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's May 31, 2007, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 20–00315–02 was issued on April 23, 1958, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is situated on 76 acres and consists of office space and laboratories. The Facility is located in a residential and recreational area. Within the Facility, use of licensed materials was confined to Buildings 3, 4, 30, and 89.

In 2004, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved,

operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14 in unsealed forms, and nickel-63 and other sealed sources. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey in December 2006. This survey covered Buildings 3, 30, and 89. Building 4 was surveyed previously in 1996 when licensed activities were ceased in that location, and those survey results were provided. The final status survey report was attached to the Licensee's amendment request dated May 31, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Commonwealth of Massachusetts, Department of Public Health, Radiation Control Program for review on July 23, 2007. On September 13, 2007, The Commonwealth of Massachusetts, Department of Public Health, Radiation Control Program responded by e-mail. The Commonwealth agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Letter dated May 31, 2007, requesting termination of the license [ML071630222].

2. Final Status Survey Report, Natick Soldier Center, Research, Development and Engineering Command, Soldier Systems Center, Natick, Massachusetts, USA Project 2005–030, April 2007 [ML071630361 and ML071630369].

3. Sierra Army Depot Radiological Survey and Assessment Report #01–04–96, dated 18 June 1996, for the Development Building (#4) [ML071640172].

4. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

5. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

6. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''

7. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 21st day of September, 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety Region I.

[FR Doc. E7–19077 Filed 9–26–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA, and those that are currently ineligible for such benefits.

DATES: Public comments are due at the Office of the U.S. Trade Representative (USTR) by noon, Monday, October 22, 2007.

ADDRESSES: USTR prefers submission by electronic mail: *FR0720@ustr.eop.gov*. If you are unable to make a submission by e-mail, submissions should be made by facsimile to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA for countries meeting certain statutory requirements intended to prevent unlawful transshipment of such articles, if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. For 2007, 39 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 9 countries currently ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2007:

Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Burundi
Republic of Cape Verde
Republic of Cameroon
Republic of Chad
Republic of Congo
Democratic Republic of Congo
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya

Kingdom of Lesotho
Republic of Liberia
Republic of Madagascar
Republic of Malawi
Republic of Mali
Republic of Mauritius
Islamic Republic of Mauritania
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries were not designated as beneficiary sub-Saharan African countries in 2007:

Central African Republic
Federal Islamic Republic of Comoros
Republic of Cote d'Ivoire
Republic of Equatorial Guinea
State of Eritrea
Somalia
Republic of Togo
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: In order to facilitate the prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions to *FR0720.eop.gov* in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2007 AGOA Annual Country Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'' and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, Monday through Friday, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E7–19054 Filed 9–26–07; 8:45 am]

BILLING CODE 3110–W7–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56492; File No. SR–CBOE–2007–106]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to CBOE Rules Governing Doing Business With the Public

September 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2007, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend certain rules that govern an Exchange member's conduct in doing business with the public. Specifically, the proposed rule change would require member organizations to integrate the responsibility for supervision of a member organization's public customer options business into its overall supervisory and compliance program. In addition, the Exchange proposes to amend certain rules to strengthen member organizations' supervisory procedures and internal controls as they relate to a member's public customer options business. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room and *http://www.cboe.org/legal*.

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 Statutory Basis for, Proposed Rule Change

1. Purpose

a. Integration of Options Supervision

The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules.[3] The proposed rule change would eliminate the requirement that member organizations qualified to do a public customer business in options must designate a single person to act as Senior Registered Options Principal (''SROP'') for the member organization and that each such member organization designate a specific individual as a Compliance Registered Options Principal (''CROP''). Instead member organizations would be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See NYSE Rule 342 and NASD Rule 3010. On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007).

required to integrate the SROP and CROP functions into their overall supervisory and compliance programs.

The SROP concept was first introduced by CBOE during the early years of the development of the listed options market. Previously, under CBOE rules, member organizations were required to designate one or more persons qualified as Registered Options Principals (''ROPs'') having supervisory responsibilities in respect of the member organization's options business. As the number of ROPs at larger member organizations began to increase, CBOE imposed an additional requirement that member organizations designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a member organization's options activities.[4] Subsequently, following the recommendation of the Commission's Options Study, CBOE and other options exchanges required member organizations to designate a CROP to be responsible for the member organization's overall compliance program in respect of its options activities.[5] The CROP may be the same person who is designated as SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function in respect of the options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect of the firms' other securities activities. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. Thus, the current requirement for a separately designated senior supervisor in respect of all aspects of a member organization's options activities, rather than clarifying the allocation of supervisory responsibilities within the member organization, may have just the opposite effect by failing to take into account the way in which these responsibilities are actually assigned. In addition, by permitting supervision of a member organization's options activities to be handled in the same manner as the supervision of its other securities activities as well as its futures activities, the proposed rule change will ensure that supervisory responsibility over each segment of the member organization's business is assigned to the best qualified persons in the member organization, thereby enhancing the overall quality of supervision. The same holds true for the compliance function.

For example, most member organizations have designated one person to have supervisory responsibility over the application of margin requirements and other matters pertaining to the extension of credit. The proposed rule change would enable a member organization to include within the scope of such a person's duties the supervision over the proper margining of options accounts, thereby assuring that the most qualified person is charged with this responsibility and at the same time eliminating any uncertainty that might now exist as to whether this responsibility lies with the senior credit supervisor or with the SROP.

Similarly, the proposed rule change would allow a member organization to specifically designate one or more individuals as being responsible for approving a ROP's acceptance of discretionary accounts[6] and exceptions to a member organization's suitability standards for trading uncovered short options.[7] The proposed rule changes would allow member organizations the flexibility to assign such responsibilities, which formerly rested with the SROP and/or CROP, to more than one ROP qualified individual where the member organization believes it advantageous to do so to enhance its supervisory or compliance structure. Typically, a member organization may wish to divide these functions on the basis of geographic region or functional considerations. Rule 9.2 would be amended to clarify the qualification requirements of individuals designated as ROPs.[8] Rule 9.3 would be amended to specify the registration requirements of individuals who accept orders from non-broker-dealer customers.[9]

The proposed rule change would call for options discretionary accounts, the acceptance of which must be approved by a ROP qualified individual (other than the ROP who accepted the account), to be supervised in the same manner as the supervision of other securities accounts that are handled on a discretionary basis. The proposed rule change would eliminate the requirement that discretionary options orders be approved on the day of entry by a ROP (with one exception as described below). This requirement predates the Options Study and is not consistent with the use of supervisory tools in computerized format or exception reports generated after the close of a trading day. No similar requirement exists for supervision of other securities accounts that are handled on a discretionary basis.[10] Discretionary orders must be reviewed in accordance with a member organization's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific ROP-qualified individuals, thereby enhancing the quality of supervision.

Exchange Rule 9.10 would be revised by adding, as Interpretation and Policy .01, a requirement that any member organization that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary account activity must establish and implement procedures to require ROP qualified individuals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. The Exchange believes that any member organization that does not utilize computerized surveillance tools to monitor discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Under the proposed rule change, options discretionary accounts will continue to receive frequent appropriate supervisory review by designated ROP-qualified individuals. Additionally, member organizations will continue to be required to designate ROP-qualified individuals to review and approve the acceptance of options discretionary accounts in order to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions. This requirement provides an additional level of supervisory audit over options discretionary accounts that does not exist for other securities discretionary accounts.

In addition, the proposed rule change would require that each member organization submit to the Exchange a written report by April 1 of each year, that details the member organization's supervision and compliance effort, including its options compliance program, during the preceding year and reports on the adequacy of the member

[4] Report of the Special Study of the Options Market (''Options Study''), note 11 p. 316 (December 22, 1978).

[5] Id. at p. 335.

[6] See proposed Rule 9.10(a).

[7] See proposed Rule 9.7(f)(3).

[8] See proposed Rules 9.2.01 and 9.2.02.

[9] See proposed Rule 9.3.01.

[10] See, e.g., NYSE Rule 408.

organization's ongoing compliance processes and procedures.[11]

Proposed Rule 9.8(h) would require that each member organization submit, by April 1st of each year, a copy of the Rule 9.8(g) annual report to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.[12]

Proposed Rule 9.8(g) would provide that a member organization that specifically includes its options compliance program in a report that complies with substantially similar requirements of the NYSE and NASD will be deemed to have satisfied the requirements of Rules 9.8(g) and 9.8(h).

Additionally, where appropriate, the proposed rule change would delete references to SROP and CROP in Rules 3.6A and 26.10.[13]

Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, member organizations would still be required to designate a single general partner or executive officer to assume overall authority and responsibility for internal supervision, control of the member organization and compliance with securities laws and regulations.[14] Member organizations would also be required to designate specific qualified individuals as having supervisory or compliance responsibilities over each aspect of the member organization's options activities and to set forth the names and titles of these individuals in their written supervisory procedures.[15] This is consistent with the integration of options supervision into the overall supervisory and compliance structure of a member organization. In connection with the approval of these proposed rule changes, the Exchange intends to review member organizations' written supervisory and compliance procedures in the course of the Exchange's routine examination of member organizations to ensure that supervisory and compliance responsibilities are adequately defined.

The Exchange believes that the proposed rule changes recognize that options are no longer in their infancy, have become more integrated with other securities in the implementation of particular strategies, and thus should not continue to be regulated as though they are a new and experimental product. The Exchange believes that the proposed rule change is appropriate and would not materially alter the supervisory operations of member organizations. The Exchange believes the supervisory and compliance structure in place for non-options products at most member organizations is not materially different from the structure in place for options.

b. Supervisory Procedures and Internal Controls

The Exchange also proposes to amend certain rules to strengthen member and member organizations' supervisory procedures and internal controls as they relate to a member's public customer options business. The proposed rule changes described below are modeled after NYSE and NASD rules approved by the Commission in 2004.[16] The Exchange believes the following proposal to strengthen member supervisory procedures and internal controls is appropriate and consistent with the preceding proposal to integrate options and non-options sales practice supervision and compliance functions.

Exchange Rule 9.8(a)(3) would be revised to require the development and implementation of written policies and procedures reasonably designed to supervise sales managers and other supervisory personnel who service customer options accounts (i.e., who act in the capacity of a registered representative).[17] This requirement would apply to branch office managers, sales managers, regional/district sales managers, or any person performing a similar supervisory function. Such policies and procedures are expected to encompass all options sales-related activities. Proposed Rule 9.8(a)(3)(i) would require that supervisory reviews of producing sales managers be conducted by a qualified ROP who is either senior to, or otherwise ''independent of'', the producing manager under review.[18] This provision is intended to ensure that all options sales activity of a producing manager is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity.

Proposed Rule 9.8(a)(3)(ii) would provide a limited exception for members so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the review. In this case, the reviews may be conducted by a qualified ROP to the extent practicable. Under proposed Rule 9.8(a)(3)(iii), a member relying on the limited size and resources exception must document the factors used to determine that compliance with each of the ''senior'' or ''otherwise independent'' standards of Rule 9.8(a)(3)(i) is not possible, and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of Rule 9.8(a)(3)(i) to the extent practicable.

Paragraph (a)(3)(iv) of Rule 9.8 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements in Rules 9.8(a)(3)(i), (a)(3)(ii) and (a)(3)(iii) will be deemed to have met such requirements.

Proposed Rule 9.8(c)(i) would require member organizations to develop and maintain adequate controls over each of their business activities. The proposed rule would further require that such controls include the establishment of procedures to independently verify and test the supervisory systems and procedures for those business activities. Member organizations would be required to include in the annual report prepared pursuant to Rule 9.8(g) a review of the member organization's efforts in this regard, including a summary of the tests conducted and significant exceptions identified. The Exchange believes proposed Rule 9.8(c)(i) would enhance the quality of member organizations' supervision.[19] Paragraph (c)(ii) of Rule 9.8 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements

[11] See proposed Rule 9.8(g), which is modeled after NYSE Rule 342.30.

[12] Proposed Rule 9.8(h) is modeled after NYSE Rule 354.

[13] The Exchange notes that a separate proposed rule change currently pending at the Commission (SR–CBOE–2007–30) proposes to delete references to the CROP in Rule 9.21, among other things.

[14] See proposed Rule 9.8(a).

[15] See proposed Rule 9.8.01.

[16] See Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) (SR–NYSE–2002–36), and Securities Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR–NASD–2002–162).

[17] Proposed Rule 9.8(a)(3) is modeled after NYSE Rule 342.19.

[18] An ''otherwise independent'' person would be defined in proposed Rule 9.8(a)(3)(i) as one who: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed; and must alternate such review responsibility with another qualified person every two years or less. Further, if a person designated to review a producing manager receives an override or other income derived from that producing manager's customer activity that represents more than 10% of the designated person's gross income derived from the member organization over the course of a rolling twelve-month period, the member organization must establish alternative senior or otherwise independent supervision of that producing manager to be conducted by a qualified ROP other than the designated person receiving the income.

[19] Proposed Rule 9.8(c)(i) is modeled after NYSE Rule 342.23.

in Rule 9.8(c)(i) will be deemed to have met such requirements.

Proposed Rule 9.8(d) would establish requirements for branch office inspections similar to the requirements of NYSE Rule 342.24. Specifically, Rule 9.8(d) would require a member organization to inspect each supervisory branch office at least annually and each non-supervisory branch office at least once every three years.[20] The proposed rule would further require that persons who conduct a member organization's annual branch office inspection must be independent of the direct supervision or control of the branch office (i.e., not the branch office manager, or any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports). The Exchange believes that requiring branch office inspections to be conducted by someone who has no significant financial interest in the success of a branch office should lead to more objective and vigorous inspections.

Under proposed Rule 9.8(e), any member organization seeking an exemption, pursuant to Rule 9.8(d)(1)(ii), from the annual branch office inspection requirement would be required to submit to the Exchange written policies and procedures for systematic risk-based surveillance of its branch offices, as defined in Rule 9.8(e). Proposed Rule 9.8(f) would require that annual branch office inspection programs include, at a minimum, testing and verification of specified internal controls.[21] Paragraph (d)(3) of Rule 9.8 would provide that a member organization that complies with requirements of the NYSE or the NASD that are substantially similar to the requirements in Rules 9.8(d), (e) and (f) will be deemed to have met such requirements.

In conjunction with the proposed changes to Rules 9.8(d), (e) and (f), the Exchange proposes to amend Rule 9.6 to define ''branch office'' in a way that is substantially similar to the definition of branch office in NYSE Rule 342.10.

Proposed Rule 9.8(g)(4) would require a member organization to designate a Chief Compliance Officer (CCO).[22] Proposed Rule 9.8(g)(5) would require each member organization's chief executive officer (CEO), or equivalent, to certify annually that the member organization has in place processes to: (1) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory, and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with Exchange rules and federal securities laws and regulations.

Proposed Rule 9.8(g)(5) would further require that the CEO attest the CEO has conducted one or more meetings with the CCO in the preceding 12 months to discuss the compliance processes in proposed Rule 9.8(g)(5)(i), that the CEO has consulted with the CCO and other officers to the extent necessary to attest to the statements in the certification, and the compliance processes are evidenced in a report, reviewed by the CEO, CCO, and such other officers as the member organization deems necessary to make the certification, that is provided to the member organization's board of directors and audit committee (if such committee exists).[23]

Under proposed Rule 9.8(b)(2), a member, upon a customer's written instructions, may hold mail for a customer who will not be at his or her usual address for no longer than two months if the customer is on vacation or traveling, or three months if the customer is going abroad. This provision would help ensure that members that hold mail for customers who are away from their usual addresses, do so only pursuant to the customer's written instructions and for a specified, relatively short period of time.[24]

Proposed Rule 9.8(b)(3) would require that, before a customer options order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a qualified ROP may approve any changes in account names or designations. The ROP also must document the essential facts relied upon in approving the changes and maintain the record in a central location. A member would be required to preserve any account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4. The Exchange believes the proposed rule would help to protect account name and designation information from possible fraudulent activity.[25]

Rule 9.10(d) allows member organizations to exercise time and price discretion on orders for the purchase or sale of a definite number of options contracts in a specified security. The Exchange proposes to amend Rule 9.10(d) to limit the duration of this discretionary authority to the day it is granted, absent written authorization to the contrary. In addition, the proposed rule would require any exercise of time and price discretion to be reflected on the customer order ticket. The proposed one-day limitation would not apply to time and price discretion exercised for orders effected with or for an institutional account[26] pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. The Exchange believes that investors will receive greater protection by clarifying the time such discretionary orders remain pending.[27]

2. Statutory Basis

The proposed rule change would integrate the supervision and compliance functions relating to member organizations' public customer options activities into the overall supervisory structure of a member organization, thereby eliminating any uncertainty over where supervisory responsibility lies. The proposed rule change would also foster the strengthening of members' and member organizations' internal controls and supervisory systems. As such, the proposed rule changes are consistent with and further the objectives of

[20] Proposed Rules 9.8(d)(1)(i) and (ii) would provide members with two exceptions from the annual branch office inspection requirement: A member may demonstrate to the satisfaction of the Exchange that other arrangements may satisfy the Rule's requirements for a particular branch office, or based upon a member organization's written policies and procedures providing for a systematic risk-based surveillance system, the member organization submits a proposal to the Exchange and receives, in writing, an exemption from this requirement pursuant to Rule 9.8(e).

[21] Proposed Rules 9.8(e) and (f) are modeled after NYSE Rule 342.25 and 342.26.

[22] Rule 3.6A(b) would be revised to add Chief Compliance Officer as a new associated person status under Chapter 9 of Exchange Rules.

[23] Proposed Rule 9.8(g)(5) is modeled after NASD Rule 3013 and NYSE Rule 342.30(e).

[24] Proposed Rule 9.8(b)(2) is modeled after NASD Rule 3110(i).

[25] Proposed Rule 9.8(b)(3) is modeled after NASD Rule 3110(j).

[26] ''Institutional account'' would be defined in Rule 9.10(d) as ''the account of: (i) A bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (iii) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.''

[27] Proposed Rule 9.10(d) is modeled after NASD Rule 2510(d)(1).

Section 6(b)(5) of the Act,[28] in that they are designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest.

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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–106 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–2007–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–106 and should be submitted on or before October 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19079 Filed 9–26–07; 8:45 am]

BILLING CODE 8010–01–P

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56487; File No. SR–CBOE–2007–04]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Amending Its Obvious Error Rule for Equity Options

September 20, 2007.

I. Introduction

On February 21, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.25, Nullification and Adjustment of Equity Options Transactions, to revise its obvious error provision related to ''no bid series'' and to make a non-substantive change by adding a cross-reference within the text of Rule 6.25. On July 2, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 9, 2007.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 6.25 by modifying the nullification provisions for ''no bid series'' options.[4] Currently, Rule 6.25 provides that electronic transactions in series that are quoted no bid are subject to nullification if at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution. Under the proposed revision to Rule 6.25, electronic transactions in a series quoted no bid on the Exchange could be nullified if: (i) The bid in that series immediately preceding the execution was, and for five (5) seconds prior to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56190 (August 2, 2007), 72 FR 44892.

[4] The proposed rule change also would add a cross-reference to paragraph (a)(5) to the introductory language of Rule 6.25. According to the CBOE, this proposed change is non-substantive because the text of Rule 6.25(a)(5) currently provides that the provision is not applicable to trades executed in open outcry.

execution remained, zero; and (ii) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at the time of execution.

The proposed rule change would require that for purposes of the ''no bid series'' provision, bids and offers of the parties to the subject trade that are in any of the series in the same options class would not be considered. In addition, the proposed rule change would provide that each group of series in an options class with a non-standard deliverable would be treated as a separate options class. Finally, the proposed rule change would clarify that the ''no bid series'' provision is intended to apply to series quoted no bid on the Exchange (as opposed to series for which the national best bid is quoted no bid).[5]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b) of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] in that the proposal promotes just and equitable principles of trade, prevents fraudulent and manipulative acts, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures.

The Exchange represented that the proposed changes to the ''no bid series'' provision are intended to address the Exchange's experience in applying this provision to particular trading scenarios that have occurred. The Commission believes that the proposed rule change is designed to clarify the application of Rule 6.25 to ''no bid series'' options and thus is an appropriate modification of the Exchange's obvious error rule.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change(SR–CBOE–2007–04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19080 Filed 9–26–07; 8:45 am]

BILLING CODE 8010–01–P

[5] Consistent with the existing provisions, for a nullification to be granted, any member or person associated with a member that believes it participated in a transaction that falls within the ''no bid series'' parameters must also satisfy the notification procedures set forth in paragraph (b) of Rule 6.25.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56491; File No. SR–FINRA–2007–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Changes in the Functionality of the NASD/NYSE Trade Reporting Facility

September 21, 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 September 19, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially FINRA. FINRA has submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA proposes to amend its rules to reflect a change in the functionality of the NASD/NYSE Trade Reporting Facility (the ''NASD/NYSE TRF'')[6] to permit Participants to submit trades to the NASD/NYSE TRF for submission to the National Securities Clearing Corporation (''NSCC'') for clearance and settlement.

The text of the proposed rule change is available at *http://www.finra.org,* at the principal offices of FINRA, 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, FINRA 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. FINRA 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 NASD/NYSE TRF provides FINRA members with a mechanism for reporting locked-in trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act,[7] effected otherwise than on an exchange. NASD Rules 6130E(a) and 6140E currently provide that the NASD/NYSE TRF will not submit trades to clearing and, where appropriate, Participants must have a valid Qualified Service Representative (''QSR'') agreement with the NSCC or similar arrangement to

[5] FINRA has asked the Commission to waive the 30-day operative delay provided in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, Inc. Accordingly, the NASD/NYSE TRF is now doing business as the FINRA/NYSE TRF. The formal name change of each of FINRA's Trade Reporting Facilities (''TRFs'') is pending and, once completed, FINRA will file a separate proposed rule change to reflect those changes in the Manual.

[7] 17 CFR 242.600(b)(47).

clear trades submitted to the NASD/NYSE TRF.[8]

FINRA proposes to amend Rules 6130E(a) and 6140E to reflect a change in the functionality of the NASD/NYSE TRF to permit Participants to submit trades to the NASD/NYSE TRF for submission to the NSCC for clearance and settlement. Thus, locked-in trades (including locked-in trades reported as other than regular way settlement) will be accepted by the NASD/NYSE TRF, as they are today, and at the option of the Participant, clearing information for such trades will be submitted to the NSCC. In addition, FINRA proposes to amend Rules 4632E(e)(3)(B) and 6130E(f) to include references to ''clearing'' and ''clearing-only'' reports (in addition to non-clearing reports), where appropriate, and Rule 6160E to refer to trades that have been treated as locked-in ''and sent to DTCC.'' The amendments proposed herein are identical to the rules relating to the NASD/NSX TRF,[9] and are substantially similar to the rules relating to the NASD/Nasdaq TRF.[10]

The proposed rule change will provide members with another mechanism for clearing trades that they report to FINRA and will ensure consistency in the trade reporting rules relating to the TRFs, to the extent practicable.

FINRA has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay. FINRA proposes that the proposed rule change will be operative on September 19, 2007, by which date the NASD/NYSE TRF will have made the necessary systems changes to implement this proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will assist members in complying with their reporting obligations by providing another mechanism for members to clear trades reported to FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because FINRA has designated the foregoing proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), FINRA provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay because of the imminent closing of the NASD/BSE TRF, which is expected to occur on or before September 21, 2007. According to FINRA, a FINRA member that currently participates only in the NASD/BSE TRF seeks to report trades to the NASD/NYSE TRF after the NASD/BSE TRF closes. FINRA states that the member currently is performing systems testing with the NASD/NYSE TRF so that it can fully comply with its reporting obligations following the closing of the NASD/BSE TRF. The proposal would accommodate this (and any other) FINRA member that, for systems or business reasons, chooses to use the NASD/NYSE TRF as an alternative facility through which to report trades to FINRA, but that may also need a facility through which to clear those trades.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because, as noted above, the proposed rules are identical, or substantially similar, to the rules governing the NASD/NSX TRF and the NASD/Nasdaq TRF.[14] In addition, the proposal will provide an additional mechanism for members to submit trades to NSCC for clearance and settlement in light of the imminent closing of the NASD/BSE TRF.[15] For these reasons, the Commission designates the proposal to be operative on filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[8] *See also* Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (notice of filing and immediate effectiveness of SR–NASD–2007–011).

[9] *See* NASD Rules 4632C(d), 6130C(a), 6140C and 6160C. Rule 6130C(a) was recently amended by proposed rule change SR–FINRA–2007–003, which was filed for immediate effectiveness, but is not yet operative. *See* Securities Exchange Act Release No. 56321 (August 24, 2007), 72 FR 50425 (August 31, 2007).

[10] *See* Rules 4632(d), 6130(a), 6140 and 6160. The NASD/Nasdaq TRF offers trade comparison functionality, while the NASD/NYSE TRF and NASD/NSX TRF accept locked-in trades only. The pertinent rules reflect this difference in functionality.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* notes 9 and 10, *supra,* and accompanying text.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2007–015 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2007–015 and should be submitted on or before October 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19091 Filed 9–26–07; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56479; File No. SR–MSRB–2007–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendment to Rule A–3, on Membership on the Board

September 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 August 9, 2007, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB filed an amendment to the proposed rule change on September 17, 2007. The MSRB has filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of an amendment to Rule A–3, on membership on the Board, to permit a Board member to succeed him or herself in office for a second consecutive term. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB, 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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB 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 Board has been reviewing its Administrative Rules and by-laws to ensure that they are consistent with current good corporate governance practices. Rule A–3, on membership on the Board, currently provides, among other things, that no member of the Board may succeed himself or herself in office and no broker-dealer representative or bank representative may be succeeded by any person associated with the broker, dealer or municipal securities dealer with which the member was associated at the expiration of his or her term. The Board has determined to modify this provision in the rule (as well as in By-Law Article 3) to permit a sitting Board member to serve a second consecutive term, through the standard nomination and election process. The rule amendment does not establish a lifetime limit on the number of terms a person could serve but does limit a person to serving two terms in succession. Sitting and former Board members would be required to undertake the same nomination and election process applicable to new applicants for Board membership. The rule amendment also maintains the existing prohibition on having a representative of a dealer or bank immediately succeed the expiring term of another representative of the same dealer or bank, other than in the case of a sitting Board member succeeding him or herself.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(I) of the Act,[5] which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB believes that the proposed rule change is consistent with this provision because it is concerned solely with the operation and administration of the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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 since it only applies to the operation and administration of the MSRB.

[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)(3).

[5] 15 U.S.C. 78o–4(b)(2)(I).

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(3) thereunder [7] because it is concerned solely with the operation and administration of the MSRB. 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.[8]

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–MSRB–2007–02 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2007–02 and should be submitted on or before October 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19023 Filed 9–26–07; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on September 17, 2007, the date that the MSRB filed Amendment No. 1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56483; File No. SR–Phlx–2007–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change to Standardize Certain Options Rules for Equity, Index, and ETF Options

September 20, 2007.

On March 21, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] a proposed rule change to amend Phlx Rule 1014(c)(i)(A) relating to quote spread parameters (bid/ask differentials) and Phlx Rule 1014(g)(i)(B) relating to the purchase or sale priority for orders of 100 contracts or more, such that the rules would apply equally to options on equities, options on exchange-traded fund (''ETF'') shares, and index options. On July 25, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 21, 2007. [3] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change is consistent with section 6(b) of the Act, [4] in general, and with section 6(b)(5) of the Act, [5] in particular, because it serves to ease and clarify the application of the Exchange's rules relating to quote spread parameters and priority in purchase or sale for orders of 100 contracts or more. The Commission believes that it is reasonable to make no distinction among options on equities, ETFs, and indexes, with respect to the aforementioned rules, and that by applying them in the same manner to all such option types, the proposed rule change should help obviate confusion among customers and Exchange members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [6] that the proposed rule change (SR–Phlx–2007–27), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19022 Filed 9–26–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56249 (August 14, 2007), 72 FR 46697.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of extension of the deadline for public comment regarding retroactivity.

SUMMARY: The United States Sentencing Commission submitted a series of amendments to the federal sentencing guidelines to Congress on May 1, 2007. Notice of such amendments was published in the **Federal Register** on May 21, 2007 (72 FR 28558). On July 31, 2007, the Commission published a notice (72 FR 41794) requesting

comment regarding whether either Amendment 9, which pertains to offenses involving cocaine base (''crack''), or Amendment 12, which pertains to certain criminal history rules, should be included in subsection (c) of § 1B1.10 [Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)] as amendments that may be applied retroactively to previously sentenced defendants. The Commission further requested comment regarding whether, if it amends § 1B1.10(c) to include either amendment, it also should amend § 1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. 3582(c)(2).

The Commission is issuing this notice to advise the public that the period for public comment regarding retroactivity has been extended to November 1, 2007. The deadline was initially October 1, 2007.

The Commission plans to publish on its Web site, *http://www.ussc.gov*, data related to possible retroactivity that may assist interested parties in preparing their comment. This comment period is extended to ensure sufficient time for interested parties to consider any such data and to submit comment for Commission review and consideration.

DATES: Comment should be received not later than November 1, 2007.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that ''in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.'' The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors. The text of the amendments referenced in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.* In addition, data relating to possible retroactivity will be posted on the Commission's Web site.

The Commission issued a notice for public comment regarding retroactivity of Amendments 9 and 12 on July 31, 2007 (72 FR 41794). Comment was initially due to the Commission on October 1, 2007. The Commission hereby invites additional comment from any person or group who has interest in the issues surrounding the retroactivity of either the cocaine base or criminal history guideline amendment. Comment must be received by the Commission not later than November 1, 2007.

Authority: 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E7–19117 Filed 9–26–07; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF STATE

[Public Notice: 5947]

Title: 30-Day Notice of Proposed Information Collection: Voluntary Disclosures; OMB Control Number 1405–XXXX

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Voluntary Disclosures.
- *OMB Control Number:* 1405–XXXX.
- *Type of Request:* Existing Collection in Use Without an OMB Control Number.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* No Form.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 400.
- *Estimated Number of Responses:* 400.
- *Average Hours per Response:* 10 hours.
- *Total Estimated Burden:* 4,000 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from September 27, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget, who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: Katherine_T._Astrich@omb.eop.gov*. You must include the information collection title and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions)* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Patricia C. Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached on (202) 663–2700 and E-mail: *Slyghpc@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Section 127.12 of the International Traffic in Arms Regulations (ITAR) encourages the disclosure of information to the Directorate of Defense Trade Controls when there has been a violation of the Arms Export

Control Act (AECA), ITAR, order, license, or other authorization issued under the AECA. The violation is analyzed to determine the harm to the U.S. national security and foreign policy interests.

Methodology: Respondents may submit the information by letter using postal mail or a delivery service.

Dated: September 5, 2007.

Frank J. Ruggiero,

Acting Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. E7–19101 Filed 9–26–07; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 5910]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice of creation of Advisory Committee and call for applications for membership.

Creation of Advisory Committee: The Secretary of State announces the creation of the Advisory Committee on International Postal and Delivery Services in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Purpose: The purpose of the Advisory Committee shall be to serve the Department of State in an advisory capacity with respect to the formulation, coordination, and oversight of foreign policy related to international postal services and other international delivery services. The Committee will provide a forum for government employees, representatives of the industry sector and members of the public to present their advice and views directly to the Department of State.

Membership: The members of the Committee will be selected by the Department of State from U.S. Government agencies; associations that represent mailers, suppliers and private sector delivery companies; and stakeholders in international postal and delivery services. The Committee, which will have about 21 members, will meet as necessary, but not less frequently than once per year. The initial meetings of the Committee will be held in Washington, DC. Committee members will receive no compensation for their service on the Committee or reimbursement for expenses (for example, travel costs) related to their Committee membership. In accordance with the Federal Advisory Committee Act, the Committee shall be fairly balanced in its membership in terms of the points of view to be represented and the functions to be performed.

Addresses and deadline: Those wishing to be considered for membership should send a statement of interest and qualifications to the Department of State by one of the following methods:

- *E-mail: DelehantyDM@state.gov* and *WoodCS@state.gov.*
- *Fax:* (202) 647–8902.
- *Mail:* Mr. Dennis Delehanty, Foreign Affairs Officer, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, Department of State, 2201 C Street, NW., Room 5333, Washington, DC 20520–6319.

Statements should reach the Department of State on or before October 19, 2007.

For further information, please contact Dennis Delehanty, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–4197.

Dated: September 21, 2007.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. E7–19105 Filed 9–26–07; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 5946]

Culturally Significant Objects Imported for Exhibition Determinations: ''Antonio Mancini (1852–1930) and the Vance Jordan Collection''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Antonio Mancini (1852–1930) and the Vance Jordan Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, from on or about October 20, 2007, until on or about January 20, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 19, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–19102 Filed 9–26–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5945]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: EducationUSA Advising Services in Eurasia and Central Asia

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–08–06.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: January 1, 2008, to December 31, 2008.

Application Deadline: Tuesday, November 13, 2007.

Executive Summary: The Office of Global Educational Programs, Educational Information and Resources Branch, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for EducationUSA Advising Services in Eurasia (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia, and Ukraine) and Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan). The amount anticipated to support these services in Eurasia in FY 2008 is $530,000; the amount anticipated for Central Asia is $120,000.

Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to operate EducationUSA advising centers in Bureau-specified locations. These advising centers would

be a part of the network of approximately 470 Department of State-affiliated advising centers worldwide. Advising centers provide comprehensive and unbiased information to students, scholars, and other individuals about study opportunities in the U.S.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: EducationUSA advising centers provide accurate and impartial information and guidance about academic study in the U.S., including the following topics: All accredited U.S. colleges, universities, and other higher education institutions; accreditation of institutions of higher learning; the application process for U.S. institutions of higher learning; majors and fields of study; standardized tests required by institutions of higher learning; life on a U.S. campus; financial aid; and visa regulations. In addition, advising centers should offer pre-departure orientation programs for students preparing to start study programs in the U.S. Centers should also provide information on funded study opportunities sponsored by the U.S. Government and other institutions and organizations. Centers should maintain regular communication with the relevant Regional Educational Advising Coordinator (REAC) and local Public Affairs Section (PAS), in addition to the relevant Bureau Program Officer. Advisers will be eligible to apply for Bureau-sponsored professional development opportunities and training events. The Bureau will provide reference materials and equipment, and support adviser training opportunities, based on need as assessed by the relevant REAC.

Advising centers should operate according to the following basic principles:

(1) Services provided at no charge should include, at minimum, access to educational reference materials as appropriate and to an introductory group advising session;

(2) Centers must be open to all persons, regardless of academic affiliation, and without bias based on age, gender, socio-economic level, race, religion, or physical disability.

Educational advisers working in the centers should possess the following qualifications:

(1) A university degree in a relevant field;

(2) Advanced written and spoken English language skills;

(3) A strong knowledge of the U.S. higher education system.

Advising centers should conduct the following advising activities and services:

(1) *Opportunity Scholarships:* This program provides assistance to highly qualified, economically disadvantaged students with the initial costs of testing, application, travel, and other up front costs, to participate in degree programs in the United States. Proposals should explain how advising centers in countries that currently participate in this program—Belarus, Russia, and Ukraine in Eurasia; and Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan in Central Asia—will provide administrative support to the Bureau for implementation of the program. Advising centers should provide the following services:

(a) Provide nomination forms to students and appropriate assistance about how to complete the forms, if needed;

(b) Where appropriate, and in consultation with REAC and PAS, conduct outreach and advertisement about the program;

(c) Submit completed nomination forms to relevant REAC and PAS;

(d) As needed, assist PAS with notification of students about acceptance into the program;

(e) Help participating students to complete the next steps of seeking financial aid, registration for taking tests and other preparatory work;

(f) Complete and submit monthly reports summarizing the results of program implementation.

Note: Funding for individual scholarships is provided from a different Bureau source and not from funding for this award. The funding for individual scholarships is disbursed by Fulbright offices in Ukraine and Russia and by U.S. embassies in other countries. As a part of the total dollar request, applicant organizations may request up to $40,000 for the administration of this program in Eurasia and up to $10,000 for the administration of opportunity scholarships in Central Asia. The number of students to be supported in each country will be based on the review of applications received and on the effectiveness of program implementation at specific advising centers. However, for planning purposes, applicant organizations may assume that the number of students to be identified for support during the grant period will be approximately 90 in Eurasia (60 in Russia, 25 in Ukraine, and 5 in Belarus) and 18 in Central Asia (9 in Kyrgyzstan, 3 in Kazakhstan, 3 in Tajikistan, and 3 in Turkmenistan).

(2) *Outreach:* Proposals should include outreach activities and a detailed description of those activities. Examples of outreach may include organization and hosting of education fairs, presentations at local high schools and colleges, or projects that include cooperative work with American Corners, which are resource centers about the United States in locations throughout both regions. The Bureau's emphasis on diversity should be considered when making plans for outreach activities, with a focus on non-elite and economically disadvantaged groups and with reference, if appropriate, to the opportunity scholarships.

(3) *Statistics Maintenance:* Proposals should explain how applicant organizations will ensure that center staff will record advising center user statistics and enter them on a monthly basis into the EducationUSA database on the EducationUSA Web site. Advisers should also be responsive to requests for information from the relevant REAC, PAS, and the Bureau.

(4) *Coordination and Communication:* Proposals should explain how centers will coordinate with the relevant REAC, PAS, and one another when planning workshops, advising fairs, and other public events to ensure that visiting representatives of U.S. institutions can include participation in several events in their travel schedule.

II. Award Information

The Bureau plans to award one grant to support advising centers in the following countries of Eurasia: Armenia, Azerbaijan, Belarus, Georgia, Russia, and Ukraine. The Bureau also plans to one award to support advising centers in the following countries of Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan. Within these countries, proposals should indicate the locations where the applicant organization has the institutional capacity to host and support advising centers. For each

proposed location, proposals should include a rationale that reflects the potential demand for advising services in these locations as well as the Bureau's priority of including non-elite, under-served populations among the international students who study in the U.S. If an applicant requests funding to support centers in both regions, it must do so in two separate proposals. Proposals to support a larger number of advising centers are especially encouraged.

Type of Awards: cooperative agreement (ECA's level of involvement in this program is listed under number I above.)

Fiscal Year Funds: FY 2008, pending the availability of funds.

Approximate Total Funding: $650,000 (NTE $530,000 for Eurasia and $120,000 for Central Asia).

Approximate Number of Awards: Two.

Anticipated Award Date: Pending availability of funds, January 1, 2008.

Anticipated Project Completion Date: December 31, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew this grant for two additional fiscal years, before opening it to competition again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide as much cost sharing as possible in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, grant recipients must maintain written records to support all costs which are claimed as a cost shared contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, the Bureau's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

(a.) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Educational Information and Resources Branch, U.S. Department of State, 301 4th Street, SW., Room 349, Washington, DC 20547, telephone: 202–453–8883, fax: 202–453–8890, e-mail: *scotthc@state.gov*.

Please refer to the Funding Opportunity Number ECA/A/S/A–08–06 when making the request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

Please specify Bureau Program Officer Henry Scott and refer to the Funding Opportunity Number, ECA/A/S/A–08–06, on all inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative, and budget. Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

For applicants' information only, the Bureau of Educational and Cultural Affairs is placing a higher emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, 301 4th Street, SW., Room 734, Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: Sustainability, overall program management, staffing, coordination with ECA and PAS.

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should also provide complete sub-budgets for each advising center, including costs associated with implementation of Opportunity Initiative, where applicable.

IV.3e.2. Allowable costs include the following:

(1) Advising center staff salaries and benefits;

(2) Office supplies and expenses, including rent, communications, postage and shipping;

(3) Outreach, publicity, and special projects costs;

(4) Indirect costs.

Note: In the Budget Narrative, applicants should describe mechanisms for ensuring accountability and transparency in financial transactions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: Tuesday, November 13, 2007.

Funding Opportunity Number: ECA/A/S/A–08–06.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, or U.S. Postal Service Express Overnight Mail), or

(2) Electronically through *http://www.grants.gov.*

IV.3f.1. Submitting Printed Applications (Hard-Copy)

Applications must be shipped no later than the above deadline. Delivery

services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission, please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and seven copies of the application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–08–06, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the Funding Opportunity Number ECA/A/S/A–08–06 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire applications have been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards and cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation. Please see POGI for a description of each criterion.

1. Program planning/Ability to achieve program objectives.
2. Institution's capacity/record.
3. Cost effectiveness/cost sharing.
4. Multiplier effect/impact.
5. Support of diversity.
6. Project evaluation.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

(1) *http://www.whitehouse.gov/omb/grants.*

(2) *http://exchanges.state.gov/education/grantsdiv/terms.htm#*__article I.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

A final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3.) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements:

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Henry Scott, ECA/A/S/A, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8883, fax: 202–453–8890, e-mail: *scotthc@state.gov.* Include a reference to Funding Opportunity Number ECA/A/S/A–08–06.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 19, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–19104 Filed 9–26–07; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Meeting of the TVA Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Resource Stewardship Council (RRSC) will hold a meeting on October 11 and October 12 to obtain views and advice on the topic of the dry conditions in the Tennessee Valley and TVA's drought management plan.

The RRSC was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The TVA Regional Resource Stewardship Council will hear opinions and views of citizens by providing a public comment session. The public comment session will be held at 9:30 a.m. on Friday, October 12. Persons wishing to speak are requested to register at the door by 9 a.m. EDT on October 12 and will be called on during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, October 11, 2007, from 8:30 a.m. to 4:45 p.m. EDT and on Friday, October 12, 2007, from 8:30 a.m. to 12:30 a.m. EDT.

ADDRESSES: The meeting will be held in the Auditorium of the TVA Headquarters at 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Catherine Mackey, 400 West Summit Hill Drive, WT 11B, Knoxville, Tennessee 37902, (865) 632–4077.

Dated: September 20, 2007.

Peyton T. Hairston, Jr.,

Senior Vice President, Corporate Responsibility & Diversity, Tennessee Valley Authority.

[FR Doc. E7–19088 Filed 9–26–07; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–28041]

Notice of Availability for the Final Air Quality General Conformity Determination (Final GCD) for Proposed Operations of Lynx Aviation, Inc. at Denver International Airport, Denver, CO

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

ACTION: Notice of availability of the Final Air Quality General Conformity Determination.

SUMMARY: Pursuant to Section 176 (c) of the Clean Air Act Amendments of 1990, the FAA announces the availability of the Final General Conformity Determination for Proposed Operations of Lynx Aviation, Inc. (Lynx), at Denver International Airport (DEN). FAA has determined that emissions from Lynx's operations at DEN conform to the applicable Colorado State Implementation Plans (SIPs).

In accordance with the requirements of 40 CFR § 93.156(b), FAA made the Draft Air Quality General Conformity Determination (Draft GCD) for Proposed Operations of Lynx Aviation, Inc., at Denver International Airport, Denver, CO available for public review beginning on July 20, 2007. FAA published notice of the draft determination in the ''Rocky Mountain News,'' Denver, Colorado on July 20 and 21, 2007 and DEN made copies of the draft determination available at the airport. FAA published the Notice of Availability and Public Comment Period for the Draft General Conformity Determination in the **Federal Register** on July 20, 2007 (72 FR 39877).

FAA received one comment during the public comment period, which ended on August 20, 2007. The commenter stated that jet aviation activity results in excessive pollution and that there should be less aviation activity in general in the United States. The commenter did not provide comments specific to the Draft General Conformity Determination; therefore, a response to the comment is not necessary.

Consequently, the Final General Conformity Determination consists of the Draft General Conformity Determination, with two typographical corrections.

1. Page 1, first sentence in the first paragraph under Introduction was revised to read: ''Lynx Aviation, Inc. (Lynx Aviation) has announced its

interest in initiating scheduled service at Denver International Airport (DEN), now commencing in October 2007.''

2. Page 3, first sentence in the second paragraph under Aircraft and Supportng Equipment Emissions was revised to read: ''Under the Proposed Action alternative, Lynx Aviation intends to introduce service at DEN on October 1, 2007.''

Note: The above corrections do not impact the analysis or the results. FAA will also publish this Notice of Availability for the Final General Conformity Determination in the ''Rocky Mountain News,'' Denver, Colorado.

ADDRESSES: Interested parties may view hard copies of the Final GCD in Denver, CO, Monday through Friday, from 8 a.m. to 4 p.m. Mountain Time at Environmental Services Section, Department of Aviation, City and County of Denver, Elrey B. Jeppesen Terminal Building, Level 6, Room 6619–20, 8400 Peña Boulevard, Denver, CO 80249. Please contact Ms. Aimee Fenlon at 303–342–2636 for appointments.

To request mailed hard copies of the Final GCD, contact Mr. Dennis Harn, Operations Specialist, Safety Evaluation and Analysis Branch, ANM–240, FAA Northwest Mountain Region Headquarters, 1601 Lind Ave., SW., Suite 560, Renton, WA 98057; telephone: 425–227–2560; e-mail: *Dennis.Harn@faa.gov*; or Mr. Chuck Cox, Operations Specialist, Technical Standards Branch, ANM–230, FAA Northwest Mountain Region Headquarters, 1601 Lind Ave., SW., Suite 560, Renton, WA 98057; telephone: 425–227–2243; e-mail: *Chuck.Cox@faa.gov*.

The Final GCD is also available for review electronically on the Department of Transportation's Docket Management System (DMS) at *http://dms.dot.gov/*. Do a simple search for docket number 28041.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Harn, telephone: 425–227–2560; e-mail: *Dennis.Harn@faa.gov*; or Mr. Chuck Cox, telephone: 425–227–2243; e-mail: *Chuck.Cox@faa.gov*.

Issued in Washington, DC, on September 21, 2007.

Carol E. Giles,

Acting Director, Flight Standards Service.

[FR Doc. 07–4763 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Airworthiness Standards for Acceptance Under the Special Class Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests comments on proposed airworthiness standards for acceptance of the BA609 Tiltrotor under 14 CFR 21.17(b), designation of applicable regulations for special classes of aircraft for which airworthiness standards have not been issued.

DATES: Send your comments on or before January 25, 2008.

ADDRESSES: Send all comments to the FAA, Rotorcraft Directorate, Aircraft Certification Service, Rotorcraft Standards, Fort Worth, Texas 76193–0110. You may also send comments electronically to *9_ASW_ROTOR_SAFE@faa.gov.* The subject line should read ''Comment to BA609 Certification Basis.''

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Rotorcraft Standards Staff, ASW–111, 2601 Meacham Boulevard, Fort Worth, TX 76137, telephone (817) 222–5122, or by e-mail at *Sharon.Y.Miles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested parties to submit comments on the proposed airworthiness standards to the address specified above. The FAA will consider all communications received on or before the closing date. These are preliminary proposed airworthiness standards as certification evaluation is ongoing. As such, we also plan to issue a subsequent Notice, addressing the final proposed standards and any comments received in response to this advance Notice prior to issuing the final acceptance. Commenting on this advance Notice does not preclude commenting on the subsequent Notice.

Background

The ''special class'' category for aircraft was created specifically for non-conventional aircraft for which airworthiness standards have not been issued and provides a means for applicants to propose airworthiness standards for their particular special class aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the application proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

Accordingly, the applicant for the BA609 Tiltrotor has submitted a request to the FAA to include the applicable requirements of those airworthiness requirements contained in Title 14 of the Code of Federal Regulations, parts 23, 25, and 29 found by the Administrator to be appropriate for the BA609 Tiltrotor or such airworthiness criteria as the Administrator may find appropriate for this special class aircraft that provides an acceptable level of safety equivalent to the level of safety provided in the existing airworthiness standards. We have considered the applicant's proposal and have determined that those 14 CFR parts 23, 25, and 29 requirements and certain additional airworthiness standards should apply.

How To Obtain Copies

You may obtain a copy of the proposed airworthiness standards from the Internet at: *http://www.faa.gov/aircraft/draft_docs/.*

Issued in Fort Worth, Texas, on September 12, 2007.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E7–19053 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held October 18, 2007, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

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.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. **Note:** Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on *www.rtca.org* Web site.

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 FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 21, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–4762 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–29258]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 26, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2007–29258 by any of the following methods:

Web site: http://dms.dot.gov. Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted between September 28, 2007, and October 1, 2007.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Ferroni, 202–366–3233, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 6 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Noise Barriers Inventory Request.

Background: The Federal-aid highway program has always been based on a strong State-Federal partnership. At the core of that partnership is a philosophy of trust and flexibility, and a belief that the States are in the best position to make investment decisions that are based on the needs and priorities of their citizens. The FHWA noise regulations give each State highway agency flexibility in determining the reasonableness and feasibility of noise abatement and, thus, in balancing the benefits of noise abatement against the overall adverse social, economic, and environmental effects and costs of the noise abatement measures. The State highway agencies base their determination on the interest of the overall public good, keeping in mind all the elements of the highway program.

The flexibility in noise abatement decision-making is reflected by data indicating that not all States have built noise barriers. Through the end of 2004, 45 State Departments of Transportation (SDOT) and the Commonwealth of Puerto Rico have constructed over 2,205 linear miles of barriers at a cost of over $2.6 billion ($3.4 billion in 2004 dollars). Five States and the District of Columbia have not constructed noise barriers. Ten State highway agencies account for approximately 64 percent of total barrier length and 72 percent of total barrier cost. The previously distributed listing can be found at *http://www.fhwa.dot.gov/environment/noise/barrier/summary.htm.* This listing continues to be extremely useful in the management of the highway traffic noise program, in our technical assistance efforts for State highway agencies, and in responding to inquiries from congressional sources, Federal, State, and local agencies, and the general public. An updated listing of noise barriers will be distributed nationally for use in the highway traffic noise program. This collection request is for all noise barriers constructed by December 31, 2007. This would include all funding sources and material types. Although the collection concentrates on the 2005, 2006, and 2007 calendar years, a State highway agency may, after review of the ''Summary of Noise Barriers Constructed by December 31, 2004'' document, delete, modify or add information to any calendar year.

Respondents: Each of the 50 SDOTs, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Every 3 years.

Estimated Average Burden per Response: It is estimated that on average it would take 8 hours to respond to this request. The actual response time will be dependent on the number of noise barriers constructed, the availability of this information, and the collection method. For the SDOT that did not construct noise barriers within the time period, there is no burden.

Estimated Total Annual Burden Hours: It is estimated that the estimated total annual burden is 139 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: September 18, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–19127 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Wake County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, the Western Wake Freeway, which begins at NC 55 at Old Smithfield Road (SR 1172) between Apex and Holly Springs and ends at NC 55 near Alston Avenue north of Cary in Wake County. The Western Wake Freeway is also known as State Transportation Improvement Program Project R–2635. It is part of the Outer Wake Expressway, a circumferential freeway around Raleigh, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before March 25, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418, Telephone: (919) 856–4350 extension 104; e-mail: *george.hoops@fhwa.dot.gov*. FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority (NCTA), 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612, Telephone: (919) 571–3004; e-mail: *jennifer.harris@ncturnpike.org*. NCTA's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: The Western Wake Freeway, a 12.6-mile long, 6-lane, fully access-controlled, new location roadway that will be part of Raleigh's Outer Wake Expressway. The project is also known as State Transportation Improvement Program (STIP) Project R–2635. The project would run generally in a north-south direction, roughly parallel to and just west of the existing NC 55.

On the south, the project begins at NC 55 at Old Smithfield Road (SR 1172) between Apex and Holly Springs; on the north, it ends at NC 55 near Alston Avenue north of Cary in Wake County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on January 21, 2004, in the FHWA Record of Decision (ROD) issued on April 30, 2004 approving the Western Wake Freeway project, and in a Reevaluation Report for Administrative Action issued on September 7, 2007 (''Reevaluation Report''), determining that a supplemental environmental impact statement is not required, and in other documents in the FHWA administrative record. The FEIS, ROD, Reevaluation Report and other documents in the FHWA administrative record file are available by contacting the FHWA or NCTA at the addresses provided above. The FHWA FEIS, ROD, and Reevaluation Report can be viewed at the offices of the North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612.

This notice applies to all Federal agency actions and decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801, *et seq*.].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f), *et seq*.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287); Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O.13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: September 20, 2007.

George Hoops,

Major Projects Engineer, Raleigh, North Carolina.

[FR Doc. E7–19098 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–01–9561, FMCSA–03–15268, FMCSA–05–21711]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 24, 2007. Comments must be received on or before October 29, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Numbers FMCSA–01–9561, FMCSA–03–15268, FMCSA–05–21711, using any of the following methods.

- *DOT Web site: http://dmses.dot.gov.* Follow the on-line instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Each submission must include the Agency name and docket numbers for this Notice. Note that DOT posts all comments received without change to *http://dms.dot.gov,* including any personal information included. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 25 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are

Calvin D. Atwood
Gregory W. Babington
William P. Doolittle
Jonathan M. Gentry
John N. Guilford
Benny D. Hatton, Jr.
Robert W. Healey, Jr.
Nathaniel H. Herbert, Jr.
Thomas D. Lambert
Thomas W. Markham
Raul Martinez
Joseph L. Mast
David McKinney
Kevin L. Moody
Charles W. Mullenix
Gary S. Partridge
Nathan D. Peterson
John N. Poland
Brent L. Seaux
Steven R. Smith
James T. Smith
Edd J. Stabler, Jr.
Gary M. Wolff
John C. Young
George R. Zenor

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date

and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 41811; 68 FR 54775; 70 FR 53412; 68 FR 37197; 68 FR 48989; 70 FR 42615; 70 FR 48797; 70 FR 61493). Each of these 25 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 29, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 25 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 21, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–19108 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28695]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective September 27, 2007. The exemptions expire on September 28, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

Background

On August 17, 2007, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (72 FR 46261). That notice listed 19 applicants' case histories. The 19 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 19 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on September 17, 2007.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to

accommodate their vision limitation and demonstrated their ability to drive safely. The 19 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular scar, corneal scar, optic nerve injury, Stickler's syndrome, strabismus, parasitic disease and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but five of the applicants were either born with their vision impairments or have had them since childhood. The five individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 48 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 19 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 48 years. In the past 3 years, one of the drivers had a conviction for a traffic violation and one of them was involved in two crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 17, 2007 notice (72 FR 46261).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 19 applicants, one of the applicants had a traffic violation for speeding, and one applicant was involved in two crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to 19 of the applicants listed in the notice of August 17, 2007 (72 FR 46261).

We recognize that the vision of an applicant may change and affect his/her

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 19 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 19 exemption applications, FMCSA exempts Dean N. Brown, James F. Cain, Sr., David N. Cleveland, Matthew R. Floyd, Nicholas A. Gotelaere, Christian L. Gremillion, Valerie L. Kaune, Frank D. Konwinski, Jr., James E. Mallette, Richard K. Mell, Christian E. Merseth, Luis J. Najera, Kenneth D. Perkins, Terry W. Pope, Daniel T. Rhodes, Stephen E. Shields, Ricky J. Siebels, Don S. Williams, and Robert L. Williams, Jr. from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 21, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–19112 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18667; Notice 2]

Reports, Forms and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget (''OMB''). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval, relating to confidential business information.

DATES: Comments must be submitted on or before November 26, 2007.

ADDRESSES: You may submit comments [identified by DOT Docket Number NHTSA–2004–18667 by any of the following methods:

If filing comments by September 27, 2007, please use:

• Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the Department of Transportation Docket Management System electronic docket site. No electronic submissions will be accepted between September 28, 2007, and October 1, 2007.

If filing comments on or after October 1, 2007, use:

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

• Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001

• Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• Fax: 202–493–2251

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.dms.dot.gov* or *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* until September 27, 2007, or the street address listed above. The DOT docket may be offline at times between September 28 through September 30 to migrate to the Federal Docket Management System (FDMS). On October 1, 2007, the Internet access to the docket will be at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For questions contact Michael Kido in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366–5263.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following extension of clearance for a currently approved collection of information:

Confidential Business Information

Type of Request—Extension of clearance.

OMB Clearance Number—2127–0025.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Persons who submit information to the agency and seek to have the agency withhold some or all of that information from disclosure under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, must provide the agency with sufficient support that justifies the confidential treatment of that information. In addition, a request for confidential treatment must be accompanied by: (1) A complete copy of the submission; (2) a copy of the submission containing only those portions for which confidentiality is not sought with the confidential portions redacted; and (3) either a second complete copy of the submission or alternatively those portions of the submission that contain the information for which confidentiality is sought. Furthermore, the requestor must submit a completed certification as provided in 49 CFR Part 512, Appendix A. *See generally* 49 CFR Part 512 (NHTSA Confidential Business Information regulations).

Part 512 ensures that information submitted under a claim of confidentiality is properly evaluated in an efficient manner under prevailing legal standards and, where appropriate, accorded confidential treatment. To facilitate the evaluation process, in their requests for confidential treatment, submitters of information may make reference to certain limited classes of information that are presumptively treated as confidential, such as blueprints and engineering drawings, future specific model plans (under limited conditions), and future vehicle production or sales figures for specific models (under limited conditions). Certain other information that the agency collects pursuant to the Early Warning Reporting (EWR) rule (49 CFR Part 579) would, under a proposed rule, be treated confidentially under 49 CFR Part 512, Appendix C and submitters would not need to provide a request for confidential treatment for these classes of information.

Description of the Need for the Information and Use of the Information—NHTSA receives confidential information for use in its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The information is needed to ensure the agency has sufficient relevant information for decision-making in connection with these activities. Some of this information is submitted voluntarily, as in rulemaking, and some is submitted in response to compulsory information requests, as in investigations.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to entities that submit to the agency information that the entities wish to have withheld from disclosure under the FOIA. Thus, the collection of information applies to entities that are subject to laws administered by the agency or agency regulations and are under an obligation to provide information to the agency. It also includes entities that voluntarily submit information to the agency. Such entities would include manufacturers of motor vehicles and of motor vehicle equipment. Importers are considered to be manufacturers. It may also include other entities that are involved with motor vehicles or motor vehicle equipment but are not manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting from the Collection of Information—3600 hours.

The agency receives requests for confidential treatment that vary in size from requests that ask the agency to withhold as little as a portion of one page to multiple boxes of documents. NHTSA estimates that it will take on average approximately eight (8) hours for an entity to prepare a submission requesting confidential treatment. This estimate will vary based on the size of the submission, with smaller and voluntary submissions taking considerably less time to prepare. This estimate is based on the volume of requests received over the past three years and the expectation that we will receive requests for confidentiality of early warning information that would not be resolved by the rulemaking on the confidentiality of certain EWR data.

NHTSA estimates that it will receive approximately 450 requests for confidential treatment annually. This figure is based on the average number of requests received over the past three years. We selected this period because it provides an estimate based on incoming requests for the most recent three years and an estimate of the number of requests relating to EWR data. The agency estimates that the total burden for this information collection will be approximately 3600 hours, which is based on the number of requests (450) multiplied by the estimated number of hours to prepare each submission (8 hours).

Since nothing in the rule requires those persons who request confidential treatment pursuant to Part 512 to keep copies of any records or requests submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2007.

Anthony M. Cooke,

Chief Counsel.

[FR Doc. E7–19122 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2007–28692]

Final Decision That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final decision that certain nonconforming vehicles are eligible for importation.

SUMMARY: This document announces a final decision by the National Highway Traffic Safety Administration (NHTSA) that certain vehicles that do not comply with all applicable Federal motor vehicle safety standards, but that are certified by their original manufacturer as complying with all applicable

Canadian motor vehicle safety standards, are eligible for importation into the United States. The vehicles in question either (1) are substantially similar to vehicles that were certified by their manufacturers as complying with the U.S. safety standards and are capable of being readily altered to conform to those standards, or (2) have safety features that comply with, or are capable of being altered to comply with, all U.S. safety standards.

DATES: This decision is effective on September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided, either pursuant to a petition from the manufacturer or registered importer or on its own initiative, (1) that the nonconforming motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with all applicable FMVSS, and (2) that the nonconforming motor vehicle is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if NHTSA decides that its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

On August 14, 2007, NHTSA published a notice in the **Federal Register** at 72 FR 45488 announcing that it had made a tentative decision that certain motor vehicles that do not comply with all applicable FMVSS, but that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States. The notice identified these vehicles as:

(a) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 208, 213, 214, 225, and 401, and, insofar as it is applicable, with FMVSS No. 138;

(b) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, 225, and 401, and, insofar as it is applicable, with FMVSS No. 138;

(c) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, 225, and 401, and, insofar as it is applicable, with FMVSS No. 138;

(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;

(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; and

(f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225.

The reader is referred to the August 14 notice for a full discussion of the factors leading to the tentative decision. In accordance with 49 U.S.C. 30141(b), the notice solicited public comments on the tentative decision. No comments were submitted in response to the notice. Accordingly, we are adopting the tentative decision as a final decision.

NHTSA has required Canadian-certified multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less to be originally manufactured to comply with *FMVSS No. 202 Head Restraints* for those vehicles to be imported under past eligibility decisions. The tentative decision inadvertently omitted FMVSS No. 202 from the list of standards that multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008 must be originally manufactured to comply with to be eligible for importation. That standard has been restored to the list in this final decision.

In addition, the final decision identifies FMVSS No. 138 *Tire Pressure Monitoring Systems* as a standard that passenger cars manufactured on or after September 1, 2007 must be originally manufactured to comply with to be eligible for importation. The tentative decision stated that passenger cars would be required to comply with that standard ''insofar as it is applicable.'' The only such vehicles to which the standard would not apply are those ''with dual wheels on an axle.'' See paragraph S2 of the standard, at 49 CFR 571.138. Since NHTSA is not aware of any passenger cars that are manufactured with dual wheels on an axle, the agency has eliminated this conditional language in the final decision.

Final Decision

In consideration of the foregoing, the Administrator of NHTSA hereby decides that:

(a) All passenger cars manufactured on or after September 1, 2007, and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 208, 213, 214, 225, and 401;

(b) All passenger cars manufactured on or after September 1, 2008 and before September 1, 2011 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;

(c) All passenger cars manufactured on or after September 1, 2011 and before September 1, 2012 that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 138, 201, 202a, 206, 208, 213, 214, 225, and 401;

(d) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2007 and before September 1, 2008, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225;

(e) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2008 and before September 1, 2011, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225; and

(f) All multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 lb) or less manufactured on or after September 1, 2011 and before September 1, 2012, that, as originally manufactured, comply with FMVSS Nos. 110, 118, 126, 201, 202a, 206, 208, 213, 214, and 216, and insofar as they are applicable, with FMVSS Nos. 138 and 225,

that are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, are eligible for importation into the United States on the basis that either:

1. They are substantially similar to vehicles of the same make, model, and model year originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale therein, and certified as complying with all applicable FMVSS, and are capable of being readily altered to conform to all applicable FMVSS, or

2. They have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

Vehicle Eligibility Number

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. All passenger cars admissible under this decision are eligible for entry under vehicle eligibility number VSA–80, and all multipurpose passenger vehicles, trucks, and buses admissible under this decision are eligible for entry under vehicle eligibility number VSA–81.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on: September 24, 2007.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E7–19114 Filed 9–26–07; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 684X)]

CSX Transportation, Inc.—Abandonment Exemption—in Shelby County, TN

CSX Transportation, Inc. (CSXT), has filed a notice of exemption [1] under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 13.34-mile rail line on CSXT's Southern Region, Nashville Division, Memphis Terminal Subdivision, between milepost ONI 210.66 near Cordova and milepost ONI 224 in Memphis, known as the Cordova Branch, in Shelby County, TN.[2] The line traverses United States Postal Service Zip Codes 38016, 38018, 38111, 38112, 38117, 38120, 38122, and 38134.

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 Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (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 OFA has been received, this exemption will be effective on October 27, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 9, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 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, CSX Transportation, Inc., 500 Water St., J–150, Jacksonville, Florida 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed both an environmental report and a historic report that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 2, 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 September 7, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] In its verified notice of exemption, CSXT states that the consummation date is October 10, 2007. However, because CSXT sought withdrawal of its notice on August 23, 2007, and then requested reinstatement of the notice on September 7, 2007, the filing date is considered to be September 7, 2007. Based on this filing date, the earliest date the abandonment can be consummated is October 27, 2007 (the effective date of the exemption). CSXT has been notified concerning this correction of the consummation date.

[2] By petition for exemption filed on August 21, 2007, and reinstated on September 7, 2007, CSXT is seeking an exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. The merits of the petition will be addressed in a separate decision.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] 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: September 19, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–18827 Filed 9–24–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 254X)]

Union Pacific Railroad Company—Abandonment Exemption—in Riverside County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 0.31-mile line of railroad known as the Riverside Industrial Lead, extending from milepost 545.83 near Third Street to milepost 546.14 near Sixth Street, in Riverside County, CA. The line traverses United States Postal Service Zip Code 92507.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (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 October 27, 2007, unless stayed pending reconsideration.[1] 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 October 9, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Gabriel S. Meyer, Assistant General Attorney, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 2, 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), UP 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 UP's filing of a notice of consummation by September 27, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 19, 2007.

By the Board,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–18832 Filed 9–26–07; 8:45 am]

BILLING CODE 4915–01–P

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. UP initially indicated in its notice of exemption a proposed consummation date of October 26, 2007, but because the verified notice was filed on September 7, 2007, consummation may not take place prior to October 27, 2007. UP has been informed by a Board staff member that consummation may not take place until October 27, 2007.

[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).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 20, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–XXXX.

Type of Review: New.

Title: TAP Tax Check Waiver.

Description: Taxpayer Advocacy Panel (TAP) members must be compliant with their tax obligations and must undergo and pass a tax check in order to be selected as a TAP member. By executing the Tax Check Waiver, the applicant provides information to facilitate conduct of the tax check and authorizes the IRS official conducting the check to release the results, which are otherwise confidential, to the Director of TAP to help in determining the suitability of the applicant for membership on TAP.

Respondents: Individuals or households.

Estimated Total Burden Hours: 37 hours

OMB Number: 1545–XXXX.

Type of Review: New.

Title: RP–2007–XX (RP–155430–05), Accelerated Appeals Procedure.

Description: This revenue procedure establishes the Accelerated Appeals Procedure for taxpayers who are issued a proposed assessment of penalty under section 6707 of 6707A of the Internal Revenue Code. These taxpayers may request that the Office of Appeals review and consider resolution of the proposed assessment. The information to be collected under the revenue procedure is needed to initiate, and will be used to conduct, the Accelerated Appeals Procedure.

Respondents: Individuals or households.

Estimated Total Burden Hours: 430 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–19040 Filed 9–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Operating Subsidiary

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The OTS within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before November 26, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Operating Subsidiary.

OMB Number: 1550–0077.

Form Number: OTS Form 1579.

Description: OTS analyzes the information contained in the notice or application to determine if the savings association is in compliance with applicable statutes, regulations and policies. If the information were not collected, OTS would not be able to properly evaluate whether the proposed operating subsidiary, or proposed activity in an existing subsidiary, meets applicable statutory and regulatory requirements.

Type of Review: Extension without change of currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 68.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 14 hours.

Estimated Total Burden: 952 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: September 24, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–19143 Filed 9–26–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0130]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine the status of VA-guaranteed loans being foreclosed.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 26, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits

Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–2900–0130'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Status of Loan Account—Foreclosure or Other Liquidation, VA Form Letter 26–567.

OMB Control Number: 2900–0130.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 26–567 is used to obtain information from holders regarding the status of a VA-guaranteed loan account at the time of foreclosure or other liquidation action. VA uses the information to specify the amount, if any, to be bid at the foreclosure sale.

Affected Public: Business or other for profit.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: September 20, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–19006 Filed 9–26–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's who stood in relation of parents to a deceased veteran eligibility for death benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 26, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0059'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Person Claiming to Have Stood in Relation of a Parent, VA Form 21–524.

OMB Control Number: 2900–0059.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–524 is used to gather information from claimants seeking service-connected death benefits as persons who stood in the relationship of the natural parent of a deceased veteran. The information is used to determine the claimant's eligibility for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 2 hours.

Frequency of Response: One-time.

Estimated Number of Respondents: 400.

Dated: September 20, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–19010 Filed 9–26–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the

proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to apply for increased disability compensation based on unemployability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 26, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0404'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased disability compensation based on unemployability. Claimants are required to provide current medical, educational, and occupational history in order to determine whether he or she is unable to secure or follow a substantially gainful employment due to service-connected disabilities.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 24,000.

Dated: September 20, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–19018 Filed 9–26–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a child's eligibility for death pension once a surviving spouse remarries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 26, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0038'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Information from Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4103 is used to collect data necessary to determine whether a child or children of a deceased veteran who served during a wartime period are eligible to receive death pension benefits when the surviving spouse's entitlement to death pension is permanently discontinued when he or she remarries.

Affected Public: Individuals or households.

Estimated Annual Burden: 334 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: September 20, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E7–19021 Filed 9–26–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 27, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ceanothus ophiochilus (Vail Lake ceanothus) and Fremontodendron mexicanum (Mexican flannelbush); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU77

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 431 acres (ac) (175 hectares (ha)) of federally-owned land fall within the boundaries of the critical habitat designation for these two species. Approximately 203 ac (82 ha) of land in Riverside County, California, are being designated as critical habitat for *C. ophiochilus*, and approximately 228 ac (93 ha) of land in San Diego County, California, are being designated as critical habitat for *F. mexicanum*. Of the approximately 283 ac (115 ha) proposed for designation for *C. ophiochilus*, approximately 80 ac (33 ha) of privately-owned land covered by the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) have been excluded from critical habitat for *C. ophiochilus* under section 4(b)(2) of the Act. Of the approximately 361 ac (147 ha) proposed for designation for *F. mexicanum*, approximately 133 ac (54 ha) of privately-owned land covered by the San Diego Multiple Species Conservation Plan (MSCP) have been excluded from critical habitat for *F. mexicanum* under section 4(b)(2) of the Act.

DATES: This rule becomes effective on October 29, 2007.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760–431–9440). The final rule, economic analysis, and maps will also be available via the Internet at *http://www.fws.gov/carlsbad/*.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (see ADDRESSES); telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For more information on *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54956), or the proposed critical habitat rule published in the **Federal Register** on October 3, 2006 (71 FR 58340).

Species Descriptions and Life History

No new information pertaining to the descriptions or life histories of these species was received following the 2006 proposed designation of critical habitat for each species; therefore, please refer to the proposed critical habitat designation published in the **Federal Register** on October 3, 2006 (71 FR 58340) for a discussion of the species description and life history for these two species.

Ecology and Habitat

No new information pertaining to the ecology or habitat of these two species was received following the 2006 proposed designation of critical habitat for each species. Therefore, please refer to the proposed critical habitat designation published in the **Federal Register** on October 3, 2006 (71 FR 58340), for a discussion of the ecology and habitat for these two species.

Distribution

In 2007, an occurrence of *Fremontodendron mexicanum* was documented at the historical ''Woodwardia Canyon'' occurrence on Otay Mountain, which was last documented in 1936 (Snapp-Cook 2007, p. 1). Prior to the rediscovery of this occurrence, the exact location of ''Woodwardia Canyon'' was difficult to discern from existing records. There were no maps of ''Woodwardia Canyon'' and the California Natural Diversity Database (CNDDB) cited ''Woodwardia Canyon'' in two separate areas (CNDDB 2005, p. 1 and p. 3). The rediscovered occurrence is located on Otay Mountain 0.3 miles (mi) (0.5 kilometers (km)) to the southwest of the known occurrence of *F. mexicanum* in Little Cedar Canyon, and is not within the area designated as critical habitat. Approximately 500 *F. mexicanum* were documented at this rediscovered occurrence (Snapp-Cook 2007, p. 1). The significance of this occurrence and its impact on designated critical habitat will need to be further evaluated by the Service. Appropriate action, if any, will be addressed in a future rulemaking. For a detailed discussion of the distribution of *F. mexicanum* and *Ceanothus ophiochilus* documented prior to this final designation, please refer to the proposed critical habitat designation published in the **Federal Register** on October 3, 2006 (71 FR 58340).

Previous Federal Actions

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for these two species as well as three other plant species (*Center for Biological Diversity, et al.* v. *Gale Norton, Secretary of the Department of the Interior, et al.*, C–04–3240 JL, N. D. Cal.). In a Settlement Agreement dated December 21, 2004, we agreed to submit for publication in the **Federal Register** a proposed designation of critical habitat, if prudent and determinable, on or before September 20, 2006, and a final determination by September 20, 2007. As part of the 2006 proposed designation we determined that it was prudent to designate critical habitat for each of these two species. The combined proposed critical habitat designation for both species was signed on September 18, 2006, and published in the **Federal Register** on October 3, 2006 (71 FR 58340). This final rule completes the Service's obligations regarding these species under the December 21, 2004, settlement agreement.

A draft economic analysis (DEA) for the proposed designation was completed on March 2, 2007, and a notice of availability for this DEA was published in the **Federal Register** on April 5, 2007 (72 FR 16756). Publication of the notice of availability opened a public comment period for the draft economic analysis of the proposed designation as well as the proposed designation from April 5, 2007, to May 7, 2007. Please refer to the ''Previous Federal Actions'' section of the proposed critical habitat rule for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, which published in the **Federal Register** on October 3, 2006 (71 FR 58340) for a discussion of additional Federal actions

that occurred prior to the designation of critical habitat for each species.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* in the proposed rule that published on October 3, 2006 (71 FR 58340), and in the notice of availability of the DEA published on April 5, 2007 (72 FR 16756). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the DEA.

During the comment period that opened on October 3, 2006, and closed on December 4, 2006, we received three comments directly addressing the proposed critical habitat designation: Two from peer reviewers and one from the County of San Diego. We did not receive any requests for a public hearing during this first comment period. A second comment period opened on April 5, 2007, to allow for comment on the DEA and the proposed critical habitat. During the comment period that opened on April 5, 2007, and closed on May 7, 2007, we received seven comments directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, two were from peer reviewers, one was from a Federal agency, two were from local governments, one was from an organization, and one was from an individual.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from four of the peer reviewers. The peer reviewers generally concurred with our methods and conclusions and one peer reviewer commented that the information for *Fremontodendron mexicanum* was well researched and complete.

All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

1. *Comment:* One peer reviewer requested that we clarify the statement that *Ceanothus ophiochilus* is found on metavolcanic substrate. The peer reviewer indicated that the 1977 Jennings Geologic Maps do not indicate any metavolcanic substrate, only gabbro substrate in the vicinity of species occurrences.

Response: We reviewed the soils information for this species. Geological maps that are more recent than the 1977 Jennings Geologic Maps are available. These maps indicate that the area around Vail Lake and in the Agua Tibia Wilderness, where *Ceanothus ophiochilus* is found, consists of metavolcanic, metasedimentary, and Gabbro substrates (Kennedy *et al.* 2000, p. 1; and Kennedy and Mertz 2003, p. 1).

2. *Comment:* One peer reviewer stated that the *Ceanothus ophiochilus* population in Subunit 1A near Vail Lake is important to the preservation of the genetic purity of this species and should not be excluded from critical habitat because the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) does not adequately protect this population. The peer reviewer made the following points to the argument that this population is important and should be protected:

a. In the proposed rule we wrote that *Ceanothus ophiochilus* ''appears'' to hybridize with *C. crassifolius;* however, the peer reviewer commented that *C. ophiochilus* ''does'' hybridize with *C. crassifolius* and that there are several specimens deposited at the herbarium of Rancho Santa Ana Botanic Garden which document the hybridization of these two species.

b. The peer reviewer commented that both *Ceanothus ophiochilus* and *C. crassifolius* are members of the subgenus Cerastes. All members of this subgenus lack a burl and are obligate seeders. The peer reviewer states that because both of these species only regenerate from seeds following a fire and that the two species hybridize, the threat of hybridization is a threat to the survival of the species.

c. The peer reviewer commented that the occurrences near Vail Lake and the occurrences in the Agua Tibia wilderness are affected differently by hybrids because *Ceanothus crassifolius* grows immediately adjacent to the *C. ophiochilus* in the Agua Tibia Wilderness and these two species are separated by 0.25 mi (0.4 km) in Vail Lake.

d. The peer reviewer commented that due to soil disturbance from roads and fuel breaks within the populations of *Ceanothus ophiochilus* in the Agua Tibia Wilderness, hybrid plants are now more interspersed with the population. The greater amount of hybrid individuals may increase the relative likelihood of further introgressive hybridization within the new cohort of *C. ophiochilus.* This contrasts with the populations near Vail Lake where the natural distance to *C. crassifolius* populations is greater and there has not been disturbance within the population.

These factors lead to the conclusion that the population at Vail Lake has a much better chance of keeping the pure form of *C. ophiochilus* intact and lower the risk caused by hybridization.

Response: We agree with the peer reviewer's comments on the potential problems associated with hybridization, and we have made the appropriate changes to this final rule to clarify that hybridization is a threat to this species (please see the ''Primary Constituent Elements'' section for *Ceanothus ophiochilus*). However, we disagree with the peer reviewer's comment that Subunit 1A for *C. ophiochilus* should not be excluded from critical habitat because the Western Riverside County MSHCP does not adequately protect this population. The Western Riverside County MSHCP provides measures to benefit the conservation of *C. ophiochilus* by: protecting habitat from surface-disturbing activities; implementing specific management and monitoring practices to help ensure the conservation of *C. ophiochilus* in the MSHCP Conservation Area; maintaining the physical and ecological characteristics of occupied habitat; and conducting surveys and implementing other required procedures to ensure avoidance of impacts to at least 90 percent of suitable habitat areas determined important to the long-term conservation of *C. ophiochilus* within the Criteria Area. As discussed in the proposed critical habitat rule, the exclusion of critical habitat does not dismiss or lessen the value that the Vail Lake population has to the overall conservation of this species. Rather, we have determined that the benefits of excluding Subunit 1A are greater than the benefits of including the subunit, and the exclusion of Subunit 1A will not result in the extinction of the species (please see the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands —Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion).

3. *Comment:* A second peer reviewer commented that the hybridization between *Ceanothus ophiochilus* and *C. crassifolius* may result in the loss of homogeneous *C. ophiochilus* populations at some sites. This is especially true in those populations where the *C. crassifolius* significantly outnumbers *C. ophiochilus* or where the two species are in close contact. The

reviewer further commented that management plans need to take this potential problem into consideration.

Response: The information provided by this peer reviewer and the previous peer reviewer help to explain why hybridization threatens this species. We have made the appropriate changes to this final rule to clarify that hybridization is a threat to the species (please see ''Primary Constituent Elements'' section for *Ceanothus ophiochilus* and the ''Special Management Considerations or Protection'' section). We have based this critical habitat designation on the best scientific and commercial data available. Currently, we are unaware of any studies specifically addressing the extent to which these two species are hybridizing. We also do not have information on the reproductive characteristics of the hybrid plants in the wild. However, we agree that researching the issue of hybridization as it relates to *C. ophiochilus* will be important to the conservation of this species.

4. *Comment:* One peer reviewer stated that *Ceanothus ophiochilus* will not survive in the long term if intentionally exposed to fire-suppression. The peer reviewer stated that this species is unable to reproduce vegetatively and requires fire to prepare seeds for germination and provide an open, mineral-rich soil free from competition among seedlings. The peer reviewer commented that plans for managing critical habitat need to take this natural process into consideration.

Response: Designation of critical habitat does not necessarily require changes to existing management plans. However, we have incorporated this information as it relates to the potential impacts of fire-suppression into the ''Primary Constituent Elements'' section for *Ceanothus ophiochilus* of this final rule, so it will be considered in any relevant future section 7 consultations. We will also encourage parties to consider the effects of fire-suppression when developing management plans covering areas supporting essential habitat for *C. ophiochilus.*

5. *Comment:* One peer reviewer indicated that the seeds of *Fremontodendron decumbens* differ from the seeds of *F. mexicanum. Fremontodendron decumbens* seeds have an orange waxy protrusion called a caruncle. The caruncle attracts ants which in turn disperse the seeds. It has been reported that *F. mexicanum* does not have a caruncle. The peer reviewer commented that this should be verified through a formal study because the presence or absence of a caruncle has important implications in the regeneration ecology of seed dispersal in this species and, therefore, its continued persistence.

Response: As required under the Act, we have based this critical habitat designation on the best scientific and commercial data available. We agree that investigating the seed dispersal mechanism for *Fremontodendron mexicanum* and the relationship with ants or other possible dispersers is important. We encourage further study and will continue to investigate dispersal mechanisms as we work towards the conservation of the species.

Public Comments

6. *Comment:* The County of San Diego commented that private lands in subunits 1A and 1B occupied by *Fremontodendron mexicanum* are entirely within a designated preserve area that will be protected and managed under the San Diego MSCP. The County provided specific information on the monitoring and management activities that will benefit this species and requested that lands covered by the MSCP be excluded from the final designation under section 4(b)(2) of the Act.

Response: In the proposed rule, we requested comments on the appropriateness of excluding lands occupied by *Fremontodendron mexicanum* covered by the San Diego MSCP but did not propose these lands for exclusion. Based on comments we received during the public comment periods for the proposed rule, we have determined that even though *F. mexicanum* is not a covered species under the San Diego MSCP, private lands occupied by this species will be conserved under the San Diego MSCP through the Otay Ranch Phase 2 Resource Management Plan. The Otay Ranch Phase 2 Resource Management Plan includes specific protection measures that will benefit *F. mexicanum.* In addition, these private lands will receive management for associated species that are covered under the MSCP that is consistent with the biological needs of *F. mexicanum* and preservation of its primary constituent elements. Based on the benefits of preserving and fostering our partnerships with these local jurisdictions and other non-Federal entities, and after considering the conservation benefits provided by the Otay Ranch Phase 2 Resource Management Plan under the MSCP, we have now determined that the benefits of excluding these lands from critical habitat outweigh the benefits of including these lands, and we have, therefore, excluded 133 ac (54 ha) of private lands proposed as critical habitat for this species from this final designation under section 4(b)(2) of the Act (see the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for detailed discussion of the protections provided under the MSCP).

7. *Comment:* The County indicated that the location of subunit 1A is not consistently described in the proposed rule. The County stated the proposed rule indicates that subunit 1A for *Fremontodendron mexicanum* is entirely on BLM land, but the map indicates that the subunit contains BLM land and private land.

Response: The proposed rule (71 FR 58340, October 3, 2006) indicates that subunit 1A for *Fremontodendron mexicanum* consists of both BLM and private land in the unit description on page 58350 and in Table 1 on the same page.

8. *Comment:* One commenter requested that we discuss how the designation of critical habitat for *Ceanothus ophiochilus* may contribute to the fuel load and the fire hazard in the area around the designation. The commenter also requested that we identify range land plants species important to healthy rangelands that *C. ophiochilus* could overtake in its recovery after wildfire.

Response: Ceanothus ophiochilus is a relatively uncommon component of chaparral and occurs in very limited areas. We do not believe that the conservation of this species will increase the fire danger in areas where critical habitat is designated. Management for this species would favor a natural fire regime, on the order of once every 20 to 50 years (Keeley 2006, p. 367). *Ceanothus ophiochilus* is restricted to a limited soil type found in small patches on ridge-tops and north-facing slopes. This species is found in chaparral habitat and not areas that are historically range land. Following fire, *C. ophiochilus* repopulates limited areas in chaparral habitat and will not overtake rangelands.

9. *Comment:* One commenter stated that the critical habitat designation should include all lands occupied by these two species.

Response: Under section 3(5)(c) of the Act, critical habitat shall not include the entire geographical area which can be occupied by the species unless otherwise determined by the Secretary. The proposed designation of critical habitat for these two species included all of the areas known to be occupied by *Ceanothus ophiochilus* and

Fremontodendron mexicanum at the time of the proposed rule (71 FR 58340, October 3, 2006). After critical habitat was proposed for *Fremontodendron mexicanum*, approximately 500 *F. mexicanum* were documented at the location of an historical occurrence on Otay Mountain that was previously believed to be extirpated. This rediscovered occurrence is not within the area proposed as critical habitat. 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. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

10. *Comment:* One commenter stated that we should include critical habitat Subunit 1A for *Ceanothus ophiochilus* because the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) fails to provide special management to address altered fire regime and nonnative species.

Response: Under the Western Riverside County MSHCP, an adaptive management program will be used to meet the conservation goals and objectives for this species. The species account for *Ceanothus ophiochilus* in the MSHCP documentation acknowledges that altered fire regimes and nonnative invasive species threaten this species. The Western Riverside County MSHCP provides a mechanism to address special management considerations and protections for the population of *C. ophiochilus* and its primary constituent elements identified for conservation under the MSHCP in Subunit 1A. After considering all relevant factors, including the conservation measures provided by the MSHCP, we have determined that the benefits of excluding lands covered by the MSHCP from critical habitat outweigh the benefits of inclusion (see ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section for a detailed discussion of the MSHCP and further explanation of the bases for this conclusion).

11. *Comment:* One commenter stated that both the Western Riverside County MSHCP and U.S. Forest Service's (USFS) Land Management Plan (LMP) should be evaluated using the same standards when considering the exclusion of critical habitat Subunit 1A and 1B for *Ceanothus ophiochilus*.

Response: We did evaluate lands covered by the Western Riverside County MSHCP and the USFS's Land Management Plan for exclusion from the final designation using the same standards under section 4(b)(2) of the Act. In considering whether this plan provides adequate management or protection for the species for purposes of applying section 4(b)(2) of the Act, we evaluated the plan based on the following three criteria: (1) The plan is complete and provides the same or a higher level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act; (2) there is a reasonable expectation that the conservation management strategies and actions will be implemented based on past practices, written guidance, or regulations; and (3) the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology. As discussed in the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section, we believe that the Western Riverside County MSHCP fulfills these criteria, and we are excluding non-Federal lands covered by this plan that provide for the conservation of *Ceanothus ophiochilus* from the final designation of critical habitat pursuant to section 4(b)(2) of the Act. The USFS's Land Management Plan contains general provisions for conservation of this species, and additional guidance documents are available that suggest specific management and conservation actions that should be considered. However, the LMP does not identify specific management measures to address the threat posed by short-interval fires and by competing nonnative species (Zedler 1983, p. 815; Keeley 2006, p. 367; Merriam *et al.* 2007, p. vi, v, 48, 61). Therefore, after analyzing the LMP in light of the criteria identified above, we have determined that the LMP does not provide management for *C. ophiochilus* in a manner that provides the same or higher level of protection from adverse modification or destruction than that provided through a consultation under section 7(a)(2) of the Act. In addition, as discussed below in the ''Exclusions under Section 4(b)(2) of the Act'' section below, we have determined not to exclude these Federal lands from the final designation of critical habitat pursuant to section 4(b)(2) of the Act.

12. *Comment:* One commenter stated that both subunits 1A and 1B for *Fremontodendron mexicanum* need to be retained in the final designation of critical habitat, despite the overlap of *F. mexicanum* with other species that are included in the Multiple Habitat Preserve Area/Pre-approved Mitigation Area of the MSCP for the City and County of San Diego.

Response: Fremontodendron mexicanum is not covered by the San Diego MSCP; however, all of the known occurrences of this species occur within the preserve design for the MSCP (Pryor 2007, p. 1–2). When the private lands where *F. mexicanum* occurs are conveyed into the MSCP preserve, they will be subject to adaptive management activities, consistent with the MSCP. Protections, management, and monitoring are described in the draft Otay Ranch Phase 2 Resource Management Plan (Otay Ranch 2002, p. 141–144; Pryor 2007, p. 2). Therefore, we believe that private lands where this species and associated primary constituent elements are found will be managed in a way that will help to achieve the recovery of this species and have determined that the benefits of exclusion outweigh the benefits of inclusion as described in the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section.

13. *Comment:* One commenter stated that we should use the Primary Constituent Elements (PCEs) to model suitable habitat for these species and designate suitable unoccupied habitat for these species. The commenter stated that the Service should consider and evaluate the recovery benefits of critical habitat designation as part of our critical habitat designation.

Response: When determining habitat essential for the conservation of these species, we used a set of specific criteria for each species (see ''Criteria Used To Identify Critical Habitat'' below for more detail). Based on the resulting areas that were identified using these criteria, we made the determination that additional, unoccupied areas were not essential for the conservation of either species. We believe the current distribution of known, occupied locations of both species will provide for the conservation and contribute to the recovery of these species. Additionally, both of these species occur in very limited areas. These species are endemic to a very narrow range, and we have determined that the best conservation strategy for these two species is to conserve them in the locations where they currently are found. Accordingly, when the best available scientific data does not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing.

When proposing and finalizing critical habitat designations, the Service does consider the recovery benefits to species. The identification of those lands that are essential for the conservation of the species and can, if managed, provide for the recovery of a species, is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to identify the species' essential primary constituent elements and areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified features and lands. This process is valuable to land owners and managers in developing conservation management plans for identified lands, as well as any other occupied or unoccupied suitable habitat that may not have been included in the Service's determination of essential habitat.

14. *Comment:* One commenter requested that we evaluate how an exclusion under 4(b)(2) of the Act will affect the recovery of the species in addition to whether or not the exclusion will lead to the extinction of the species.

Response: We believe the designation of critical habitat promotes the recovery of species, and when proposing and finalizing critical habitat designations we do consider the recovery benefits to species. When considering an exclusion under section 4(b)(2) of the Act, the recovery benefits to the species from designating a particular area as critical habitat are fully considered when we determine whether the benefits of inclusion of such area are outweighed by the benefits of exclusion.

If we determine that the benefits of excluding a particular area from critical habitat outweigh the benefits of including such area, and have determined that excluding the area from the final critical habitat designation is appropriate, we then evaluate whether that exclusion would result in the extinction of the species and provide clear explanation for this determination. If we have been considering an exclusion that we determine will result in the extinction of a species, consistent with the statutory requirements of Section 4(b)(2), we will not exclude the area from the critical habitat designation. Please see the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion and our determinations that the exclusions in this final rule will not result in the extinction of *Ceanothus ophiochilus* or *Fremontodendron mexicanum*. Areas meeting the definition of critical habitat for both *C. ophiochilus* and *F. mexicanum* occur on private lands. The HCPs in Riverside County and San Diego County include these private lands and provide for the management and monitoring of these lands as they are conserved. These plans are believed to provide for long-term conservation of these lands that the designation of critical habitat would not provide (please see the ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section of this final rule for a detailed discussion).

15. *Comment:* One comment stated that the individual supports all of the past and on-going conservation efforts that have taken place for these two species; however, these conservation efforts are not a substitute for critical habitat. The person commented that critical habitat complements the conservation goals of habitat conservation plans and, by designating critical habitat, the Service assures that the Federal Government meets its legal obligation to ensure the continued existence and recovery for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*.

Response: The process of designating critical habitat does complement the existing habitat conservation plans (HCPs). The proposed rule identifies areas that meet the definition of critical habitat. These areas are then analyzed based on existing land-use planning documents, such as HCPs. Based on this analysis, areas may be excluded from the final designation of critical habitat, if the benefits of exclusion outweigh the benefits of including them in the critical habitat designation and the exclusions will not result in the extinction of the species. This exclusion analysis considers all benefits, including recovery benefits, and through the analysis the Service meets all legal requirements for designation of critical habitat.

16. *Comment:* One commenter expressed support for our exclusion of private lands within the Western Riverside County MSHCP; however, the commenter stated that all lands covered by the MSHCP, including the USFS lands, should be excluded from critical habitat. The commenter cited the Implementing Agreement for the MSHCP indicating the Service had agreed that ''in the event that a critical habitat determination is made for any covered species adequately conserved * * * lands within the boundaries of the MSHCP will not be designated as critical habitat (Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan, sec. 14.10 at p. 51).''

Response: In the Biological Opinion for the MSHCP, the Service concluded that the proposed conservation strategy would adequately conserve *Ceanothus ophiochilus* and its primary constituent elements (Service 2004, p. 402–406). We believe that the conservation mechanisms in place under the HCP will adequately conserve the populations and primary constituent elements on private lands. Further, the benefits analysis provided herein under section 4(b)(2) of the Act determined that the benefits of excluding the specific lands from critical habitat outweigh the benefits of including them in critical habitat (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details). Therefore, we have excluded private lands covered by the MSHCP. We appreciate the conservation work that the USFS is doing for *C. ophiochilus;* however, the USFS is not a signatory to the MSHCP permit and therefore is not bound by the requirements of the MSHCP. The phrase ''lands within the boundaries of the MSHCP,'' as used in the provision of the Implementing Agreement referenced by the commenter, refers to lands under the jurisdiction of the MSHCP permittees, and does not include federal lands that fall within the overall MSHCP boundaries. For the reasons stated in the above response to Comment 11, we have determined not to exclude the USFS lands.

Comments From Other Federal Agencies

17. *Comment:* The USFS commented that the proposed critical habitat contains the occurrences and habitat for *Ceanothus ophiochilus* on USFS land. They also highlighted that the proposed designation stated that the Cleveland National Forest (CNF) lands were proposed for designation because of impacts to ridge tops from grading associated with the creation of fuel breaks, impacts to the associated vegetation community from unnatural fire regimes, and nonnative species. While the USFS agreed that these threats could damage *C. ophiochilus* habitat, they indicated that their Land Management Plan (LMP) provides for the minimization and avoidance of impacts to endangered species. Specifically, they indicated that Standard 12 of their LMP states, ''When occupied or suitable habitat for threatened, endangered, proposed, candidate or sensitive species is present on an ongoing or proposed project site, consider species guidance documents to develop project-specific design criteria.''

Response: We acknowledge the efforts the USFS has made towards the conservation of the *Ceanothus ophiochilus* and acknowledge that the LMP contains general provisions for conservation of this species. However, in considering whether the plan provides adequate management or protection for the species for purposes of applying section 4(b)(2) of the Act, we evaluated the plan based on the following three criteria: (1) The plan is complete and provides the same or a higher level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act; (2) there is a reasonable expectation that the conservation management strategies and actions will be implemented based on past practices, written guidance, or regulations; and (3) the plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology. The LMP does not identify specific management measures to address the threat posed by short-interval fires and by competing nonnative species (Keeley 2006, p. 367; Merriam *et al.* 2007, p. vi, v, 48, 61). Because the USFS does not have a management plan specific to *C. ophiochilus* that provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7(a)(2) of the Act, we have determined that exclusion of these lands from the final designation of critical habitat pursuant to section 4(b)(2) of the Act is not appropriate for these Federal lands.

18. *Comment:* The USFS commented that like HCPs, the USFS LMPs are designed to ensure the long-term survival of covered species in the plan area and designed to protect, restore, and enhance the value of USFS lands as habitat for listed species. They indicated that their LMP provides comparable conservation measures for *Ceanothus ophiochilus* and its primary constituent elements as the Western Riverside County MSHCP, and therefore should be excluded from critical habitat under section 4(b)(2) of the Act.

Response: Based on a review of the USFS LMP, we do not believe that the LMP provides conservation measures for *Ceanothus ophiochilus* comparable to those provided in the Western Riverside County MSHCP. During the development of this final designation, we evaluated lands covered by the Western Riverside County MSHCP, the USFS's LMP, and other relevant conservation plans for exclusion using the same standards under section 4(b)(2) of the Act. Please see our response to Comment number 11.

19. *Comment:* The USFS commented that current laws, regulations, and policies, and land management practices on the CNF are adequate to provide for the conservation of *Ceanothus ophiochilus* and its habitat. They further state that designation of critical habitat on CNF lands would not provide any additional benefit to the conservation of *C. ophiochilus*, or its habitat, and that designation would unnecessarily add to their analysis burden by requiring the USFS to make a determination of effect regarding critical habitat when consulting under section 7(a)(2) of the Act.

Response: Although the comment letter from the USFS does not explicitly request that the lands proposed for designation be excluded from final critical habitat, based on their comments we did consider their lands for exclusion. We concluded that despite the LMP and other regulations that exist, which require the USFS to manage *Ceanothus ophiochilus* and its habitat, the benefits of including this area in critical habitat outweigh the benefits of excluding this area from the designation of critical habitat (please see the ''Unit Description'' section for detailed discussion on the exclusion of the USFS lands in this critical habitat determination).

Comments Related To the Draft Economic Analysis

20. *Comment:* One commenter stated that the DEA should consider potential economic impacts to all occupied and unoccupied but suitable habitat, rather than just the areas included in the draft rule.

Response: In a critical habitat designation, section 4(b)(2) of the Act requires that we consider the economic impact of specifying any particular area as critical habitat. Therefore, we prepare an economic analysis to identify the economic impact of designating areas proposed as critical habitat (including any areas proposed for exclusion under section 4(b)(2) of the Act). The economic analysis focuses on activities within or affecting these areas. Potential economic impacts to areas supporting occupied and suitable habitat that are outside the boundaries of proposed critical habitat are not relevant to the required analysis under section 4(b)(2) of the Act.

21. *Comment:* One commenter stated that the DEA overestimates costs associated with conserving both *Ceanothus ophiochilus* and *Fremontodendron mexicanum,* because it includes economic impacts attributable to listing under the Act. The comment further states that the DEA inaccurately attributes all of the costs to critical habitat designation and confuses the economic costs by including costs of conservation efforts for the species (not just critical habitat) with conservation of the proposed critical habitat.

Response: The economic analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (i.e., the cost estimates are fully co-extensive). In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Ass'n* v. *USFWS,* 248 F.3d 1277 (10th Cir. 2001)). The economic analysis for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is consistent with this direction from the U.S. 10th Circuit Court of Appeals. The analysis identifies those economic activities believed most likely to threaten the species and their habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. We acknowledge that some of these costs will likely be incurred regardless of whether critical habitat is designated. However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, the analysis considered all future conservation-related impacts to be coextensive with the designation. We have not excluded any areas from the final critical habitat designation based on economic impacts under section 4(b)(2) of the Act.

22. *Comment:* One comment states that the DEA fails to evaluate any benefits of conserving a species that is threatened by extinction. The comment further notes that in addition to the dollar value of both *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, there are many other values, destined to grow with our knowledge of the species in science, medicine, and aesthetics and in ways still unforeseen. The same commenter requests that at least some of these values be quantified and estimated in the final economic analysis.

Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact on national security, and any

other relevant impact, of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (e.g., lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the species and their habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance.

We note, as a practical matter, it is difficult to develop credible estimates of such values, as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. We lacked both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In summary, we believe that Congress has placed significant value on conserving any and all threatened and endangered species and the habitats upon which they depend, and the critical habitat designation process under section 4 of the Act incorporates these values. Thus, although we limit the scope of the economic analysis to economic impacts (both positive and negative), when we consider whether it is appropriate to exclude particular areas from critical habitat under section 4(b)(2) of the Act, we consider not just economic impacts, but all relevant impacts. In doing so, consistent with the value Congress has placed on species preservation, conservation benefits for the species at issue derived from the designation of critical habitat are afforded appropriate weight in the balancing analysis under section 4(b)(2).

23. *Comment:* One commenter requested that we identify the potential cost of loss of private property and habitat due to wildfires that may occur as a result of the designation of critical habitat.

Response: Ceanothus ophiochilus and *Fremontodendron mexicanum* are adapted to a natural fire regime with wildfire intervals of approximately 20 to 50 years. For example, *C. ophiochilus* reproduces after fire from seed. As a result, fire suppression activities can considerably limit the species' ability to reproduce because the seeds need fire to sprout. However, short-interval fires can also be detrimental to the species by preventing plants from reaching reproductive maturity and facilitating the establishment of non-native grasses that compete for limited space and resources. Federal agencies indicated that they would need to develop fire management plans for each species. Adoption of species-specific fire management plans, which are themselves subject to consultation pursuant to Section 7 of the Act, will allow Federal land managers to maintain the natural fire regimes required by each species. Fire management plans take neighboring properties into account such that application of prescribed burns or management of wildfires should occur in such a manner that would not increase the risk to surrounding properties and development. As such, we do not believe it is appropriate to evaluate the cost of the potential loss of private property due to wildfire as a part of this designation.

24. *Comment:* One commenter stated that the co-extensive costs projected in the draft economic analysis are unacceptable.

Response: In 2001, the U.S. 10th Circuit Court of Appeals instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (*New Mexico Cattle Growers Ass'n* v. *USFWS*, 248 F.3d 1277 (10th Cir. 2001)). The economic analysis for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is consistent with this direction from the U.S. 10th Circuit Court of Appeals. See response to comment 21.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, we reviewed and considered public and peer review comments on the proposed designation of critical habitat and the DEA. As a result of comments received on the proposed rule and the DEA, and a reevaluation of the proposed critical habitat boundaries, we made the changes identified below to our proposed designation.

In the proposed rule, we requested comments on the appropriateness of excluding lands occupied by *Fremontodendron mexicanum* covered by the San Diego MSCP but did not propose these lands for exclusion. Based on information we received during the public comment periods for the proposed rule, we have determined that even though *F. mexicanum* is not a covered species under the San Diego MSCP, private lands occupied by this species will be conserved under the San Diego MSCP through the Otay Ranch Phase 2 Resource Management Plan. The management provided by the MSCP for other covered species will also benefit the recovery of *F. mexicanum* (see ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section for further discussion). We reanalyzed the lands covered by the MSCP for exclusion and determined that the benefits of excluding these lands from critical habitat outweighs the benefits of including them in the designation. Therefore, we have excluded 133 ac (54 ha) of private lands proposed as critical habitat for this species from this final designation under section 4(b)(2) of the Act (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details).

Critical Habitat

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

procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 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 may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7(a)(2) of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures, nor does it apply to private actions for which there is no involved Federal action.

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

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Furthermore, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we cannot designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area currently occupied by the species but not occupied at the time of listing, will likely be essential to the conservation of the species and, therefore, may be included in the critical habitat designation.

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

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

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

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat within areas occupied by the species at time of listing, we consider those physical or biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and may require special management considerations or protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Ceanothus ophiochilus

The specific primary constituent elements required for *Ceanothus ophiochilus* are derived from the biological and physical needs of the species as described in the final listing rule (63 FR 54956, October 13, 1998), the proposed critical habitat rule (71 FR 58340, October 3, 2006), and information contained in this final rule.

Space for Growth and Reproduction

Ceanothus ophiochilus is restricted to ridgetops and north to northeast facing slopes in chamise chaparral (PCE 1). It occurs on soils formed from metavolcanic and ultra-basic parent materials or deeply weathered gabbro substrates, all of which are phosphorus deficient and thus considered to be nutrient-poor (PCE 2) (Boyd *et al.* 1991, pp. 31, 37–38; Kennedy *et al.* 2000, p. 1; and Kennedy and Mertz 2003, p. 1). These soils are similar to serpentine soils, which are well known for the high number of associated rare and endemic plants (Kruckeberg 1984, pp.3–5, p. 34). The high number of rare and endemic plants that grow on nutrient-poor soils, sometimes termed as harsh soils, is due to the difficulty that common plants have with growing in these conditions. In turn, when plants become established on such soils, they remain genetically isolated from close relatives that are not able to thrive on the nutrient-poor soils. In this way, these nutrient-poor soils may help the species maintain reproductive isolation (Boyd *et al.* 1991, p. 37–38). This is important because *C. ophiochilus* hybridizes with the locally

common *C. crassifolius* in places where the two species grow in close proximity (Boyd *et al.* 1991, p. 37–38). Hybrids are generally found on the margins of *C. ophiochilus* occurrences, where the soil changes from the harsh metavolcanic and gabbro soils that *C. ophiochilus* is typically found on to the milder sedimentary soils that support species such as *C. crassifolius* (Boyd *et al.* 1991, p. 37–38). Hybridization is a common natural phenomenon among the species of *Ceanothus* genus (Schmidt 1993, p. 935; Fross and Wilken 2006, pp. 131–149), and metavolcanic and gabbro soils are important for growth and reproduction of *C. ophiochilus*, as well as for space and separation from *C. crassifolius*, a species with which *C. ophiochilus* is known to hybridize.

Soils where *Ceanothus ophiochilus* is found in the Agua Tibia Wilderness are mapped as Ramona, Cienaba, and Vista series (USDA 1973, pp. 38–40, 70–71, 82–83), but appear to be Las Posas series based on field review and soil samples (USFS 1998a). Soils where *C. ophiochilus* is found at Vail Lake are mapped as Cajalco series (USDA 1971, p. 21).

Ceanothus ophiochilus is found in chamise chaparral or mixed chamise-ceanothus-manzanita chaparral at elevations of 2,000 feet (ft) to 3,000 ft (610 meters (m) to 914 m) (California Department of Fish and Game 2000; California Natural Diversity Database (CNDDB) 2005) with the following associated species: *Adenostoma fasciculatum, A. sparsifolium, Quercus berberidifolia, C. crassifolius, Arctostaphylos* spp. *Salvia clevelandii*, and *Eriodictyon crassifolium* (PCE 3) (Boyd and Banks 1995, p. 15). Within chaparral of southern Riverside County, these associated species are much more common than *C. ophiochilus*.

We have little information about the pollinators or reproductive biology of this species. This species is in the subgenus *Cerastes,* and, like all members of this subgenus, it is an obligate seeding species and does not have a burl (an underground mass from which the species can resprout following fire). Therefore, this species requires fire to establish new seedlings. However, if fire burns too frequently there is insufficient time for the plant to mature and establish a seed bank, placing populations at risk of extirpation (Keeley 2006, p. 367). The natural fire regime for the chaparral ecosystem is once every 20 to 50 years. Little information exists regarding the dispersal of this species.

Primary Constituent Elements for Ceanothus ophiochilus

Pursuant to the Act and its implementing regulations, we are required to identify the known physical or biological features (PCEs) within the geographical area occupied at the time of listing that are essential to the conservation of *Ceanothus ophiochilus*, which may require special management considerations or protection. All areas designated as critical habitat for *C. ophiochilus* are occupied, within the species' historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined the PCEs for *Ceanothus ophiochilus* are:

(1) Flat to gently sloping north to northeast facing ridge tops with slopes in the range of 0 to 40 percent slope that provide the appropriate solar exposure for seedling establishment and growth;

(2) Soils formed from metavolcanic and ultra-basic parent materials and deeply weathered gabbro or pyroxenite-rich outcrops that provide nutrients and space for growth and reproduction. Specifically in the areas that *Ceanothus ophiochilus* is found, the soils are:

(a) Ramona, Cienaba, Las Posas, and Vista series in the Agua Tibia Wilderness; and

(b) Cajalco series in the vicinity of Vail Lake; and

(3) Chamise chaparral or mixed chamise-ceanothus-arctostaphylos chaparral at elevations of 2,000 ft to 3,000 ft (610 m to 914 m) that provide the appropriate canopy cover and elevation requirements for growth and reproduction.

Fremontodendron mexicanum

The specific primary constituent elements required for *Fremontodendron mexicanum* are derived from the biological and physical needs of the species as described in the final listing rule (63 FR 54956, October 13, 1998), the proposed critical habitat (71 FR 58340, October 3, 2006), and information contained in this final rule.

Space for Growth and Reproduction

For its individual and population growth, *Fremontodendron mexicanum* needs alluvial terraces and benches adjacent to moderately sloped streams, creeks, and ephemeral drainages; stabilized northwest to northeast facing slopes associated with steep slopes (San Miguel-Exchequer soil complex has slopes in a range of 9 to 70 percent (USDA 1973, p. 76)) (PCE 1 and 2). *Fremontodendron mexicanum* occurs at elevations of 900 ft (274 m) to 3,000 ft (914 m) in the United States (63 FR 54956); however, in Mexico, *F. mexicanum* occurs at an elevation of approximately 30 ft (9 m). Erosion from the steep slopes on Otay Mountain provides soils that form benches along the streambeds in Cedar Canyon and Little Cedar Canyon where *F. mexicanum* grows. *Fremontodendron mexicanum* also occupies some areas on slopes adjacent to the streambeds (Snapp-Cook 2006). In addition to plants growing near the streambed, plants observed on slopes adjacent to the streambeds were between 10 and 500 ft (3 and 152 m) from the streambed. Although the role that the plants on sloped areas play in the dynamics of growth and reproduction for this species is unknown at this time, the high density of these plants suggests that they may play a significant role.

Fremontodendron mexicanum is found growing within open stands of *Cupressus forbesii* (Tecate cypress), which often form a closed-cone coniferous forest, or is interspersed with mixed chaparral and *Platanus racemosa* (sycamore) (PCE 3) (63 FR 54956, October 13, 1998). In addition to cypress and sycamore, *F. mexicanum* is frequently associated with *Dendromecon rigida* ssp. *rigida* (tree poppy) and *Malosma laurina* (laurel sumac) (Snapp-Cook 2006). The canyon slopes around *F. mexicanum* are generally vegetated with chaparral and coastal sage scrub species (63 FR 54956, October 13, 1998). The mix of chaparral and riparian species may provide adequate shade and ground cover to exclude nonnative species, preventing such species from competing with *F. mexicanum* (Snapp-Cook 2006).

Fremontodendron mexicanum is a facultative resprouter, meaning it is able to sprout from underground roots after a fire, flood, or other disturbance destroys the above-ground plant, and can also reproduce from seeds following a fire. This ability to repopulate an area using multiple strategies following a fire makes *F. mexicanum* more resilient to short-interval fire than obligate seeders (plants that can only reproduce from seed following a fire). For example an obligate seeder like Tecate cypress needs 6 to 30 years to produce sufficient numbers of seeds to reproduce following a fire, whereas, *F. mexicanum* has the ability to begin replacing its canopy with new basal sprouts relatively quickly following a fire (Keeley 1986). Other members of the *Fremontodendron* genus have a

structure on their seeds that attracts ants to disperse the seeds (Boyd 2001, p. 234; Keeley 1987, p. 443). This structure is a waxy orange protrusion growing at the base of each seed; it is called a ''caruncle'' or an ''elaiosome.'' No observations have been made that indicate the presence of a caruncle on *F. mexicanum;* however, this should be investigated to learn if any similarities exist between the various species of *Fremontodendron* that would provide information about how *F. mexicanum's* seed is dispersed. More research is needed into *F. mexicanum's* reproduction and the role that pollination and seed production play in its survival.

Hydrology and Soil Moisture Requirements for the Species

Fremontodendron mexicanum has been cultivated since its discovery in the early 1900s, and the data available from the cultivation reports state that this species does well in soils that are well drained (Bornstein *et al.* 2005). *Fremontodendron mexicanum* grows on terraces and alluvial benches that are maintained by a natural hydrological cycle, which erodes the surrounding metavolcanic soils on the slopes and deposits those soils in the stream beds. The natural hydrological cycle also maintains open and semi-open spaces where *F. mexicanum* can establish itself. The natural flows may also provide transportation of seeds down stream to establish and augment downstream occurrences.

Primary Constituent Elements for Fremontodendron mexicanum

Pursuant to the Act and its implementing regulations, we are required to identify the known physical and biological features (PCEs) within the geographical area occupied at the time of listing that are essential to the conservation of *Fremontodendron mexicanum,* which may require special management considerations or protections. All areas designated as critical habitat for *F. mexicanum* are occupied, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined the PCEs *for Fremontodendron mexicanum* are:

(1) Alluvial terraces, benches, and associated slopes within 500 ft (152 m) of streams, creeks, and ephemeral drainages where water flows primarily after peak seasonal rains with a gradient ranging from 3 to 7 percent; and stabilized northwest to northeast facing slopes associated with steep (9 to 70 percent) slopes that provide space for growth and reproduction.

(2) Silty loam soils derived from metavolcanic and metabasic bedrock, mapped as San Miguel-Exchequer Association soil series that provide nutrients and substrate with adequate drainage to support seedling establishment and growth.

(3) Open *Cupressus forbesii* and *Platanus racemosa* stands at elevations of 900 ft (274 m) to 3,000 ft (914 m) within a matrix of chaparral (such as *Dendromecon rigida* ssp. *rigida* and *Malosma laurina*) and riparian vegetation that provide adequate space for growth and reproduction.

The designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is designed for the conservation of PCEs necessary to support the life history functions of each species and the areas containing the PCEs for each species. Units are designated based on sufficient PCEs being present to support each species' life history functions. Each critical habitat unit contains all of the PCEs and supports multiple life processes for the species present in that unit.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing contain the primary constituent elements that may require special management considerations or protection.

As stated in the final listing rule, threats to *Ceanothus ophiochilus* include habitat destruction, alteration, fragmentation, and degradation from urban development, as well as hybridization and fire at too frequent intervals to allow for sufficient seed bank replenishment in the soil (63 FR 54956, October 13, 1998). Threats to *Fremontodendron mexicanum* as cited in the final listing rule include altered fire regimes, indirect impacts from nearby urbanization, and increased competition from nonnative species (63 FR 54965, October 13, 1998). These threats could impact the PCEs determined to be essential for conservation of *C. ophiochilus* and *F. mexicanum*.

Urban development near *Ceanothus ophiochilus* critical habitat units may alter the habitat characteristics required by the species. Land grading in and around occurrences of *C. ophiochilus* may affect the topography of the habitat and change the soil composition (PCEs 1 and 2) rendering the habitat unsuitable for species growth and reproduction. Urban development may also encourage invasion by nonnative plant species, changing the vegetation community and/or directly impacting the vegetation community (PCE 3). In addition, urban development near this species may increase the frequency of fire. All identified private land is covered by the Western Riverside County MSHCP (MSHCP), and those lands have been excluded from the final designation (see ''Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act'' section for a detailed discussion). No urban development is expected to directly impact the occurrences of *C. ophiochilus* on land owned by the USFS. Therefore, we do not believe threats from urban development would require special management considerations or protection of the PCEs on designated critical habitat for this species.

The management of both fire frequency and the placement of fuel breaks is important for the conservation of *Ceanothus ophiochilus,* and special management considerations or protection of the PCEs for *C. ophiochilus* may be required on USFS lands to address potential threats posed by fire management activities. In the past, fuel breaks have been placed on the ridgelines (PCE 1) in *C. ophiochilus* habitat and have caused soil disturbance (PCE 2). Studies of fuel breaks in the Cleveland National Forest near the critical habitat designation have demonstrated an increase in the density of competing nonnative species (Merriam *et al.* 2007, p. 48), and it has been hypothesized that fuel breaks promote the introduction and spread of nonnative plants (Merriam *et al.* 2007, p. vi). These nonnative invasive plants alter local fuel conditions and change fire behavior and frequency (Merriam *et al.* 2007, p. 61). *Ceanothus ophiochilus* is very sensitive to short-interval fires, which may extirpate the species from a site entirely (Keeley 2006, p. 367). Soil disturbance, caused by the creation of fuel breaks, has also led to increased hybridization between *Ceanothus ophiochilus* and *C. crassifolius*. However, the degree to which hybridization is impacting *C. ophiochilus* and its habitat is not yet known.

Fremontodendron mexicanum does not face direct threats from urban development; however, the PCEs for this species may require special management considerations or

protection to address the threat from nonnative species. Nonnative plant species such as *Tamarix* spp. (salt cedar) and *Cortaderia selloana* (Pampas grass) could reduce the amount of space available to *F. mexicanum* (PCE 1 and 2) and alter the vegetation community (PCE 3) if they become well established in either Cedar Canyon or Little Cedar Canyon. In addition, the PCEs for this species may require special management considerations or protection to address negative impacts related to fire fighting activities. Fire fighting activities may alter the alluvial terraces and benches that *F. mexicanum* grows on (PCE #1) if activities occur directly in the streambed adjacent to where *F. mexicanum* occurs. Special management may be needed to insure that fire fighting activities do not alter these areas or that measures are in place to restore damage to habitat after the activities occur. Likewise, future fuel breaks should be designed such that they do not create situations were extra run off is channeled into the canyons thus increasing the scouring that occurs in the creek bottoms and eroding the terraces and benches where *F. mexicanum* grows (PCE #1).

In our unit descriptions for this designation, we further describe the threats requiring special management considerations or protection for each subunit.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available in determining areas that contain the features essential to the conservation of *Ceanothus ophiochilus* or *Fremontodendron mexicanum*. Recovery of *Ceanothus ophiochilus* and *Fremontodendron mexicanum* will require conservation of all populations identified in the proposed critical habitat rule. Both these species are narrow endemics with few populations and all populations may be important for redundancy and resilience of these two narrow-ranging species.

To delineate the critical habitat for *Ceanothus ophiochilus*, we used the following criteria: (1) We identified all areas occupied by *C. ophiochilus* at the time of listing and/or currently occupied using the location data from Boyd and Banks (1995); (2) we created GIS (Geographic Information System) polygons, using these areas as guides, that included the occurrences and the ridge tops and north- and northeast-facing slopes immediately adjacent (within 500 ft (152 m)) to the occurrences of *C. ophiochilus*; and (3) we connected the polygons that were closer than 0.6 mi (1 km) to reduce fragmentation and ensure that the subunits captured populations and not individual occurrences.

To delineate the critical habitat for *Fremontodendron mexicanum*, we used the following criteria: (1) We identified all areas, except one (see below), occupied by native occurrences (we did not include occurrences known to be of cultivated origin) of *F. mexicanum* at the time of listing and/or currently occupied using current data in the California Natural Diversity Database (CNDDB) (2005) and data obtained from field surveys (Snapp–Cook 2006); (2) we created GIS polygons, using these areas as guides, that included the alluvial terraces and benches occupied by *F. mexicanum*, and the associated slopes within 500 ft (152 m) of the areas occupied by *F. mexicanum* to insure that adequate space was delineated to encompass all existing *F. mexicanum* identified in the CNDDB and in field surveys conducted prior to the publication of the proposed critical habitat (71 FR 58340, October 3, 2006); and (3) we connected the polygons that were closer than 0.5 mi (0.8 km) from one another with a 660 ft (201 m) wide corridor to allow for connectivity between known occurrences for the transfer of pollen and seeds and to allow for natural riparian process to occur. The recently rediscovered occurrence of *F. mexicanum* on Otay Mountain (Snapp–Cook 2007, p. 1) discussed above in the ''Distribution'' section was not included in the delineation because the Service was not aware of its existence at the time of the proposed critical habitat rule, and the significance of this rediscovered population and its impact on designated critical habitat will need to be further evaluated by the Service. Appropriate action, if any, will be addressed in a future rulemaking.

We analyzed all areas meeting the criteria used to identify critical habitat for both species to determine if any existing conservation or management plans exist that benefit either species and/or their respective PCEs. We determined that the Western Riverside County MSHCP benefits the conservation of *Ceanothus ophiochilus* and that the San Diego MSCP benefits the conservation of *Fremontodendron mexicanum*. We also determined that the benefits of excluding these areas outweighed the benefits of including these areas in the critical habitat designation. Therefore, approximately 213 ac (87 ha) of private lands occupied by these species covered by the MSHCP or MSCP have been excluded under section 4(b)(2) of the Act in this final designation (please see ''Exclusions under Section 4(b)(2) of the Act'' for a detailed discussion).

The MSHCP and MSCP documents were used as aids in determining areas that contain the features essential to the conservation of these two species. No areas outside the geographical area occupied at the time of listing by *Ceanothus ophiochilus* or *Fremontodendron mexicanum* were included in this final designation.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. 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 final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7(a)(2) consultations, unless they may affect the species or primary constituent elements in adjacent critical habitat.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical Habitat Designation

We are designating approximately 203 ac (82 ha) of federally-owned land as critical habitat for *Ceanothus ophiochilus* and approximately 228 ac (93 ha) of federally-owned land as critical habitat for *Fremontodendron mexicanum*. Table 1 provides the approximate area (ac/ha) determined to meet the definition of critical habitat for *C. ophiochilus* and *F. mexicanum*, the areas being excluded from final critical habitat designation under section 4(b)(2) of the Act (please see ''Exclusions under Section 4(b)(2) of the Act'' for a detailed discussion), and the areas being designated as critical habitat.

Areas proposed as critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, areas excluded from the final critical habitat designation under section 4(b)(2) of the Act, and areas designated as final critical habitat (acres (ac)/hectares (ha)) are shown in Table 1.

TABLE 1

Critical habitat unit	Land ownership	Proposed critical habitat (71 FR 58340)	Areas excluded under section 4(b)(2) of the Act	Final critical habitat
Ceanothus ophiochilus:				
1. Western Riverside County				
1A. Vail Lake	Private	76 ac (31 ha)	76 ac (31 ha)	0 ac (0 ha).
1B. Agua Tibia Mountains	USFS*	203 ac (82 ha)	0 ac (0 ha)	203 ac (82 ha).
	Private	4 ac (2 ha)	4 ac (2 ha)	0 ac (0 ha).
Total		283 ac (115 ha)	80 ac (33 ha)	203 ac (82 ha).
Fremontodendron mexicanum:				
1. Otay Mountain				
1A. Cedar Canyon	BLM*	145 ac (59 ha)	0 ac (0 ha)	145 ac (59 ha).
	Private	114 ac (46 ha)	114 ac (46 ha)	0 ac (0 ha).
1B. Little Cedar Canyon	BLM*	83 ac (34 ha)	0 ac (0 ha)	83 ac (34 ha).
	Private	19 ac (8 ha)	19 ac (8 ha)	0 ac (0 ha).
Total		361 ac (147 ha)	133 ac (54 ha)	228 ac (93 ha).

*USFS = U.S. Forest Service; BLM = Bureau of Land Management.

Below we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*.

Critical Habitat Designation for Ceanothus ophiochilus

We are designating 203 ac (82 ha) of land as critical habitat for *Ceanothus ophiochilus* within a single unit. In the proposed critical habitat, this unit was divided into two subunits: Subunits 1A (Vail Lake) and 1B (Agua Tibia Mountains). We excluded all of subunit 1A (76 ac (31 ha)) and a portion of subunit 1B (4 ac (2 ha)) under section 4(b)(2) of the Act from the final designation of critical habitat for *C. ophiochilus* (please see the ''Exclusions under Section 4(b)(2) of the Act'' section). Therefore, only the lands in subunit 1B designated as final critical habitat are discussed below.

Unit 1: Western Riverside County

Unit 1 is located near Vail Lake in southern Riverside County, California. The area was occupied at the time of listing and contains all of the primary constituent elements essential to the conservation of the species that may require special management considerations or protection for *Ceanothus ophiochilus*. Below, we present a brief description of subunit 1B, reasons why it meets the definition of critical habitat for *C. ophiochilus*, and our rationale for our final designation of critical habitat.

Subunit 1B, Agua Tibia Mountains, Riverside County, California

Subunit 1B (Agua Tibia Mountains) consists of 203 ac (82 ha) of land which is managed by the USFS. Subunit 1B contains two of the three CNDDB element occurrences (2 and 3) of *Ceanothus ophiochilus*, both known at the time of listing. The PCEs within this subunit may require special management considerations or protection to address the threats posed by short-interval fires, competing nonnative species, impacts to ridge tops (PCE 1) from grading associated with the creation of fuel breaks and impacts to the associated vegetation community (PCE 3) resulting from unnatural fire regimes. Subunit 1B is entirely within the Agua Tibia Wilderness of the Cleveland National Forest.

Recently the USFS completed the LMP for the Four Southern California National Forests. Implementation of the LMP was analyzed by the Service to address potential impacts to *Ceanothus ophiochilus*. This analysis found that impacts to *C. ophiochilus* would be minor or negligible upon implementation of appropriate minimization measures due to the low-impact nature of activities planned (e.g., dispersed recreation, non-motorized trails) (Service 2005 p. 129–132). However, the LMP does not identify specific management measures to address the threat posed by short-interval fires and by competing nonnative species (Keeley 2006, p. 367; Merriam *et al.* 2007, p. vi, v, 48, 61). Because the USFS does not have a management plan specific to *C. ophiochilus* that provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act, we have determined that exclusion of these lands from the final designation of critical habitat pursuant to section 4(b)(2) of the Act is not appropriate for these Federal lands (please see ''Exclusions under Section 4(b)(2) of the Act'' for a detailed discussion). Therefore, we are designating the USFS lands containing features essential to the conservation of *C. ophiochilus* as critical habitat for this species.

Critical Habitat Designation for Fremontodendron mexicanum

We are designating 228 ac (93 ha) of land as critical habitat for *Fremontodendron mexicanum* within one unit on Otay Mountain in southern San Diego County. This unit contains land managed by the Bureau of Land Management (BLM) within the Otay Mountain Wilderness Area (Otay Mountain Wilderness Act of 1999, Pub. L. 106–145, H.R. 15). This unit is further divided into two subunits. Subunit 1A (Cedar Canyon) and subunit 1B (Little Cedar Canyon) are each separate canyons on the northwest portion of Otay Mountain. All 133 ac (54 ha) of private land in Unit 1 proposed as critical habitat (71 FR 58340, October 3, 2006) have been excluded from this final designation under section 4(b)(2) of the Act (please see ''Exclusions under Section 4(b)(2) of the Act'' for a detailed discussion).

The critical habitat described below constitutes our best assessment of specific areas determined to be occupied at the time of listing, containing the primary constituent elements essential to the conservation of the species that may require special management considerations or protection for *Fremontodendron mexicanum*.

Below, we present brief descriptions of the critical habitat subunits, reasons why they meet the definition of critical habitat for *Fremontodendron mexicanum*, and our rationale for their designation as critical habitat.

Subunit 1A, Cedar Canyon, Otay Mountain, San Diego County, California

Subunit 1A, Cedar Canyon, consists of 145 ac (59 ha) of public land managed by the BLM. Subunit 1A contains CNDDB element occurrences 1, 13, and 16. Land in this subunit is entirely within the Cedar Canyon Area of Critical Environmental Concern (ACEC) and a Research Natural Area (RNA) (BLM 1994, pp. 1, 19, 22). The BLM has not yet developed a specific management plan that outlines how the species will be managed in the Cedar Canyon ACEC and RNA. This subunit was occupied at the time of listing and contains all of the features essential to the conservation of the species. In 1998, when *Fremontodendron mexicanum* was federally listed, less than 100 individual plants were documented from Cedar Canyon. This occurrence was thought to be the only location where *F. mexicanum* occurred naturally in the United States. Prior to the 2003 Otay fire, the canyon was dominated by *Cupressus forbesii* (Tecate cypress) and riparian vegetation. In late 2005 and early 2006 when this canyon was surveyed for *F. mexicanum* by Service biologists, over 1,000 plants were found (Snapp-Cook 2006). This increase in the number of plants may be a result of the 2003 Otay fire that burned Cedar Canyon as this species is a facultative resprouter (i.e., resprouts and produces seedlings after fire). The phenomenon of *F. mexicanum* resprouting following fire was also recorded following a 1979 fire in Cedar Canyon (CNDDB 2005 p. 1). The PCEs in this subunit may require special management considerations or protection to address negative impacts related to fire fighting activities (PCE 1) and negative impacts from the growth of nonnative species that may affect the space available for this species (PCE 1, 2, and 3).

Subunit 1B, Little Cedar Canyon, Otay Mountain, San Diego County, California

Subunit 1B, Little Cedar Canyon, consists of 83 ac (34 ha) of public land managed by the BLM. Little Cedar Canyon is located approximately 1.9 mi (3 km) to the west of Cedar Canyon. The land in this subunit is part of the Otay Mountain Wilderness Area. This site was not discovered until after the species was listed; however, we believe that it was occupied at the time of listing. Thirty-one healthy plants were documented in Little Cedar Canyon in the summer of 2006, and evidence of mature seed was detected (Martin 2006). Although this occurrence is small when compared to the more than 1,000 plants observed in Cedar Canyon in early 2006 (Snapp-Cook 2006), the Little Cedar Canyon occurrence will help to stabilize the existence of *F. mexicanum* in the United States and the discovery of *F. mexicanum* in Little Cedar Canyon almost doubles the amount of known occupied habitat for this species in the United States. The PCEs in this subunit may require special management considerations or protection to minimize impacts related to fire fighting activities and to the invasion of nonnative species that may affect the space available for this species (PCE 1, 2, and 3).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''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. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service 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, as any conservation recommendations in a conference report or opinion are strictly advisory. However, once a species proposed for listing becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any discretionary Federal action.

The primary utility of the conference procedures is to allow a Federal agency to maximize its opportunity to adequately consider species proposed for listing and proposed critical habitat and to avoid potential delays in implementing its proposed action, because of the section 7(a)(2) compliance process, if we list those species or designate critical habitat. We may conduct conferences either informally or formally. We typically use informal conferences as a means of providing advisory conservation recommendations to assist the agency in eliminating conflicts that the proposed action may cause. We typically use formal conferences when we or the Federal agency believes the proposed action is likely to jeopardize the continued existence of the species proposed for listing or adversely modify proposed critical habitat.

We generally provide the results of an informal conference in a conference report, while we provide the results of a formal conference in a conference opinion. We typically prepare conference opinions on proposed species or critical habitat in accordance with procedures contained at 50 CFR 402.14, as if the proposed species were already listed or the proposed critical habitat was already designated. We may adopt the conference opinion as the biological opinion when the species is listed or 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)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

• Can be implemented in a manner consistent with the intended purpose of the action,

• Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

• Are economically and technologically feasible, and

• Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Ceanothus ophiochilus* or *Fremontodendron mexicanum* and/or their respective designated critical habitat require consultation under section 7 of the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 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 Adverse Modification Standard for Actions Involving Effects To the Critical Habitat

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for *Ceanothus ophiochilus* or *Fremontodendron mexicanum.* Generally, the conservation role of *Ceanothus ophiochilus* or *Fremontodendron mexicanum* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and, therefore, should result in consultation for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* include, but are not limited to:

(1) Actions that would directly impact *Ceanothus ophiochilus* and *Fremontodendron mexicanum* habitat and their primary constituent elements. Such activities could include, but are not limited to, road grading, streambed clearing, the creation of fuel breaks, and grading near these occurrences. These activities could change the physical and biological features of the habitat by affecting the topography of the site; removing soil and associated species; burying the appropriate soil for these species, making it unavailable for species growth and/or reproduction; or encouraging invasion by nonnative plant species;

(2) Actions that would alter fire frequency in the areas occupied by *Ceanothus ophiochilus.* Such activities could include, but are not limited to, prescribed burns. These activities could alter the soil composition by increasing the nutrients in the soil; and

(3) Actions that would increase the presence of nonnative species. Such activities could include, but are not limited to, seeding areas with nonnative species following a fire and inadvertently introducing nonnative seed via machinery, vehicles, and field gear. These activities could reduce the ability of these two species to grow and produce seed because the nonnative species may crowd out or otherwise compete with *Ceanothus ophiochilus* and *Fremontodendron mexicanum.* An increased presence of nonnative species could also change the fire regime as mentioned above or could alter the soil composition.

We consider all of the units designated as critical habitat, as well as those that have been excluded, to contain features essential to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum.* All subunits are within the geographic range of each species, respectively, and were occupied at the time of listing. All of the subunits are currently occupied. Federal agencies already consult with us on activities in areas occupied by these species, or if either species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *C. ophiochilus* and *F. mexicanum.*

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If we consider excluding an area, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we have made. In addition, the Service has conducted an economic analysis of the impacts of the proposed critical habitat designation and related factors, which was made available for public review and comment on April 5, 2007 (72 FR 16756). Based on public comment which provided specific information about private lands being proposed for

designation for *Fremontodendron mexicanum,* areas in addition to those proposed for exclusion in the proposed critical habitat rule have been excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

Regulatory Benefits

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Prior to our designation of critical habitat, Federal agencies must consult with us on actions that may affect a listed species and must refrain from undertaking actions that are likely to jeopardize the continued existence of such species. Thus the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often also result in effects on the species. However, the regulatory standard is different; the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results, and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot,* we combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affected occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency). If there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure no degradation of those areas containing the physical and biological features essential to the conservation of the species or of those unoccupied areas that are essential to the conservation of the species. Critical habitat designation alone, however, does not require property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

We believe that in many instances the regulatory benefit of critical habitat is low when compared to voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

In providing the framework for the consultation process, the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Educational Benefits

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have had significant public input during their development, which may largely duplicate the educational benefit of a critical habitat designation. A second benefit of including lands in critical habitat is that the designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Recovery Benefits

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In identifying those lands, the Service must consider the recovery needs of the species, such that the habitat that is identified, if managed, could provide for the survival and recovery of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section

7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

It is beneficial to identify those areas that are necessary for the conservation of the species and that, if managed appropriately, would further recovery measures for the species. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to identify the physical or biological features essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute proactive actions over the lands they encompass to remove or reduce known threats to a species or its habitat and, therefore, in doing so, may implement recovery actions. We believe that the conservation benefits to a species and its habitat that could be achieved through the designation of critical habitat, in some cases, are less than the conservation benefits that could be achieved through the implementation of a management plan that includes species-specific provisions and considers enhancement or recovery of listed species as the management standard over the same lands. Consequently, implementation of any HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation.

The information provided in this section applies to all the following discussions that discuss the benefits of inclusion and exclusion of critical habitat.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners are essential to our understanding the status of species on non-Federal lands, and necessary for us to implement recovery actions such as reintroducing listed species and restoring and protecting habitat.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7(a)(2) consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of attracting endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives, because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002). We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus the benefits of excluding areas that are covered by effective partnerships or other conservation commitments can often be high.

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives

for listed species that are covered within the plan area. Many conservation plans also provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these conservation efforts and partnerships designed to proactively protect species to ensure that listing under the Act will not be necessary. Our experience in implementing the Act has found that designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to many entities which are either currently developing such plans, or contemplating doing so in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in developing plans targeting listed species' conservation.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. We have found that potential participants are not inclined to participate in such management plans when we designate critical habitat within the area that would be covered by such a management plan, thus having a negative effect on our ability to establish new partnerships to develop these plans; particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCPs and Natural Communities Conservation Plan (NCCP)–HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Areas Considered for Exclusion Under Section 4(b)(2) of the Act

After considering the following areas under section 4(b)(2) of the Act, we are excluding them from the critical habitat designation for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. We are excluding approximately 80 ac (33 ha) of non-Federal lands from the *C. ophiochilus* critical habitat designation in subunits 1A and 1B that are within the Western Riverside County MSHCP Plan Area, and all 133 ac (54 ha) of private land in Unit 1 from the designation of critical habitat for *F. mexicanum*. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs below.

Relationship of Critical Habitat to Habitat Conservation Plan Lands Exclusions Under Section 4(b)(2)—of the Act

When performing the required analysis under section 4(b)(2) of the Act, the existence of a management plan (HCPs as well as other types) that considers enhancement or recovery of listed species as its management standard is relevant to our weighing of the benefits of inclusion of a particular area in the critical habitat designation. We considered the following criteria when we evaluated the management and protection provided by the plans relevant to these critical habitat designations:

(1) The plan is complete and provides the same or a higher level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

As discussed in detail below, we believe that the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) fulfills these criteria with respect to the conservation of *Ceanothus ophiochilus*. In addition, although not yet complete, the Otay Ranch Phase 2 Resource Management Plan developed under the San Diego Multiple Species Conservation Plan (MSCP) substantially fulfills these criteria with respect to the conservation of *Fremontodendron mexicanum*.

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County MSHCP is a large-scale, multi-jurisdictional HCP that addresses 146 listed and unlisted ''Covered Species,'' including *Ceanothus ophiochilus*, within the 1,260,000 ac (510,000 ha) Plan Area in western Riverside County. Participants in the MSHCP include 14 cities in western Riverside County; the County of Riverside (including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department); California Department of Parks and Recreation; and the California Department of Transportation. The MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of Covered Species. On June 22, 2004, the Service issued a single incidental take permit pursuant to section 10(a)(1)(B) of the Act to 22 Permittees under the MSHCP for a period of 75 years. The Service granted the participating jurisdictions ''take authorization'' of listed species in exchange for their contribution to the assembly and management of the MSHCP Conservation Area, which the Service determined met the requirements for issuance of an incidental take permit under section 10 of the Act. Collectively, the MSHCP Conservation Area includes new reserve lands and additional Federal partner lands, totaling approximately 500,000 ac (202,343 ha).

The MSHCP will establish approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of

existing natural and open space areas (e.g., State Parks, USFS, and County Park lands known as Public/Quasi–Public (PQP) Lands) in forming the approximately 500,000–ac (202,343–ha) MSHCP Conservation Area. The precise configuration of the 153,000 ac (61,916 ha) of Additional Reserve Lands is not mapped or precisely identified in the MSHCP, but rather is based on textual descriptions within the bounds of a 310,000–ac (125,453–ha) Criteria Area that is interpreted as implementation of the MSHCP proceeds. For *Ceanothus ophiochilus,* critical habitat subunits 1A (Vail Lake) and 1B (Agua Tibia Wilderness) are located entirely within the MSHCP Plan Area on USFS and private lands.

The private lands within these subunits are within the Criteria Area and are targeted for inclusion within the MSHCP Conservation Area as Additional Reserve Lands. Specific conservation objectives in the MSHCP for *Ceanothus ophiochilus* provide for conservation and management of at least 13,290 ac (5,378 ha) of suitable chaparral habitat and at least three core locations of this species in the vicinity of Vail Lake and the Agua Tibia Wilderness. Additionally, the plan requires surveys for *C. ophiochilus* as part of the project review process for public and private projects where suitable habitat is present within a defined boundary of the Criteria Area (see Criteria Area Species Survey Area Map, Figure 6–2 of the MSHCP, Volume I). For locations with positive survey results, 90 percent of those portions of the property that provide long-term conservation value for the species will be avoided until it is demonstrated that the conservation objectives for the species are met. We are currently aware of only three populations of *C. ophiochilus* in the MSHCP Conservation Area. The MSHCP recognizes these same three populations. The goal of the MSHCP is to conserve a minimum of three populations of *C. ophiochilus.* Although the specific location of individual target areas for this species has yet to be identified, we recognize that no other populations of the plant have been identified and agree that conservation of three populations of this plant through the survey requirements, avoidance and minimization measures, and management for *C. ophiochilus* (and its PCEs) exceed any conservation value provided as a result of any regulatory protections that may be afforded through a critical habitat designation over the private lands within these subunits.

We are excluding approximately 80 ac (33 ha) of non-Federal lands from the *Ceanothus ophiochilus* critical habitat designation in subunits 1A and 1B that are within the MSHCP Plan Area under section 4(b)(2) of the Act. These non-Federal lands comprise private lands to the west of Vail Lake (approximately 76 ac (31 ha) in subunit 1A) and private lands adjacent to the northern boundary of the Cleveland National Forest east of Woodchuck Road (approximately 4 ac (2 ha) in subunit 1B).

The USFS lands within these subunits are considered PQP lands under the MSHCP and as such are included within the overall 500,000 ac (202,343 ha) MSHCP Conservation Area. While these Federal lands are managed by the USFS and are an integral part of the overall conservation strategy of the MSHCP, federal entities cannot be permittees under a section 10(a)(1)(B) permit, and the USFS is not bound by the terms of the MSHCP. In addition, the rationale provided below supporting the exclusion of the private lands within these subunits is not applicable to Federal lands. Therefore, we are not excluding USFS lands within subunit 1B based on the MSHCP.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the exclusion from the final designation of approximately 80 ac (33 ha) of critical habitat on non-Federal lands within the MSHCP Plan Area, and have determined that the benefits of excluding these non-Federal lands in subunits 1A and 1B outweigh the benefits of including these lands. The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP, and aid in fostering additional partnerships for the benefit of species on non-Federal lands.

The benefits of excluding these lands from critical habitat outweigh the minimal benefits of including these lands as critical habitat. The PCEs required by *Ceanothus ophiochilus* will benefit by the conservation measures outlined in the MSHCP. These conservation measures include protecting and managing the PCEs within the MSHCP Conservation Area by: Protecting habitat from surface-disturbing activities; implementing specific management and monitoring practices to help ensure the conservation of *C. ophiochilus* and its PCEs in the Plan Area; maintaining the physical and ecological characteristics of occupied habitat; and conducting surveys and implementing other required procedures to ensure avoidance of impacts to at least 90 percent of suitable habitat areas determined important to the long-term conservation of *C. ophiochilus* within the Criteria Area. The specific area identified as Subunit 1A and the private lands identified within Subunit 1B are subject to the requirements of the MSHCP. The benefits from the required specific conservation actions, survey requirements, avoidance and minimization measures, and management for *C. ophiochilus* and its PCEs exceed any conservation value provided as a result of any regulatory protections that may be afforded through a critical habitat designation. As such, the regulatory benefits of including the 80 ac (33 ha) of private land within the MSHCP plan area are minimal.

The educational benefits of critical habitat derived through informing the public of areas important for the long-term conservation of this species would also be minimal because these educational benefits have been and continue to be accomplished through materials provided on our Web site at *http://www.fws.gov/carlsbad/.* Further, many educational benefits of critical habitat designation have already been achieved through the overall designation process and notice and public comment, and will occur whether or not these particular subunits are designated.

In addition, the recovery benefits associated with designation, identified above in the ''Recovery Benefits'' section, have already been achieved through the public review process of the proposed critical habitat rule. Designation of critical habitat does not require that management or recovery actions take place on the lands included in the designation. Preserving and supporting the partnerships that we have developed with the local jurisdictions and project proponents in the implementation the Western Riverside County MSHCP will provide a greater benefit to the species, as it ensures both preservation and management of lands we have determined essential for the conservation of this species.

Exclusion Will Not Result in Extinction of the Species

We conclude that the exclusion of 80 ac (33 ha) from the final designation of critical habitat for *Ceanothus ophiochilus* will not result in the extinction of the species because the Western Riverside County MSHCP provides for the conservation of this species and its PCEs on all known occupied areas within the county and may also conserve newly discovered

occurrences. Importantly, as we stated in our biological opinion, while some loss of modeled habitat for *C. ophiochilus* is anticipated due to implementation of the MSHCP, we concluded that implementation of the plan will not jeopardize the continued existence of this species.

The jeopardy standard of section 7 and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The exclusion of critical habitat leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Application of Section 4(b)(2) to Lands Within Otay Ranch Which Are Within County of San Diego Subarea Plan Under the Multiple Species Conservation Plan

All private lands proposed for designation of *Fremontodendron mexicanum* are within the area covered by the ''Otay Ranch Phase 2 Resource Management Plan (Otay Ranch 2002, p. 260).'' This plan provides for the phased conservation and development of lands in southern San Diego County. Lands covered by this plan were originally owned by a single owner. Following the development of the Plan the land was divided into sections and sold to separate owners. The development and associated conservation of these lands is currently taking place in a phased approach. A large portion of land is proposed for conservation purposes, but this land is not actually conserved until the associated development on the section occurs. The land that we proposed for designation is part of the eastern section of Otay Ranch and because it is the furthest from existing development it will be one of the last phases completed.

The conservation associated with the development of Otay Ranch conserves both state and federally-listed species as well as sensitive species that do not receive any legal protection under the Act. The partnerships that the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and County of San Diego (as well as many other entities) have formed with the private landowners and other stakeholders through the work to conserve the sensitive biological resources on Otay Ranch while at the same time allowing for both residential and commercial development of the land have taken a long time to cultivate. These lands are essential to the long-term conservation of several species in southern San Diego County, including *Fremontodendron mexicanum.*

In its current state, the land excluded from the designation of critical habitat is not being managed under the Otay Ranch Phase 2 Resource Management Plan; however, ongoing measures are in place that protect the primary constituent elements for *Fremontodendron mexicanum.* The excluded area is fenced and has locked gates at access points. This measure excludes any unauthorized off-road vehicle activity from the area. The excluded area is also entirely within the area zoned by the County of San Diego as open space. This places restrictions on any development that would be permitted in this area.

Other areas within the Otay Ranch have been conserved as expected and we believe a reasonable certainty exists that this area will be conserved as planned. One of our partners involved with the conservation of these lands, the County of San Diego, provided significant comments on the future management that will occur on these lands (Pryor 2007, p. 2). *Fremontodendron mexicanum* will benefit from adaptive management activities that occur within the Otay Ranch Preserve. The draft Otay Ranch Phase 2 Resource Management Plan (Otay Ranch 2002, p. 52, 53, 141, 144) describes the following monitoring and management activities, which will benefit *F. mexicanum* within the Otay Ranch Preserve:

a. Focused surveys and population estimates specifically for *F. mexicanum* (Otay Ranch 2002, p. 141, 144);

b. Maintenance of existing, high-quality resources through the prevention of disturbance, including controlling access to the preserve, prohibiting off-road traffic, enforcing no trespassing rules, and curtailing activities that degrade resources such as grazing, shooting, and illegal dumping (Otay Ranch 2002, p. 52);

c. Monitoring of resources to identify changes in the quality and quantity of sensitive resources and habitat (Otay Ranch 2002, p. 52);

d. Implementation and monitoring of restoration activities as appropriate (Otay Ranch 2002, p. 53);

e. Trail maintenance (Otay Ranch 2002, p. 53); and

f. Removal and control of exotic species including nonnative plants and cowbirds (Otay Ranch 2002, p. 53).

As discussed below, we have excluded all private lands within the Otay Ranch from the final critical habitat designation within Unit 1 for *Fremontodendron mexicanum* under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of including these lands.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the current conservation measures in place on the private lands within Otay Ranch proposed for designation of critical habitat for *Fremontodendron mexicanum* and the future conservation measures as described in the ''Otay Ranch Phase 2 Resource Management Plan (Otay Ranch 2002. pp. 260).'' We have determined that these conservation measures provide direct and indirect benefits for *F. mexicanum* (see discussion above). We also believe that the partnerships that we have developed with the landowners and other stakeholders have made this conservation possible. We believe that the designation of critical habitat could have a detrimental effect on these important partnerships and similar future partnerships.

We have worked with several different stakeholders to achieve high amounts of conservation on Otay Ranch. This large piece of land provides habitat for many sensitive species, many that do not receive any legal protection under the Act, and the conservation of this habitat has been essential to the success of the large scale habitat conservation planning efforts taking place in southern San Diego County. Partnerships to conserve private land take years to foster and it is necessary to build trust between the Federal government and private land owners. A large part of this trust comes from each partner following through with its commitments. In this case, the owners of Otay Ranch have agreed to set aside specific lands for conservation. In return they will be allowed to develop other areas of their private land. The area that we proposed for designation as critical habitat is entirely within the area which is proposed for conservation in the land-use planning for Otay Ranch; however, we do not want to impose an additional regulatory burden that could unnecessarily interfere with these important partnerships. The conservation of this area is already supported by the open space zoning on this area under the County of San Diego. As other phases of the Otay Ranch project have been developed some minor changes have occurred with the open space designations and conservation easements, but for the most part large areas that would have otherwise been developed have been conserved and now contribute to the overall conservation envisioned under the MSCP and Otay Ranch Specific

Plan. We have received comments from potential participants expressing their concern over areas included in the designation of critical habitat that overlap areas covered by management plans. These potential participants have suggested that they are not inclined to participate in such management plans, thus having a negative impact on our ability to establish new partnerships. The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the land owners of Otay Ranch and the County of San Diego and promote the conservation of *Fremontodendron mexicanum* on these private lands.

In comparison, the regulatory benefits of including these lands in critical habitat are minimal. Based on the existing land-use restrictions and the future conservation and management of these lands under the Otay Ranch Phase 2 Resource Management Plan, we do not anticipate Federal activities occurring on these private lands that could appreciably reduce the conservation value of this habitat for *F. mexicanum*. In addition, the educational and overall recovery benefits of critical habitat designation have largely already been accomplished in the rulemaking process through informing the public of areas important for the long-term conservation of *Fremontodendron mexicanum*. Such benefits can continue to be achieved through the publication of materials regarding this species provided on our Web site.

Therefore, we have determined that the benefits of excluding the identified 133 ac (54 ha) of private land from the critical habitat designation outweigh the benefits of including these lands in critical habitat.

Exclusion Will Not Result in Extinction of the Species

Exclusion of these 133 ac (54 ha) of non-Federal lands from the final designation of critical habitat will not result in the extinction of *Fremontodendron mexicanum* because these lands will be permanently conserved and managed in a manner that clearly benefits this species.

The jeopardy standard of section 7 and routine implementation of habitat protection through the section 7 process also provide assurances that the species will not go extinct. Although *F. mexicanum* is not a covered species under the MSCP, *F. mexicanum* was evaluated in the biological opinion for the MSCP, and we found that implementation of the plan would not jeopardize this species (Service 1998). The exclusion of critical habitat leaves these protections unchanged from those that would exist if these areas were designated as critical habitat.

Economics

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if it is determined that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on April 5, 2007 (72 FR 16756). We accepted comments on the draft analysis until May 7, 2007. A final analysis of the potential economic effects of the proposed designation was then developed taking into consideration the public comments and any new information.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. The information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis estimates the foreseeable potential economic impacts of the proposed critical habitat designation and other conservation-related actions for these species on government agencies and private businesses and individuals. The economic analysis identifies potential costs will be $385,000 to $659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $325,000 to $559,000 ($22,000 to $38,000 annualized) at a 3 percent discount rate, or $272,000 to $471,000 ($26,000 to $44,000 annualized) at a 7 percent discount rate.

The economic analysis considers the potential economic effects of actions relating to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of 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 *C. ophiochilus* and *F. mexicanum* in areas containing features essential to the conservation of the species. 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 (such as lost economic opportunities associated with restrictions on land use).

The 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 *Ceanothus ophiochilus* and *Fremontodendron mexicanum* were listed as endangered and threatened, respectively (October 13, 1998; 63 FR 54956), and considers those costs that may occur in the 20 years following a designation of critical habitat. After consideration of the impacts under section 4(b)(2) of the Act, we have not excluded any areas from the final critical habitat designation based on the identified economic impacts.

A copy of the final economic analysis with supporting documents are included in our administrative file and may be obtained by contacting the Carlsbad Fish and Wildlife Office, Branch of Endangered Species (see **ADDRESSES**) or by downloading from the Internet at *http://www.fws.gov/carlsbad/.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule in that it may raise novel legal and policy issues. On the basis of our economic analyses of the critical habitat for these species, we have determined that the final designations of critical habitat for each species will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. The economic analysis identifies potential costs will be $385,000 to $659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $325,000 to $559,000 ($22,000 to $38,000 annualized) at a 3 percent discount rate, or $272,000 to $471,000 ($26,000 to $44,000 annualized) at a 7 percent discount rate. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it in determining whether to exclude any area from critical habitat, as provided for under section 4(b)(2). If we determine that the benefits of excluding a particular area outweigh the benefits of specifying such area as part of the critical habitat, we may exclude the area unless we determine, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Ceanothus ophiochilus* and *Fremontodendron mexicanum.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The draft economic analysis analyzed the possible impacts to small entities in the following categories: Development, fire management on Federal lands, alien plant species management on Federal lands, and other activities on Federal lands. The economic analysis concluded that conservation activities would not affect small entities in the above categories (Service 2007, Appendix A, p. A–1). There are two private land owners in Riverside County that may need to undertake fire management activities and/or management of alien plant species. The economic cost of fire management was estimated at $3,000 to $4,000 per year and the economic cost of alien plant species management was estimated at $1,000 to $2,000 per year. It is unclear if these private landowners qualify as small businesses.

In general, two different mechanisms in section 7(a)(2) consultations could lead to additional regulatory requirements for approximately four small businesses, on average, that may be required to consult with us regarding their project's impact on *Ceanothus ophiochilus* and *Fremontodendron mexicanum* and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the

Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a plant species or adversely modify its critical habitat, we may identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7(a)(2) consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Land management activities, like fire suppression, grazing, mining, and recreation authorized by the USFS and BLM;

(2) Restoration activities designed to mitigate or repair the effects of fire suppression; and

(3) Activities related to road use and maintenance authorized or conducted by USFS, BLM and the Department of Homeland Security.

The most likely Federal involvement could include projects that require permits to conduct activities on USFS or BLM land. It is likely that a developer or other project proponent could modify a project or take measures to protect *Ceanothus ophiochilus* and *Fremontodendron mexicanum*. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats they face, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. Federal involvement, and thus section 7(a)(2) consultations, would be limited to a subset of the area designated. Currently, we are unaware of any small businesses that use the areas designated as critical habitat for economic purposes. Therefore, based on the above reasoning and the currently available information, we certify that the rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is not expected to significantly affect energy supplies, distribution, or use because there are no existing energy projects within the area designated as critical habitat for either of these two species. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for this rule in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child

Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

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 the Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. Only federal lands are being designated as critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*; therefore, the designation is unlikely to impact 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(a)(2) 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 are designating critical habitat in accordance with the provisions of section 4 of the Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et. seq.)

It is our position that, outside the jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that were occupied at the time of listing and that contain the features essential for the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, and no Tribal lands that are unoccupied areas essential for the conservation of the species. Therefore, critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is staff 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.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for ''*Ceanothus ophiochilus*'' and the entry for ''*Fremontodendron mexicanum*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Ceanothus ophiochilus	Vail Lake ceanothus	U.S.A. (CA)	Rhamnaceae	T	648	17.96(a)	NA
*	*	*	*	*	*		*
Fremontodendron mexicanum	Mexican flannelbush	U.S.A. (CA), Mexico	Sterculiaceae	E	648	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.96(a) as follows:
■ a. By adding an entry for *Ceanothus ophiochilus* (Vail Lake ceanothus) in alphabetical order under family Rhamnaceae;
■ b. By adding Family Sterculiaceae in alphabetical order by family name; and
■ c. By adding an entry for *Fremontodendron mexicanum* (Mexican flannelbush) under Family Sterculiaceae.

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Rhamnaceae: *Ceanothus ophiochilus* (Vail Lake ceanothus).

(1) Critical habitat units are depicted for Riverside County, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for *Ceanothus ophiochilus* are the habitat components that provide:

(i) Flat to gently sloping north to northeast facing ridge tops with slopes in the range of 0 to 40 percent slope that provide the appropriate solar exposure for seedling establishment and growth.

(ii) Soils formed from metavolcanic and ultra-basic parent materials and deeply weathered gabbro or pyroxenite-rich outcrops that provide nutrients and space for growth and reproduction. Specifically in the areas that *Ceanothus ophiochilus* is found, the soils are:

(A) Ramona, Cienaba, Las Posas, and Vista series in the Agua Tibia Wilderness; and

(B) Cajalco series in the vicinity of Vail Lake.

(iii) Chamise chaparral or mixed chamise-ceanothus-arctostaphylos chaparral at elevations of 2,000 feet to 3,000 feet (610 meters to 914 meters) that provide the appropriate canopy cover and elevation requirements for growth and reproduction.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a base of USGS 1:24,0000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Unit 1.

(i) Subunit 1B for *Ceanothus ophiochilus,* Agua Tibia Subunit, Riverside County, California. From USGS 1:24,000 quadrangles Pechanga and Vail Lake, lands bounded by the following UTM NAD27 coordinates (E,N): 499902,3701154; 499909, 3701222; 499950, 3701238; 500022, 3701235; 500060, 3701218; 500091, 3701184; 500127, 3701138; 500158, 3701092; 500191, 3701048; 500226, 3701010; 500247, 3700998; 500262, 3700990; 500273, 3700981; 500294, 3700965; 500326, 3700909; 500351, 3700872; 500353, 3700869; 500362, 3700855; 500375, 3700824; 500398, 3700735; 500400, 3700646; 500370, 3700546; 500308, 3700359; 500293, 3700272; 500173, 3700102; 500057, 3699889; 500008, 3699730; 499990, 3699595; 499988, 3699460; 500022, 3699376; 500045, 3699326; 500113, 3699213; 500179, 3699040; 500199, 3698902; 500173, 3698801; 500010, 3698618; 499966, 3698566; 499920, 3698544; 499823, 3698518; 499757, 3698516; 499704, 3698537; 499671, 3698570; 499655, 3698612; 499671, 3698670; 499783, 3698843; 499834, 3698968; 499840, 3699020; 499840, 3699090; 499819, 3699185; 499755, 3699338; 499731, 3699474; 499757, 3699750; 499838, 3699993; 499974, 3700214; 500037, 3700349; 500055, 3700453; 500063, 3700594; 500033, 3700813; 499984, 3700976; 499924, 3701105; thence returning to 499902, 3701154.

(ii) Map of Unit 1, subunit 1B (Map 1) follows:

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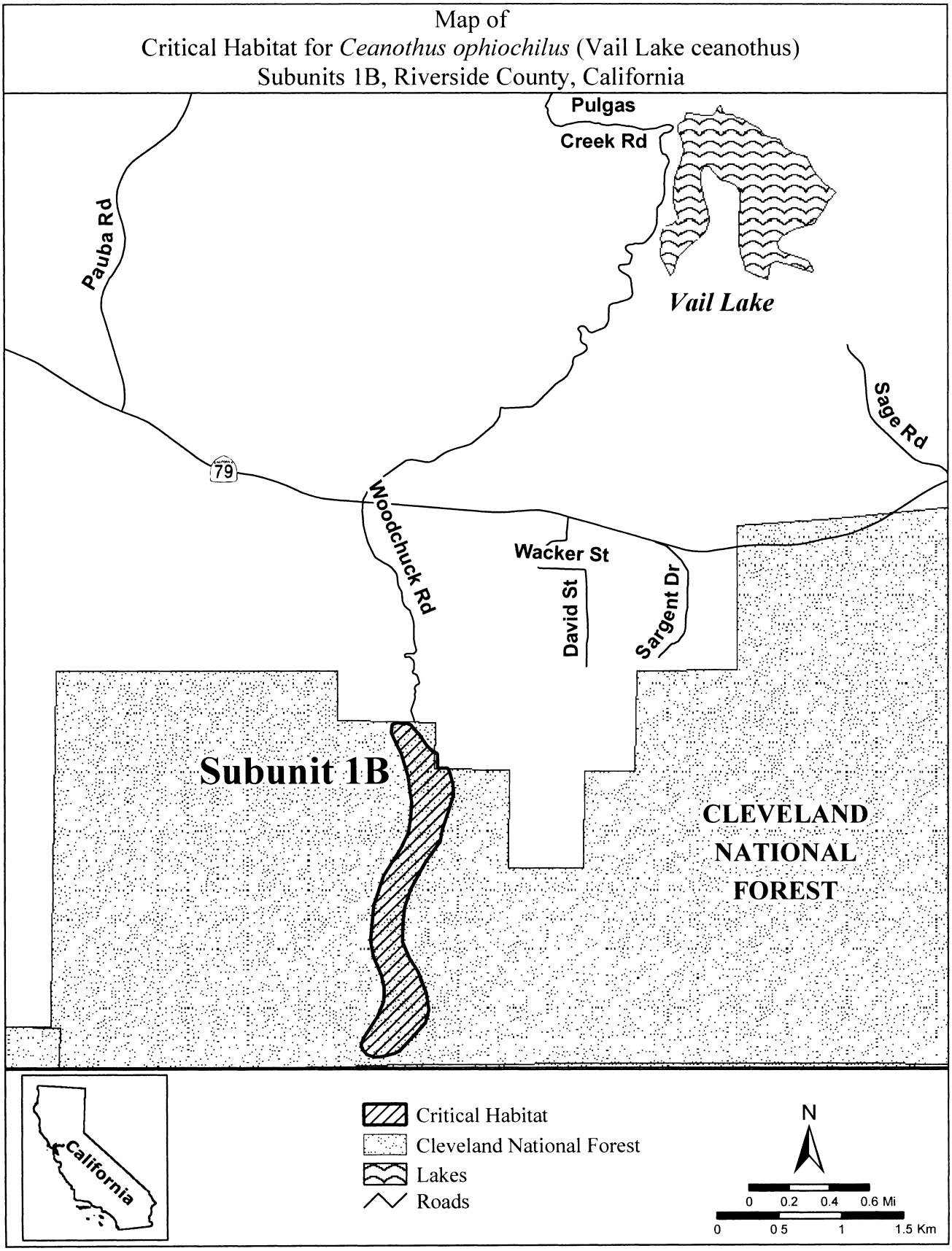

Map of
Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus)
Subunits 1B, Riverside County, California
Pulgas
Creek Rd
Pauba Rd
Vail Lake
Sage Rd
79
Woodchuck Rd
Wacker St
David St
Sargent Dr
Subunit 1B
CLEVELAND
NATIONAL
FOREST
California
Critical Habitat
Cleveland National Forest
Lakes
Roads
N
0 0.2 0.4 0.6 Mi
0 0 5 1 1.5 Km

Family Sterculiaceae: *Fremontodendron mexicanum* (Mexican flannelbush).

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Fremontodendron mexicanum* are the habitat components that provide:

(i) Alluvial terraces, benches, and associated slopes within 500 feet (152 meters) of streams, creeks, and ephemeral drainages where water flows primarily after peak seasonal rains with a gradient ranging from 3 to 7 percent; and stabilized north- to east-facing slopes associated with steep (9 to 70 percent) slopes and canyons that provide space for growth and reproduction.

(ii) Silty loam soils derived from metavolcanic and metabasic bedrock, mapped as San Miguel—Exchequer Association soil series that provides the nutrients and substrate with adequate drainage to support seedling establishment and growth.

(iii) Open *Cupressus forbesii* and *Platanus racemosa* stands at elevations of 900 feet (274 meters) to 3,000 feet (914 meters) within a matrix of chaparral (such as *Dendromecon rigida* ssp. *rigida* and *Malosma laurina*) and riparian vegetation that provides adequate space for growth and reproduction.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a base of USGS 1:24,000 maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

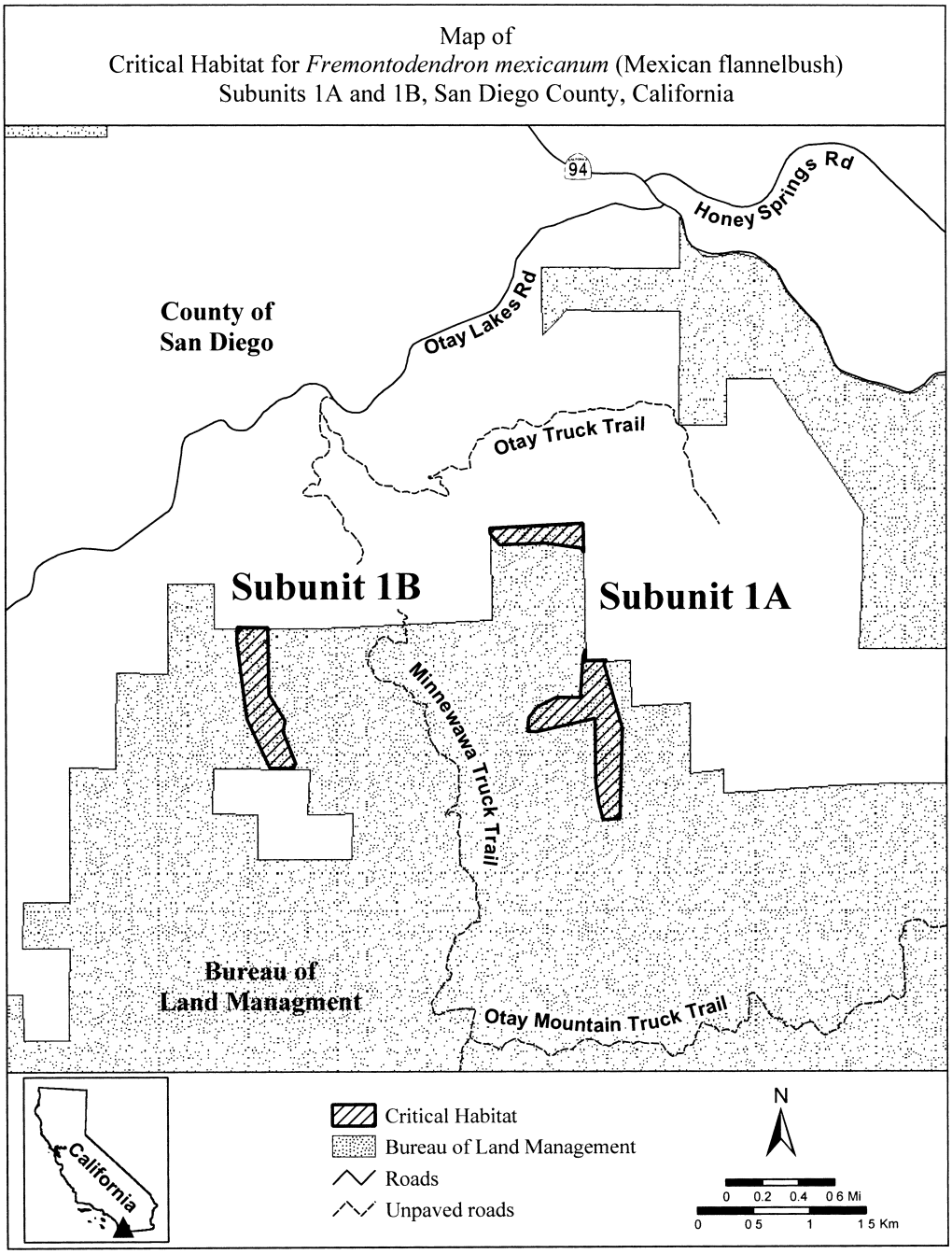
(5) Unit 1.

(i) Subunit 1A for *Fremontodendron mexicanum,* Cedar Canyon Subunit, San Diego County, California. From USGS 1:24,000 quadrangles Dulzura and Otay Mountain, lands bounded by the following UTM NAD27 coordinates (E,N): 515014, 3611487; 515155, 3611552; 515695, 3611495; 515848, 3611474; 516142, 3611376; 516372, 3611063; 516368, 3610565; 516091, 3610192; 516251, 3609616; 516229, 3608802; 516080, 3608793; 516038, 3608958; 516013, 3609134; 516008, 3609701; 515493, 3609581; 515407, 3609585; 515418, 3609710; 515497, 3609804; 515663, 3609889; 515878, 3609887; 515904, 3610258; 515952, 3610432; 515921, 3610608; 516125, 3610698; 515989, 3611007; 515889, 3611230; 515567, 3611277; 515159, 3611261; 515064, 3611374; thence returning to 515014, 3611487.

(ii) Map depicting Subunit 1A is located at paragraph (5)(iv) of this entry.

(iii) Subunit 1B for *Fremontodendron mexicanum,* Little Cedar Canyon Subunit, San Diego County, California. From USGS 1:24,000 quadrangles Dulzura and Otay Mountain, lands bounded by the following UTM NAD27 coordinates (E,N): 512964, 3610810; 513099, 3610671; 513104, 3609924; 513252, 3609684; 513232, 3609584; 513344, 3609302; 513278, 3609139; 513174, 3609122; 512911, 3609699; 512854, 3610125; 512821, 3610402; 512834, 3610662; thence returning to 512964, 3610810.

(iv) Map of Subunits 1A and 1B (Map 2) follows:



* * * * *

Dated: May 19, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received at the Office of the Federal Register on September 20, 2007.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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Native American $1 Coin Act (Sept. 20, 2007; 121 Stat. 777)

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