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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

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CFR Correction

In Title 14, of the Code of Federal Regulations, revised as of January 1, 2007, on page 227, in § 23.561, paragraph (d)(1), remove the second entry for pargraphs (i) through (iv), and remove (d)(1)(v).

[FR Doc. 07–55519 Filed 10–22–07; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM07–17–000; Order No. 700]

Revisions to Landowner Notification and Blanket Certificate Regulations

Issued October 18, 2007.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to modify landowner notification requirements and to require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority. The proposed regulatory revisions are intended to enhance public participation in the Commission's consideration of proposed projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse environmental impact.

DATES: The regulatory revisions made in this Final Rule will become effective November 23, 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.

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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.

I. Introduction

1. On June 22, 2007, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to modify landowner notification requirements and require a noise survey following the completion of projects involving compressor facilities undertaken pursuant to blanket certificate authority.[1] These regulatory revisions are intended to enhance public participation in the Commission's consideration of proposed projects and ensure that compressor projects completed under blanket certificate authority will not have a significant adverse environmental impact. Comments on the NOPR were submitted by the U.S. Department of the Interior (Interior) and the Interstate Natural Gas Association of America (INGAA). This Final Rule responds to the comments and adopts, with minor modifications, the regulatory revisions described in the NOPR.

II. Regulatory Revisions

2. The NOPR discusses proposed changes to the existing regulations regarding landowner notification and compressor noise restrictions. Comments submitted address the latter.

A. Landowner Notification

3. The NOPR discusses expanding the § 157.6(d)(2)(iii) landowner notification requirement. Currently, this requirement directs natural gas companies planning to construct compressor or liquefied natural gas (LNG) facilities to notify all landowners whose property contains a residence within one-half mile of the project site before beginning any construction.[2] This will be revised to remove the residence qualification, and will instead direct companies to notify all landowners within one-half mile of the site of a planned compressor or LNG project regardless of whether the property contains a residence. This revision should ensure all landowners within one-half mile of a proposed project site will receive notice that will allow them to raise land use issues, including existing non-residential uses as well as planned future uses of undeveloped land.

B. Noise Survey

4. To ensure that compressor facilities installed under blanket certificate authority will not have significant adverse environmental impacts, compressor facilities must be designed to meet the noise level limits described below. To verify blanket certificate compressor facilities meet these noise level limits, this order will revise § 157.206(b)(5) to require that companies completing a blanket certificate compressor project file a noise survey with the Commission. If this post-project survey shows the facility is emitting excessive noise, the company will have up to one year from the project's in-service date to meet the noise limits. After completing its noise mitigation measures, the company will submit a subsequent noise survey to verify compliance with the noise limits.

[1] 72 FR 35669 (June 29, 2007), FERC Stats. and Regs.¶ 32,616 (2007). The NOPR followed an expansion of the blanket certificate program, *see Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates*, Order No. 686, 71 FR 63680 (Oct. 31, 2006), FERC Stats. & Regs. ¶ 31,231 (2006), *order on reh'g and clarification*, Order No. 686–A, 72 FR 37431 (July 10, 2007), FERC Stats. and Regs. ¶ 31,249 (2007), *order on reh'g*, Order No. 686–B, FERC Stats. and Regs. ¶ 31,255 (2007).

[2] *See* the landowner notification requirements, 18 CFR 157.203(d)(1) and (2), and the definition of affected landowners, 18 CFR 157.6(d)(2)(iii).

This same noise survey requirement is routinely applied to compressor facilities installed under case-specific certificate authority.

5. A company may rely on blanket certificate authority to undertake qualifying projects provided: (1) Noise-generating equipment installed under blanket certificate authority, whether an entire new compressor station or an addition or modification to an existing station, does not exceed an average day-night sound level (L_{dn}) of 55 decibels (dBA) at a noise sensitive area (NSA) when operating at full load; (2) an addition or modification to an existing compressor station, which is currently emitting noise at an L_{dn} of 55 dBA or less at NSAs, does not cause noise at NSAs to exceed an L_{dn} of 55 dBA; and (3) an addition or modification to an existing compressor station, which is currently emitting noise in excess of an L_{dn} of 55 dBA at NSAs, does not cause noise to increase at NSAs.

III. Comments and Commission Response

6. Comments by Interior question whether an L_{dn} of 55 dBA might adversely impact certain wildlife resources. Comments by INGAA seek clarification on how compressor noise is to be measured.

A. Department of the Interior's Comments

7. Interior points out that 55 dBA was designated by the U.S. Environmental Protection Agency (EPA) as a noise level adequate to protect against speech interference and sleep disturbance for residential, education, and healthcare NSAs.[3] Given that the 55 dBA level is based on human activity, Interior is concerned that this level fails to account for impacts on species that may be more sensitive to noise. Interior urges that screening for such species be required for blanket certificate projects and asks the Commission to direct blanket project applicants to contact Interior's Fish and Wildlife Service, along with the appropriate state fish and wildlife agency or state Natural Heritage Database, to identify the presence of threatened or endangered species and noise-sensitive species or habitats in the project vicinity. If there are such species or habitats, Interior would then require the project applicant to seek case-specific certificate authorization.

8. While appropriate to most circumstances, the Commission recognizes that 55 dBA ought not be applied inflexibly or universally.[4] That said, the Commission finds that potential adverse impacts on species and habitat due to noise are adequately taken into account by the requirement that all blanket certificate projects comply with the Endangered Species Act of 1973 (ESA).[5] Compliance with the ESA effectively compels a blanket certificate holder to engage in the same screening and consultation that Interior requests for threatened and endangered species. Accordingly, the Commission expects the ESA compliance process will continue to provide the most appropriate means for assessing whether a proposed blanket certificate project's permitted noise level of 55 dBA might have significant adverse impacts on wildlife resources. In addition, the Commission notes that the expanded landowner notification requirement implemented herein should promote consideration of noise impacts on the use of land for non-residential purposes, such as the cultivation of a domesticated noise-sensitive species.

B. INGAA's Comments

9. The NOPR proposed that § 157.206(b)(5)(ii) direct a blanket certificate project sponsor to measure ''noise attributable to the operation of the facility at full load.'' INGAA seeks clarification on conducting a post-project noise survey, asking whether ''the facility'' is intended to refer to the particular equipment added or modified under blanket certificate authorization, or whether ''the facility'' is intended to include all the facilities, i.e., both existing facilities as well as new or modified facilities located at a particular compressor site. In response to INGAA's request, we will revise § 157.206(b)(5)(ii) as described below.

10. As a threshold measure, for a compressor facility to qualify for blanket certificate authorization, the facility must be designed to meet an L_{dn} of 55 dBA at NSAs when operating at full load. Requiring that a facility added or modified under blanket certificate authority meet this maximum noise limit is intended to ensure that there will not be a significant adverse environmental noise impact.[6]

11. With respect to noise impacts, the Commission will also consider the composite noise level of a compressor station's new and existing facilities. This is because a facility that meets an L_{dn} of 55 dBA, when added to a station currently operating an L_{dn} of 55 dBA, can cause the overall noise of the station to exceed an L_{dn} of 55 dBA. Thus, the Commission will require that an addition or modification to an existing compressor station that is operating at or below an L_{dn} of 55 dBA at NSAs must not cause overall noise attributable to the station to exceed an L_{dn} of 55 dBA at NSAs. Further, an addition or modification to an existing compressor station that is operating above an L_{dn} of 55 dBA at NSAs must not cause overall noise attributable to the station to increase at NSAs.

12. To ensure adherence to these noise level limits, the Commission will require a company that relies on its blanket certificate to construct a new compressor station facility, or to add or modify a facility at an existing station, to submit a noise survey within 60 days of placing the new or modified facility in service. The company must measure noise attributable to its new or modified facility operating at full load at NSAs. When a new or modified facility is placed in service at an existing compressor station, the company must also measure the overall post-project noise of the station operating at full load. If the measured noise exceeds the specified limits at NSAs, the company must bring its station into compliance within a year of the blanket certificate facility's in-service date. Within 60 days of completing its noise-mitigation measures, e.g., making modifications to noise-generating equipment or erecting a barrier between the station and NSAs, the company must submit a subsequent noise survey to the Commission demonstrating its compliance with the noise level limits.

IV. Information Collection Statement

13. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.[7] Upon approval of a collection of information, OMB will assign an OMB

[3] The Commission relied on this EPA designation in conducting its Environmental Assessment (EA) of the blanket certificate program, finding that compressors should not increase ambient noise levels at nearby NSAs above an L_{dn} of 55 dBA, since 55 dBA is ''the maximum level which will not affect public health and welfare by interfering with speech or other activities in outdoor areas * * * [and consequently] should also ensure adequate protection for the indoor noise environment.'' *Blanket Certification of Routine Gas Pipeline Transactions*, EA at 25 (July 1981), *citing* EPA's *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety* (Washington, DC 1974).

[4] The EA reviewing the blanket certificate program noted the possibility that ''compressor facilities constructed in some rural areas could degrade a quiet environment because a blanket authorization would require little or no noise abatement in remote or unpopulated areas.'' *Id.* at 33.

[5] 16 U.S.C. 1531 *et seq.*

[6] *See* note 3.

[7] 5 CFR 1320.11.

control number and an expiration date. The only entities affected by this rule would be the natural gas companies under the Commission's jurisdiction.

14. The information collection requirements in this Final Rule are identified as FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition and Abandonment,'' which identifies the Commission's information collections relating to Part 157 of its regulations, which apply to natural gas facilities for which authorization under section 7 of the Natural Gas Act (NGA) is required, and includes all blanket certificate projects, and FERC–577, ''Gas Pipeline Certificates: Environmental Impact Statements,'' which identifies the Commission's information collections relating to the requirements set forth in National Environmental Policy Act and Parts 2, 157, 284, and 380 of the Commission's regulations, and requires applicants to conduct appropriate studies necessary to determine the impact of the construction and operation of proposed jurisdictional facilities on human and natural resources, and the measures which may be necessary to protect the values of the affected area. These information collection requirements are mandatory.

15. The revised regulations require that companies seeking to construct or alter compressor or LNG facilities notify all landowners within one-half mile of the boundary of the project site. This should necessitate only a nominal additional effort, since companies are already required to identify all landowners of record within one-half mile of the project site, and then notify the subset of those landowners that have a residence on their property. In practice, companies routinely give notice to all identified landowners, rather than take the extra step of segregating properties with residences from those without so as to give notice only to the former. In view of this practice, the Commission expects the time and cost to notify non-residential landowners will prove to be de minimis.

16. The Noise Control Act of 1972 established the requirement that all federal agencies administer their programs to promote an environment free of noise that jeopardizes public health and welfare.[8] In 1974, the U.S. Environmental Protection Agency, acting to execute its responsibility to coordinate federal research and activities related to noise control, identified an L_{dn} of 55 dBA as necessary to protect against speech interference and sleep disturbance for residential, educational, and healthcare activities. The revised regulations state that a company adding or altering compressor facilities under blanket certificate authority must submit a noise survey within 60 days of placing new facilities in service to demonstrate that noise attributable to the operation of the company's compressors does not exceed an L_{dn} of 55 dBA at nearby NSAs or increase noise at NSAs already in excess of an L_{dn} of 55 dBA. The Commission does not view this as substantially modifying natural gas companies' existing obligations, since the proposed submission of a noise survey simply provides verification of compliance with the existing noise requirement. The same noise survey requirement is routinely applied to compressor projects subject to case-specific NGA section 7 certificate authority.[9]

17. The Commission is submitting these reporting requirements to OMB for its review and approval under § 3507(d) of the Paperwork Reduction Act of 1995.[10] The Commission solicited comments on the need for these regulatory revisions and the accuracy of estimated burden estimates, as well as how the quality, quantity, and clarity of the information to be collected might be enhanced, and any suggested methods for minimizing the respondent's burden. The comments submitted did not specifically address the new reporting requirements; accordingly, the Commission will use the same estimates here as in the NOPR.

18. The Commission estimates it will require 32 hours to complete a noise survey, and expects the additional burden to be modest, given that in 2006 only two compressor projects went forward under blanket certificate authority. For the purpose of estimating burden hours, the Commission anticipates five such projects in the future.

Data collection	Number of respondents	Number of responses/ Filings	Number of hours per response	Total annual hours
FERC–537 (Part 157)	5	5	32	160

Information Collection Costs: The above reflects the total reporting burden associated with the proposed broadening of the landowner notification requirement. Because of the regional differences and the various staffing levels that will be involved in preparing the documentation (legal, technical, and support) the Commission is using an hourly rate of $150 to estimate the costs for filing and other administrative processes (reviewing instructions, searching data sources, completing and transmitting the collection of information). The estimated cost per project is $4,800, with an estimated annual total of $24,000.

Title: FERC–537.

Action: Proposed Data Collection.

OMB Control Nos.: 1902–0060 and 1902–0128.

Respondents: Natural gas pipeline companies.

Frequency of Responses: On occasion.

Necessity of Information: Submission of the information is necessary for the Commission to carry out its NGA statutory responsibilities and meet the Commission's objectives of expediting appropriate infrastructure development to ensure sufficient energy supplies while addressing landowner and environmental concerns fairly. 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 Executive Director]. Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: michael.miller@ferc.gov or the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

[8] 42 U.S.C. 4901, *et seq.*

[9] The potential cost savings to the industry that may be realized by enabling projects previously permitted only under case-specific authority to proceed under the expanded blanket certificate program were discussed in the Final Rule in Order No. 686. With respect to the proposed noise survey, the Commission notes that case-specific projects require a noise survey both before and after construction. Thus, the relatively minor cost of conducting a post-construction noise survey for a blanket certificate project is expected to be offset by the benefit of not having to also conduct a noise survey before construction, as would be necessary for a case-specific certificate project.

[10] 44 U.S.C. 3507(d).

V. Environmental Analysis

19. The Commission is required to prepare an EA or an Environmental Impact Statement (EIS) for any action that may have a significant adverse effect on the human environment.[11] In promulgating the blanket certificate program in 1982, the Commission prepared an EA in which it determined that, subject to compliance with the standard environmental conditions, projects under the blanket program would not have a significant adverse environmental impact. In particular, the EA concluded that an L_{dn} of 55 dBA at NSAs would be adequate to avoid interfering with speech or other activities in outdoor areas and ensure adequate protection for the indoor noise environment. As discussed herein, the Commission is expanding landowner notification and requiring the submission of a post-project noise survey for blanket certificate activities involving compressor facilities. Because these actions serve to better inform the public of proposed projects and to further ensure and verify that no blanket certificate project has a significant adverse environmental impact, these regulatory revisions do not constitute a major federal action that may have a significant adverse effect on the human environment.

VI. Regulatory Flexibility Act Analysis

20. The Regulatory Flexibility Act of 1980 (RFA)[12] generally requires a description and analysis of regulations that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such an analysis if regulations would not have such an effect.[13] Under the industry standards used for purposes of the RFA, a natural gas pipeline 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.[14]

21. This order's regulatory revisions will have no significant economic impact on those entities—be they large or small—subject to the Commission's regulatory jurisdiction under NGA section 3 or 7, and no significant economic impact on state agencies. Accordingly, the Commission certifies that these regulatory revisions will not have a significant economic impact on a substantial number of small entities.

VII. Document Availability

22. 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 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*.

VIII. Effective Date and Congressional Notification

23. This Final Rule will take effect November 23, 2007. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[15] The Commission will submit this Final Rule to both houses of Congress and the Government Accountability Office.[16]

List of Subjects in 18 CFR Part 157

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

By the Commission.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

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

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 § 157.6, paragraph (d)(2)(iii) is revised to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(2) * * *

(iii) Is within one-half mile of proposed compressors or their enclosures or LNG facilities; or

* * * * *

■ 3. In § 157.206, paragraph (b)(5)(ii) is redesignated as paragraph (b)(5)(iii) and a new paragraph (b)(5)(ii) is added, to read as follows:

§ 157.206 Standard conditions.

* * * * *

(b) * * *

(5) * * *

(ii) A compressor facility installed under this section must be designed to meet the following noise emissions criteria. For each new compressor station facility, and for each addition or modification to an existing compression station, the blanket certificate holder must file a noise survey with the Secretary within 60 days of placing the facility in service.

(A) If noise emitted from a new compressor facility operating at full load exceeds an L_{dn} of 55 dBA at any noise-sensitive area (NSA), or if an addition or modification to an existing compressor station operating at full load at or below an L_{dn} of 55 dBA at NSAs causes overall noise attributable to the station to exceed an L_{dn} of 55 dBA at an NSA, the blanket certificate holder must come into compliance with an L_{dn} of 55 dBA at NSAs within 1 year of placing the facility in service.

(B) If an addition or modification to an existing compressor station operating at full load above an L_{dn} of 55 dBA at NSAs causes overall noise attributable to the station to increase at an NSA, the blanket certificate holder must act within 1 year of placing the added or modified facility in service to reduce noise at NSAs to the level that existed prior to the addition or modification.

(C) If the initial noise survey demonstrates a need to take action to mitigate noise, within 60 days of completing such action, the blanket certificate holder must file a subsequent noise survey with the Secretary demonstrating that each new compressor station facility, and each addition or modification to an existing

[11] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[12] 5 U.S.C. 601–612.

[13] 5 U.S.C. 605(b) (2000).

[14] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 623 (2000). Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[15] *See* 5 U.S.C. 804(2).

[16] *See* 5 U.S.C. 801(a)(1)(A).

compressor station, complies with the noise level limits.

* * * * *

[FR Doc. E7–20804 Filed 10–22–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

[CBP Dec. 07–83]

Technical Amendments to List of User Fee Airports

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; technical amendments.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect those that have been currently designated by the Commissioner. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

DATES: *Effective Date:* October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Captain, Office of Field Operations, 703–261–8516.

SUPPLEMENTARY INFORMATION:

Background

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security [1] as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. *See* 19 CFR 122.15. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding new airports, deleting certain former airports, and reflecting changes that have occurred in the names of certain existing user fee airports.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely lists those user fee airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendments to Regulations

■ Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

■ 2. Section 122.15(b) is amended by revising the list of airports to read as follows:

[1] Sections 403(1) and 411 of the Homeland Security Act of 2002 (''the Act,'' Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the ''Customs Service'' as the ''Bureau of Customs and Border Protection,'' also referred to as ''CBP.''

§ 122.15 User fee airports.

* * * * *

(b) List of user fee airports. * * *

Location	Name
Addison, Texas	Addison Airport.
Ardmore, Oklahoma	Ardmore Industrial Airpark.
Bakersfield, California	Meadows Field Airport.
Bedford, Massachusetts	L.G. Hanscom Field.
Broomfield, Colorado	Jefferson County Airport.
Carlsbad, California	McClellan-Palomar Airport.
Daytona Beach, Florida	Daytona Beach International Airport.
Decatur, Illinois	Decatur Airport.
Egg Harbor Township, New Jersey	Atlantic City International Airport.
Englewood, Colorado	Centennial Airport.
Fort Worth, Texas	Fort Worth Alliance Airport.
Fresno, California	Fresno Yosemite International Airport.
Gypsum, Colorado	Eagle County Regional Airport.
Hillsboro, Oregon	Hillsboro Airport.
Johnson City, New York	Binghamton Regional Airport.
Leesburg, Florida	Leesburg Regional Airport.
Lexington, Kentucky	Blue Grass Airport.
Manchester, New Hampshire	Manchester Airport.
Mascoutah, Illinois	MidAmerica St. Louis Airport.
McKinney, Texas	Collin County Regional Airport.
Melbourne, Florida	Melbourne Airport.
Mesa, Arizona	Williams Gateway Airport.
Midland, Texas	Midland International Airport.
Morristown, New Jersey	Morristown Municipal Airport.
Moses Lake, Washington	Grant County International Airport.
Myrtle Beach, South Carolina	Myrtle Beach International Airport.
Orlando, Florida	Orlando Executive Airport.
Palm Springs, California	Palm Springs International Airport.
Riverside, California	March Inland Port Airport.
Rochester, Minnesota	Rochester International Airport.
Rogers, Arkansas	Rogers Municipal Airport.
Roswell, New Mexico	Roswell Industrial Center.
San Bernardino, California	San Bernardino International Airport.
Santa Maria, California	Santa Maria Public Airport.
Sarasota, Florida	Sarasota/Bradenton International Airport.
Scottsdale, Arizona	Scottsdale Airport.
Sugar Land, Texas	Sugar Land Regional Airport.
Trenton, New Jersey	Trenton Mercer Airport.
Victorville, California	Southern California Logistics Airport.
Waterford, Michigan	Oakland County International Airport.
Waukegan, Illinois	Waukegan Regional Airport.
West Chicago, Illinois	Dupage County Airport.
Wheeling, Illinois	Chicago Executive Airport.
Wilmington, Ohio	Airborne Air Park Airport.
Yoder, Indiana	Fort Wayne International Airport.
Ypsilanti, Michigan	Willow Run Airport.

* * * * *

Dated: October 18, 2007.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

[FR Doc. E7–20803 Filed 10–22–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD01–07–145]

RIN 1625–AA00

Safety Zone: Army Corps of Engineers Blasting and Dredging Operation, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in Boston Harbor, Boston, Massachusetts, for the Army Corps of Engineers (ACOE) blasting and dredging operation, to include the underwater blasting locations and the vessel transporting blasting material to and from the work sites, between October 5, 2007 and December 31, 2007. The zone temporarily closes all navigable waters of Boston Harbor within a four hundred (400) yard radius of the four underwater demolition sites located at approximate positions 42°20′05.5″ N, 070°59′53.9″ W, east-southeast of Castle Island; 42°20′19.0″ N, 070°58′46.5″ W, President Roads Anchorage; 42°21′15.80″ N, 070°55′51.95″ W, North Channel; 42°22′03.70″ N, 070°55′18.83″ W, North Channel, while blasting operations are occurring and a moving

safety zone of one hundred yards around the M/V EMILY ROSE. The operations will only occur during daylight hours. The safety zone is necessary to protect the maritime public from the potential hazards posed by the blasting and dredging. Entry into this zone is prohibited during the closure period unless authorized by the Captain of the Port Boston, Massachusetts.

DATES: This rule is effective from 12:01 a.m. on October 5, 2007 until 11:59 p.m. on December 31, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–07–145 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Eldridge McFadden, Sector Boston, Waterways Management Division, at (617) 223–5160.

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. A notice and comment period was not held for this rulemaking because the logistics with respect to the blasting and dredging were not determined with sufficient time to draft and publish an NPRM. Delaying the necessary blasting operations to accommodate a notice and comment period would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as immediate action is needed to protect vessels transiting the area from the hazards associated with underwater blasting and rock removal operations. Any delay encountered in this regulation's effective date would be contrary to the public interest since immediate action is necessary to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, detonation, and transportation of explosives.

Background and Purpose

The Army Corps of Engineers is conducting a project to deepen Boston Harbor. Within the shipping channels there are several rock formations which are impeding the progress of the work. The Army Corps has contracted RDA Construction to perform the associated blasting and dredging to remove the rock. The explosives will be transferred to and from the blasting sites aboard the M/V EMILY ROSE. In order to protect the maritime public from the hazards associated with the loading, detonation, and transportation of explosives in and around the blasting areas, the Coast Guard is establishing safety zones around each of the four blasting sites and a moving safety zone around the vessel EMILY ROSE as it transits from the loading point on the Fore River in Quincy, Massachusetts to the blasting sites and back. Entry into these zones will be prohibited unless authorized by the Captain of the Port.

Discussion of Rule

This rule establishes temporary safety zones on the navigable waters of Boston Harbor within a four hundred (400) yard radius of the various rock sites located in Boston Harbor at approximate positions 42°20′05.5″ N, 070°59′53.9″ W, east-southeast of Castle Island; 42°20′19.0″ N, 070°58′46.5″ W, President Roads Anchorage; 42°21′15.80″ N, 070°55′51.95″ W, North Channel; and, 42°22′03.70″ N, 070°55′18.83″ W, North Channel while blasting and dredging is occurring. This regulation also establishes a moving safety zone on all navigable waters of the Fore River and Boston Harbor in a 100 yard radius around the M/V EMILY ROSE as it loads and unloads explosives and transits from the Fore River to the four demolition areas and from the demolition areas back to the Fore River shipyard. The explosives loading will occur at the Fore River shipyard wet dock in Quincy, Massachusetts. The explosives will be transported via vessel to the construction barges at the above noted positions where the blasting and dredging is occurring.

This rule is effective from 12:01 a.m. EDT on October 5, 2007 until 11:59 p.m. EST on December 31, 2007. Although the safety zone will be in effect for twelve weeks, it will only be enforced during actual transit and blasting times. Blasting will only occur during daylight hours.

Marine traffic may transit safely outside of the zone during the enforcement period. Public notifications will be made prior to and during the enforcement period via safety marine information broadcasts and the event will be published in the Local Notice to Mariners. During the enforcement periods, entry into those zones by any vessel is prohibited unless specifically authorized by the Captain of the Port, Boston.

Given the limited time-frame of the enforcement period of the zone, the small safety zone size and the short duration of the blasting events, the Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Blasting operations are only to occur during daylight, specifically between the hours of 6 a.m. and 4 p.m. The moving safety zone around the EMILY ROSE will be enforced only during the loading, unloading and transit of explosives to the site and from the site back to shore with any unused explosives. Portions of the safety zones around the perimeter of the blasting work are located within the channel and may peripherally affect vessels transiting in or out of the port. However, the zone around the blasting worksite will be enforced only during the actual blasting times thus minimizing any adverse impact. Public notifications will be made during the entire effective period of this safety zone via marine information broadcasts and through local notice to mariners.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule will prevent traffic from transiting a portion of Boston Harbor during the blasting and dredging operations, the effect of this rule will not be significant for several reasons: vessels, although excluded from the zone, will have sufficient navigable water to safely maneuver in all other waters of Boston Harbor surrounding the zone when blasting is occurring; and, when blasting operations are not occurring the zones will not be enforced thus allowing vessels to move within the areas designated by this rule; also, advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners allowing mariners to plan voyages accordingly.

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 Boston Harbor during the effective period of this safety zone. For the reasons outlined in the Regulatory Evaluation section above, this safety zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Chief Eldridge McFadden, Sector Boston, Waterways Management Division, at (617) 223–5160.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T01–145 to read as follows:

§ 165.T–01–145 Safety Zone: Army Corps Underwater Rock Demolition, Boston Harbor, Boston, MA.

(a) *Location.* The following areas are safety zones: (1) All navigable waters of the Fore River and Boston Harbor, from surface to bottom, within a four hundred (400) yard radius around the blasting and dredging sites located in Boston Harbor at approximate positions: 42°20′05.5″ N, 070°59′53.9″ W, east-southeast of Castle Island; 42°20′19.0″ N, 070°58′46.5″ W, President Roads Anchorage; 42°21′15.80″ N, 070°55′51.95″ W, North Channel; and 42°22′03.70″ N, 070°55′18.83″ W, North Channel, while blasting operations are occurring. (2) All navigable waters within a one hundred (100) yard radius of the motor vessel EMILY ROSE while it is loading, transporting and unloading explosives.

(b) *Effective Date.* This rule is effective from 12:01 a.m. on October 5, 2007 until 11:59 p.m. on December 31, 2007.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port, Boston Harbor.

(d) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Boston or the COTP's designated representative.

(3) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission by calling the Sector Boston Command Center at 617–223–5761 or via VHF channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

(e) *Enforcement period.* This section will be enforced only during daylight hours where blasting operations are being conducted and when the vessel EMILY ROSE is loading, transporting or unloading explosives.

Dated: October 4, 2007.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. E7–20780 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8479–6]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the updates of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on March 23, 2006, August 18, 2006 and May 31, 2007. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 (''the Act''). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources for which the Ventura County Air Pollution Control District is the designated COA. The intended effect of approving the requirements contained in ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources'' (September 2007) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on November 23, 2007.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of November 23, 2007.

ADDRESSES: EPA has established docket number OAR–2004–0091 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, Air Division, U.S. EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

Throughout this document, the terms ''we'', ''us'', and ''our'' refer to U.S. EPA.

On March 23, 2006 (71 FR 14662), August 18, 2006 (71 FR 47758) and May 31, 2007 (72 FR 30320), EPA proposed to approve requirements into the OCS Air Regulations pertaining to Ventura County APCD. These requirements are being promulgated in response to the submittal of rules from this California air pollution control agency. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must

incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comments

EPA's proposed actions provided 30-day public comment periods. During these periods, we received no comments on the proposed actions.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed actions. EPA is approving the proposed actions under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (''OMB'') review and the requirements of the Executive Order. The Order defines ''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 action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009.

As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 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; 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant economic impact on a substantial number of small entities. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally

requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will 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. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. This rule does not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (November 9, 2000)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule 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 and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 (April 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

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

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, this rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this final rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the

absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. 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). This action will be effective November 23, 2007.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 24, 2007. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action 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 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 20, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, September 2007.

* * * * *

■ 3. Appendix A to CFR Part 55 is amended by revising paragraph (b)(8) under the heading ''California'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(a) * * *

(b) * * *

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* September 2007:

Rule 2 Definitions (Adopted 04/13/04)
Rule 5 Effective Date (Adopted 04/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 06/14/77)
Rule 10 Permits Required (Adopted 04/13/04)
Rule 11 Definition for Regulation II (Adopted 03/14/06)
Rule 12 Applications for Permits (Adopted 06/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 06/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 06/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 06/13/95)
Rule 19 Posting of Permits (Adopted 05/23/72)
Rule 20 Transfer of Permit (Adopted 05/23/72)
Rule 23 Exemptions from Permits (Adopted 09/12/06)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review—General (Adopted 03/14/06)
Rule 26.1 New Source Review—Definitions (Adopted 11/14/06)
Rule 26.2 New Source Review—Requirements (Adopted 05/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 03/14/06)
Rule 26.6 New Source Review—Calculations (Adopted 03/14/06)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 01/13/98)
Rule 26.11 New Source Review—ERC Evaluation At Time of Use (Adopted 05/14/02)
Rule 26.12 Federal Major Modifications (Adopted 06/27/06)
Rule 28 Revocation of Permits (Adopted 07/18/72)
Rule 29 Conditions on Permits (Adopted 03/14/06)
Rule 30 Permit Renewal (Adopted 04/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 02/20/79)
Rule 33 Part 70 Permits—General (Adopted 09/12/06)
Rule 33.1 Part 70 Permits—Definitions (Adopted 09/12/06)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 04/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 09/12/06)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 04/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 04/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 04/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 03/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/06/98)
Rule 42 Permit Fees (Adopted 04/11/06)
Rule 44 Exemption Evaluation Fee (Adopted 09/10/96)
Rule 45 Plan Fees (Adopted 06/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 08/04/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 06/22/99)
Rule 50 Opacity (Adopted 04/13/04)
Rule 52 Particulate Matter-Concentration (Grain Loading) (Adopted 04/13/04)
Rule 53 Particulate Matter-Process Weight (Adopted 04/13/04)
Rule 54 Sulfur Compounds (Adopted 06/14/94)
Rule 56 Open Burning (Adopted 11/11/03)

Rule 57 Incinerators (Adopted 01/11/05)
Rule 57.1 Particulate Matter Emissions from Fuel Burning Equipment (Adopted 01/11/05)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 09/01/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 04/13/99)
Rule 67 Vacuum Producing Devices (Adopted 07/05/83)
Rule 68 Carbon Monoxide (Adopted 04/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 06/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 09/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 06/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 06/08/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 09/13/05)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS (Adopted 09/13/05)
Rule 74 Specific Source Standards (Adopted 07/06/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/11/03—effective 07/01/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 07/01/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 07/05/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/08/05)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 03/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 04/09/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 09/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/08/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 06/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 01/08/91)
Rule 74.20 Adhesives and Sealants (Adopted 01/11/05)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Adopted 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 01/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/08/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 05/10/94)
Rule 74.30 Wood Products Coatings (Adopted 06/27/06)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 05/23/72)
Rule 102 Source Tests (Adopted 04/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 02/09/99)
Rule 154 Stage 1 Episode Actions (Adopted 09/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 09/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 09/17/91)
Rule 158 Source Abatement Plans (Adopted 09/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 09/17/91)
Rule 220 General Conformity (Adopted 05/09/95)
Rule 230 Notice to Comply (Adopted 11/09/99)

* * * * *

[FR Doc. E7–20139 Filed 10–22–07; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061020273–7001–03]

RIN 0648–XD45

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2007 summer flounder commercial quota allocated to the State of New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2007, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

DATES: Effective 0001 hours, October 20, 2007, through 2400 hours, December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, (978) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2007 calendar year was set equal to 7,789,800 lb (3,533 mt) (71 FR 75134, December 14, 2006). This quota was increased through an emergency action to 10,267,098 lb (4,658 mt) (72 FR 2458, January 19, 2007). The percent allocated to vessels landing summer flounder in New York is 7.64599 percent, resulting in a commercial quota of 785,029 lb (357 mt). The 2007 allocation was reduced to 767,161 lb (348 mt) when research set-aside was deducted and then reduced to 619,123 (281 mt) after the 2006 overages had been applied.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New York has harvested its quota for 2007.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, October 20, 2007, further landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2007 calendar year, unless additional quota becomes available through a transfer and is announced in

the **Federal Register**. Effective 0001 hours, October 20, 2007, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 17, 2007.

Emily H. Menashes,

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

[FR Doc. 07–5228 Filed 10–22–07; 3:08 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XD53

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 directed fishing allowance (DFA) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 18, 2007, until 1200 hrs, A.l.t., December 31, 2007.

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

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

The 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI as a DFA of 12,129 metric tons is established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and a reallocation (72 FR 52493, September 14, 2007). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C). The fishery was previously closed to directed fishing on September 28, 2007 (72 FR 56016, October 2, 2007) and reopened on October 2, 2007 (72 FR 56933, October 5, 2007).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2007.

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

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

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

Dated: October 17, 2007.

Emily H. Menashes,

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

[FR Doc. 07–5227 Filed 10–18–07; 3:08 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 204
Tuesday, October 23, 2007

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

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 113, 9004, and 9034

[Notice 2007–20]

Candidate Travel

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules implementing new statutory provisions governing the rates and timing of payment for non-commercial campaign travel on aircraft, and a proposed definition of ''Leadership PAC.'' These proposed changes, consistent with the new statutory provisions, would restrict and in some cases prohibit Federal candidates and their political committees from expending campaign funds for non-commercial air travel. The proposed rules would apply to all Federal candidates, including publicly funded presidential candidates. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 13, 2007. The Commission will hold a hearing on these proposed rules on November 15, 2007, at 10 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments. Anyone seeking to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to *travel07@fec.gov.* If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. The Commission hearing on this rulemaking will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Mr. Joshua S. Blume, Attorney, or Mr. Richard Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is proposing changes to its rules to implement section 601 of Pub. L. 110–81, 121 Stat. 735, the ''Honest Leadership and Open Government Act of 2007,'' signed September 14, 2007. The new law amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) (''the Act'') by restricting, and in some cases prohibiting, the expenditure of campaign funds by candidates for Federal office for non-commercial travel aboard aircraft. *See* 2 U.S.C. 439a(c) (henceforth referred to as ''new 2 U.S.C. 439a(c)'' or ''the new law'').

The Commission proposes to implement these new provisions by adding new section 11 CFR 113.5 to Part 113, which governs the expenditure of campaign funds by candidates for Federal office and their authorized political committees. In addition, the Commission is proposing conforming revisions to 11 CFR 100.93, which provides an exception to the definition of ''contribution'' for non-commercial travel aboard aircraft by, or on behalf of, Federal candidates and political committees, if the candidates and political committees reimburse the service providers at specified rates. With respect to the scope of the proposed changes, the Commission presents two alternatives. Under Alternative 1, the proposed changes would also affect travel by other persons, such as a staff member of a political party committee, separate segregated fund (''SSF''), or nonconnected political committee, if they are not traveling on behalf of a specific candidate. Under Alternative 2, the proposed changes would affect only candidates for Federal office and those traveling on behalf of a candidate for Federal office and his or her authorized committee. The proposed changes would not alter the Commission's treatment of travel by means of transportation other than aircraft, or on travel aboard commercial airliners or charter flights.

In addition, Congress defined the term ''Leadership PAC'' in section 204(8)(B) of Public Law 110–81. This type of political committee is subject to certain restrictions under the provisions of new 2 U.S.C. 439a(c), and is also subject to certain requirements set forth in another section of Public Law 110–81 pertaining to the practice of ''bundling'' contributions. *See* section 204 of Public Law 110–81. The Commission is therefore proposing that the term be defined in the Commission's regulations at 11 CFR 100.5(e) (examples of ''political committees'').[1]

I. Background

A. The Current Statutory and Regulatory Framework

The Act defines a ''contribution'' to include ''any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(8)(A)(i); *see also* 11 CFR 100.52(a). The phrase ''anything of value'' encompasses ''the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.'' 11 CFR 100.52(d)(1). When goods or services are provided at less than the usual and normal charge, ''the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.'' *Id.*

As a result, candidates who travel aboard a commercial airliner or other conveyance for which a fee is normally

[1] The Commission is initiating a separate rulemaking to address the bundling provisions of the new law and intends to issue a Notice of Proposed Rulemaking shortly.

charged must pay the normal and usual charge for that service in order to avoid receiving an in-kind contribution from the person providing the travel service. Such in-kind contributions would be prohibited if provided by certain entities, including corporations, labor organizations, Federal contractors, and foreign nationals. *See* 2 U.S.C. 441b, 441c, and 441e; 11 CFR 110.20, 114.2(b), and 115.2. Even where the in-kind contributions are not prohibited, they would be subject to the contribution limits in the Act and Commission regulations. *See* 2 U.S.C. 441a through 441k; 11 CFR Parts 110, 114, and 115.

1. Current 11 CFR 100.93—Payment for Non-Commercial Travel

The normal and usual charge for travel aboard a commercial airliner is the publicly available price for a ticket, and the normal and usual charge for a chartered jet is the publicly available charter or lease rate. The normal and usual charge for travel aboard a non-commercial flight, however, may not be as apparent. For example, there is generally not a ticket price for a seat aboard a corporate jet that is operated exclusively for the private travel of the corporation's executives and their guests. Because candidates for Federal office have traveled in the past on these privately operated flights, the Commission has provided specific guidance in its regulations regarding the rate of reimbursement that candidates and others must pay to avoid receiving an in-kind contribution for travel aboard such flights.

On December 15, 2003, the Commission promulgated final rules adding 11 CFR 100.93. *See Final Rules and Explanation and Justification for Travel on Behalf of Candidates and Political Committees*, 68 FR 69,583 (Dec. 15, 2003) (''2003 E&J''). Those final rules established an exception from the definition of contribution for payments at specified rates for non-commercial travel in connection with a Federal election. The payment required for non-commercial air travel by ''campaign travelers''—a term that includes individuals traveling in connection with elections for Federal office on behalf of candidates or political committees, and members of the news media traveling with a candidate—depends on whether the travel is between cities served by regularly scheduled commercial airline service, and whether that service is available at a first-class or coach rate. *See* 11 CFR 100.93(a)(3)(i) and 100.93(c). If travel between the origin and destination cities is regularly served by commercial first-class airline service, then a first-class rate applies. 11 CFR 100.93(c)(1). If such travel is served at both origin and destination by coach-class commercial service and the origin city is not served by first-class service, then a coach-class rate applies. 11 CFR 100.93(c)(2). If either the origin or the destination city is not served by commercial airline service, then the rate is the normal and usual charter fare for a comparable airplane sufficient in size to accommodate all campaign travelers. 11 CFR 100.93(c)(3). The same rates apply to travel on an airplane provided by a government entity, unless the travel is to or from a military base or other relatively publicly inaccessible location.[2] The candidate or political committee responsible for the reimbursement must pay the service provider within seven business days of the trip. 11 CFR 100.93(c).

2. Current 11 CFR 9004.7 and 9034.7—Travel by Presidential and Vice-Presidential Candidates Accepting Public Funds

Candidates for President of the United States may elect to receive matching funds from the Federal government to contest their primary elections and presidential nominees may elect to receive public funding to contest the general election. In both cases, the candidates must agree, among other things, to use the public funds they receive solely for ''qualified campaign expenses'' and not to exceed specified expenditure limits. 2 U.S.C. 441a(b)(1)(A) and (B), 26 U.S.C. 9004(c)(1), 9038(b)(2).

The Commission has promulgated separate regulations at 11 CFR 9004.7(b)(5)(i) and (v), (b)(8), and 9034.7(b)(5)(i) and (v) and (b)(8), setting forth the appropriate reimbursement rates that publicly funded candidates must use for campaign-related travel on non-commercial transportation. While 11 CFR 100.93 is focused on the potential underpayment for travel resulting in a contribution, 11 CFR 9004.7 and 9034.7 are focused on the appropriate use of public funds, and thus on whether, and to what extent, expenses for campaign-related travel constitute qualified campaign expenses for which the candidate may use public funds. The rates and recordkeeping requirements for presidential and vice-presidential candidates accepting public funds are the same as those in 11 CFR 100.93 and are mainly set forth through cross-references to 11 CFR 100.93.

[2] If such is the case, then a first-class rate applies, drawn from the closest city with regular first-class commercial service. 11 CFR 100.93(e)(1).

II. Revisions to 2 U.S.C. 439a—Use of Campaign Funds

New 2 U.S.C. 439a(c) prohibits House, Senate, and presidential candidates from making any expenditure for non-commercial travel on aircraft except at specified rates and subject to certain conditions. An ''expenditure'' includes any payment by any person ''made for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A)(i). Like the current regulations at 11 CFR 100.93, the new law focuses on the appropriate reimbursement rates for non-commercial travel. Travel on commercial flights is still governed by the current requirements for reimbursement at the normal and usual charge. The new law, however, directly limits expenditures by a candidate, candidate's authorized committee, or a leadership PAC, rather than merely specifying how to avoid the receipt of an in-kind contribution as in 11 CFR 100.93.

The new law's rates and conditions under which candidates may spend campaign funds for aircraft travel differ depending on the office sought. Presidential and Senate candidates may pay for their pro rata share of the fair market value of a flight, which is determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on board the plane. 2 U.S.C. 439a(c)(1). The authorized committees and leadership PACs of House candidates are, however, generally prohibited from using any campaign funds to pay for non-commercial flights, except for flights on aircraft operated by a Federal or State government entity. 2 U.S.C. 439a(c)(2). Aircraft owned by candidates or their immediate family members are exempt from the prohibitions and rate requirements described above. 2 U.S.C. 439a(c)(3).

III. Proposed 11 CFR 100.5(e)(6)—Definition of ''Leadership PAC''

The term ''Leadership PAC'' is defined in section 204(a) of Public Law 110–81 (2 U.S.C. 434(i)(8)(B)) as ''a political committee that is directly or indirectly established, financed, maintained or controlled by [a] candidate [for Federal office] or [an] individual [holding Federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.'' The term ''PAC'' is an

acronym for ''political action committee,'' which is a term generally used to refer to all political committees other than authorized committees and committees of a political party.[3]

The new definition of leadership PAC is relevant to two areas of the new law that fall within the Commission's purview: (1) The new restrictions on candidate travel that would be implemented through both proposed sections 11 CFR 100.93 and 113.5, and (2) the disclosure requirements in Section 204 of the new law for contributions bundled by lobbyists. In the provision relevant to this rulemaking, the new law generally prohibits ''candidates for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee *and a leadership PAC*'' from making expenditures for non-commercial air travel. Public Law 110–81, section 601(a) (codified at 2 U.S.C 439a(c)(2)) (emphasis added).

The Commission proposes to incorporate a definition of ''leadership PAC'' into 11 CFR 100.5, which is the general definition of ''political committee.'' Specifically, ''leadership PAC'' would be added to the list of different types of political committees in 11 CFR 100.5(e), with the new term added at 11 CFR 100.5(e)(6). The proposed definition mirrors the definition in the new law.

The Commission proposes to incorporate the definition of ''leadership PAC'' into the general definition section in 11 CFR Part 100, rather than within the travel rules themselves, to promote consistency and economy within the structure of its regulations.

The definition will impact several sections of the Commission's regulations, including proposed 11 CFR 100.93, 11 CFR 113.5, and the new bundling regulations the Commission intends to promulgate in a separate rulemaking. The Commission seeks comments on the content and placement of this new definition.

IV. Proposed Revisions to 11 CFR 100.93—Payment for Travel Aboard Aircraft and Other Means of Transportation

The majority of the Commission's current guidance regarding non-commercial air travel is provided in 11 CFR 100.93, which provides an exception to the definition of ''contribution'' for non-commercial travel if the service provider is reimbursed for the travel at the specified rates. Several of the reimbursement rates permitted under current 11 CFR 100.93 are inconsistent with the new statutory requirements. For example, the statute requires a candidate for President or U.S. Senate to reimburse the service provider at the comparable charter rate, whereas current 11 CFR 100.93 allows reimbursement at the rate of the first class or coach airfare for campaign travel between two cities served by regularly scheduled commercial airline service. Therefore, the Commission is proposing conforming changes and clarifications in 11 CFR 100.93.

The Commission wishes to clarify that, although it is proposing changes to only some of the provisions in 11 CFR 100.93, it may make further revisions to this section in its final rules, in response to any public comments and additional information that it may receive regarding the proposed rules. The Commission therefore invites comments on the entirety of 11 CFR 100.93 and is opening the entire section for comments through this Notice of Proposed Rulemaking. Commenters favoring retention of current provisions of 11 CFR 100.93 should submit comments to that effect. Conversely, those preferring additional changes to 11 CFR 100.93 beyond those proposed should submit comments to that effect. In particular, the Commission seeks comments on the extent to which new 2 U.S.C. 439a(c) should be implemented solely through revisions to 11 CFR 100.93, rather than through the addition of 11 CFR 113.5.

a. General Scope of Rule—Travel on Behalf of Candidates

New 2 U.S.C. 439a specifies that ''a candidate for election for Federal office * * * *or any authorized committee* of such a candidate, *may not make any expenditure* for a flight on an aircraft unless—* * *'' 2 U.S.C. 439a(c)(1) (emphasis added). Given the inclusion of authorized committees in this language, the proposed rule, consistent with the current rule, would apply to the same range of individuals covered by the term ''campaign traveler'' in the current rule. Campaign traveler is defined in part as ''any individual traveling in connection with an election for Federal office on behalf of a candidate.'' 11 CFR 100.93(3)(i)(A). In other words, the proposed rule would apply to travel by candidates themselves, and also those traveling on behalf of candidates or their authorized committees, such as campaign staff. *See* proposed 11 CFR 100.93(c)(1).

This interpretation is also consistent with the personal use prohibitions set out by Congress in 2 U.S.C. 439a(b) and the Commission's regulatory interpretation of that section, which apply to personal use by ''any person.'' *See, e.g.*, 11 CFR 113.1(g) (defining personal use as ''any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense *of any person* that would exist irrespective of the candidate's campaign or duties as a Federal officeholder'') (emphasis added); *see also* Explanation and Justification for final rules regarding Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, 7864 (Feb. 9, 1995) (''Section 439a states that no campaign funds 'may be converted by any person to any personal use.' ''). Thus, any use of campaign funds that would exist irrespective of the campaign or the duties of a Federal officeholder is personal use under current Commission regulations, regardless of whether the beneficiary is the candidate, a family member of the candidate, or some other person.

Moreover, the Commission notes that Congress, in its amendments to the Senate rules, set out an approach to reimbursement for non-campaign travel that includes all Congressional staff, not just the Federal officeholders themselves. That amendment requires reimbursement for non-commercial travel aboard aircraft at the normal and usual charter rate for a comparable aircraft of comparable size, ''as determined by dividing such cost by the number of Members, *officers, or employees* of Congress on the flight.'' Public Law 110–81, Section 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate (emphasis added).

The Commission seeks comments on this proposed interpretation of the new law. Is there any evidence that suggests that Congress intended to exclude campaign staff, or others traveling on the candidate's behalf, from the general scope of the rule?

A. Proposed 100.93(a)—Scope and Definitions

1. Proposed 11 CFR 100.93(a)(3)(i)—Definition of ''Campaign Traveler''

A ''campaign traveler'' is defined as ''[a]ny individual traveling in connection with an election for Federal office on behalf of a candidate or political committee'' and ''[a]ny member of the news media traveling with a

[3] The term ''PAC'' has not been a term of art in the law or in Commission regulations. PACs sponsored by a corporation or a labor organization are generally described in the Commission's regulations as separate segregated funds (''SSFs''). *See* 2 U.S.C. 441b(b)(2)(C); 11 CFR 100.5(b). PACs that lack corporate or labor sponsorship are referred to in the regulations as ''nonconnected committees.'' *See, e.g.*, 11 CFR 104.10 and 106.6(a).

candidate.'' 11 CFR 100.93(a)(3)(i). The Commission proposes to add ''Any candidate for Federal office or'' at the beginning of that definition to clarify that a candidate himself or herself would be included within the definition of ''campaign traveler.'' The Commission seeks comments on this proposed clarification and whether any additional changes to the definition would be appropriate.

2. Proposed 11 CFR 100.93(a)(3)(iv) and (v)—Definitions of ''Commercial Travel'' and ''Non-Commercial Travel''

The Commission's current regulations distinguish between commercial and non-commercial air travel based on the certification system of the Federal Aviation Administration (FAA). Specifically, the Commission's rules in 11 CFR 100.93 apply to all airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135. 11 CFR 100.93(a)(1)(i).

The new law's restrictions on expenditures for air travel by presidential and U.S. Senate candidates are focused on the FAA's certification and safety requirements, but do not reference specific FAA regulatory provisions. In order to simplify and align the Commission's regulations with the new statutory language, the Commission is proposing to replace its reliance on specific FAA regulatory provisions with the new terms ''commercial travel'' and ''non-commercial travel.'' The definition of ''commercial travel'' would follow the new statutory language: travel aboard an aircraft ''operated by an air carrier or commercial operator certificated by the Federal Aviation Administration if the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority if the flight is required to be conducted under air carrier safety rules.'' Proposed 11 CFR 100.93(a)(3)(iv). Conversely, the proposed definition of ''non-commercial air travel'' would encompass travel not included in the definition of ''commercial travel.'' Proposed 11 CFR 100.93(a)(3)(v).

The Commission seeks comments on these proposed definitions. Is there any difference between the universe of aircraft encompassed by the new term ''non-commercial travel'' and the aircraft included in current 11 CFR 100.93(c) (''an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135'')? Would additional guidance in the form of references to FAA regulatory provisions be helpful in discerning what aircraft qualify as ''non-commercial travel,'' or is the proposed language sufficiently clear? In addition, the Commission seeks comments on whether additional explanation should be provided to address flights conducted in foreign countries and, if so, what it should be.

The Commission also seeks comments on whether the definitions of ''commercial travel'' and ''non-commercial travel'' should specifically address more complex multiple ownership or leasing arrangements, such as arrangements in which some of the owners of an aircraft are commercial operators certificated by the FAA but others are not.

B. Proposed 11 CFR 100.93(c)(1)—Non-Commercial Air Travel by Candidates for President, Vice-President, and U.S. Senate

New 2 U.S.C. 439a(c)(1)(B) requires candidates for President, Vice President, and U.S. Senate to pay their ''pro rata share of the fair market value'' of non-commercial flights aboard aircraft. The pro rata share is ''determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight.'' *Id.* Because the statutory language is specific that the ''number of candidates on the flight'' determines the ''pro rata share,'' the Commission proposes to define ''pro rata share of the fair market value of a flight'' based solely on the number of candidates on the flight, regardless of whether there are other campaign travelers or passengers aboard. Moreover, because the statutory language applies to expenditures made not only by candidates, but also by authorized committees, the Commission proposes to define ''pro rata share'' based on the number of candidates represented on a flight. *See* proposed 11 CFR 100.93(c)(1) and (3). A candidate is represented on a flight if a person is traveling on behalf of that candidate, the candidate's authorized committee, or the candidate's leadership PAC.[4] *See* proposed 11 CFR 100.93(c)(1). This reimbursement rate does not apply to travel aboard government aircraft or aircraft owned by a candidate or a member of candidate's immediate family, which are covered under proposed section 100.93(e) and (g), respectively, and discussed below. *See* subsections F and G of this section. This reimbursement rate also would not apply when a candidate or representative of the candidate is traveling on behalf of another committee (such as a political party committee), rather than on behalf of the candidate's own campaign. Reimbursement for a candidate's travel on behalf of another committee is the responsibility of the committee on whose behalf the travel occurs, at the appropriate reimbursement rate for that committee as set forth in proposed 11 CFR 100.93(c).

1. Application of Proposed Rule

Candidate A, Candidate B, and Candidate B's campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by two because there are two candidates represented on the flight (Candidate A and B). Each candidate, or the candidate's authorized committee, would therefore be required to pay 50% of the charter rate to avoid receiving an in-kind contribution from the non-commercial aircraft's owner. Because the full costs of the flight would be reimbursed by the candidate travelers (*i.e.*, Candidate A and Candidate B), and the candidate committees would fully compensate the aircraft's owner for the costs of the flight, PAC Representative P's travel would not need to be reimbursed. The Commission invites comment on whether this result—PAC Representative P traveling without paying fair market value for the cost associated with her travel—should be treated as an in-kind contribution to the PAC from one or more of the candidates paying for the cost of the flight. If so, what would the value be? If the value of the travel by a non-candidate traveler is a reportable expenditure by one or more of the candidates when the non-candidate traveler is the representative of a political committee, should the expenditure also be a reportable expenditure if the non-candidate traveler is not a political committee representative? Does it matter whether the non-candidate traveler is traveling at the invitation of one of the candidates or at the invitation of the service provider?

Repayment under the proposed rule would not vary based on the number of non-campaign travelers on the plane. For example, Candidate A, Candidate B, Candidate B's campaign manager and PAC Representative P travel on a twenty-seat plane with six other

[4] *See* discussion of leadership PACs in subsection E.4 of this section.

passengers that are not campaign travelers. Candidate A and Candidate B would still be required to pay 50% each of the entire normal and usual charter fare or rental charge for a ''comparable plane'' seating twenty passengers. Because the candidate committees would fully compensate the aircraft's owner for the costs of the flight, PAC Representative P and the six additional travelers would not be required to provide reimbursement.

2. Per Represented Committee Alternative

As an alternative, the Commission proposes requiring reimbursement based on the number of represented committees of any type, rather than the number of represented candidates or candidate committees. The Commission proposes two variations of this alternative.

(a) For example, Candidate A, Candidate B, and Candidate B's campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by three because there are three represented committees on the flight (Candidate A, Candidate B, and PAC). Each committee would be required to pay 33% of the charter rate to avoid receiving an in-kind contribution from the aircraft's owner.

(b) Using the same hypothetical situation set forth above, PAC Representative P would then have the option of paying either 33% of the calculated charter rate, or the amount that would be required under current 11 CFR 100.93.

3. Per Passenger Alternative

As an alternative, the Commission proposes requiring reimbursement only for the portion of the normal and usual charter rate that reflects the number of candidate representatives as a percentage of all passengers on the aircraft.

For example, Candidate A, Candidate B, and Candidate B's campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by four because there are four passengers on the flight. Each passenger would therefore be required to pay ¼, or 25%, of the charter rate to avoid receiving a contribution. Candidate A and PAC, with one passenger each, would pay 25% each, while Candidate B, with two passengers would be responsible for 50% of the charter rate.

Under this alternative, the repayment would also vary based on the number of non-campaign travelers on the plane. For example, Candidate A, Candidate B, Candidate B's campaign manager, and PAC Representative P travel on a twenty-seat plane with six other passengers who are not candidates or are not traveling on behalf of candidates. Because Candidate A was only one passenger among ten, Candidate A would be required to pay 10% of the normal and usual charter fare or rental charge for a ''comparable plane'' seating twenty passengers. Candidate B, with two passengers, would pay 20%, and PAC, with one passenger, would pay 10%.

4. Comparable Aircraft Alternative

As a further alternative, the Commission proposes to follow the approach in its current regulations and permit reimbursement at the normal and usual charter rate or rental charge for an aircraft of sufficient size to carry the campaign travelers. *See* current 11 CFR 100.93(c)(3) (requiring reimbursement of ''the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers''). Under this approach, the campaign committee would be responsible for paying the normal and usual charter rate for a plane of sufficient size to seat its campaign travelers, rather than the rate for a plane comparable (in terms of seating capacity) to the one flown. For example, Candidate A, Candidate B, Candidate B's campaign manager, and PAC Representative P travel on a twenty-seat plane with six other passengers who are not candidates and are not traveling on behalf of candidates. Under this approach, Candidate A, Candidate B, Candidate B's campaign manager, and PAC Representative P would collectively be responsible for reimbursing the aircraft's owner an amount equivalent to the normal and usual charter fare or rental charge for a ''comparable plane'' that could seat four passengers. Each candidate or committee must pay its pro rata share of that amount.

Under a variation of this alternative, each campaign traveler would be required to pay the normal and usual charter fare or rental charge for a ''comparable plane'' able to accommodate only himself and those traveling on his behalf. Thus, Candidate A would be required to pay the normal and usual cost of a ''comparable plane'' that can seat one passenger. Similarly, Candidate B would be required to pay the normal and usual cost of a ''comparable plane'' that can seat two passengers.

The Commission seeks comments on this approach and the presented alternatives. In addition, the Commission seeks comments on any other calculations that might be more appropriate.

C. Proposed 11 CFR 100.93(c)(2)—Non-Commercial Air Travel by Candidates for the House of Representatives

New 2 U.S.C. 439a(c)(2) states that ''in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress [hereinafter ''House candidates''], an authorized committee and a leadership PAC of the candidate may not make any expenditure'' for non-commercial air travel, with exceptions for travel on government airplanes and aircraft owned by the candidate or members of the candidate's immediate family. Both exceptions are discussed below. The effect of this provision is generally to prohibit travel by House candidates on non-commercial aircraft. Proposed 11 CFR 100.93(c)(2)(i) would reflect new 2 U.S.C. 439a(c)(2) by prohibiting expenditures by House candidates for non-commercial travel on behalf of that candidate, the candidate's authorized committee, or the candidate's leadership PAC. The new law expressly applies to expenditures by authorized committees and leadership PACs of House candidates, including expenditures made by the candidates themselves on behalf of their authorized committees. Proposed 11 CFR 100.93(c)(2) would apply not only to House candidates, but also to persons traveling on behalf of such candidate, the candidate's authorized committee, or the candidate's leadership PAC. This prohibition does not apply when the travel would not be considered an expenditure by the candidate, candidate's authorized committee, or candidate's leadership PAC. For example, travel by a House candidate on behalf of a non-House candidate, party committee, or non-candidate committee would be required to be reimbursed by such other committee at the respective rate set forth for travel on behalf of that candidate or committee. The Commission seeks comment on this approach.

The Commission seeks comments on the treatment of House candidate travel in proposed 11 CFR 100.93(c)(2). Should House candidates be permitted to travel on non-commercial aircraft on

behalf of their own campaigns if the cost of the travel is provided as a permissible in-kind contribution? For example, if the travel was provided by a permissible source and the costs of the travel were below the contribution limit, should a non-candidate committee be able to reimburse the travel costs as an in-kind contribution to the candidate? The proposed expenditure regulations, discussed below, prohibit such in-kind contributions. *See* proposed 11 CFR 113.5(b). If in-kind contributions are allowed, at what rate should their value be calculated for reimbursement and reporting purposes?

D. Proposed 11 CFR 100.93(c)(3)—Non-Commercial Air Travel by Other Campaign Travelers

The Commission proposes two alternatives with respect to non-commercial air travel by non-candidate campaign travelers.

Alternative 1

The Commission notes that the non-candidate reimbursement rate is not addressed in new 2 U.S.C. 439a(c).[5] These proposed changes are intended to promote uniformity and simplicity in the regulation, and make the regulation easier to understand. The Commission's long-standing travel regulations addressed travel only by candidates or on behalf of candidates. *See* former 11 CFR 114.9(e). In 2003, the Commission extended its travel regulations to cover all travel in connection with a Federal election, stating, ''By establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.''

Against this background, as one alternative, the Commission is proposing changes to the current reimbursement rate for campaign travelers who are not traveling on behalf of candidates. For example, this rate would apply to individuals traveling on behalf of a political party committee, SSF, or nonconnected committee. Under the proposed rule, the provider must be reimbursed at the pro rata share of the fair market value of such travel. Proposed 11 CFR 100.93(c)(3). The pro rata share is based on the number of different committees represented on the flight, and is calculated in the same manner as reimbursement for travel on behalf of Senate, Vice Presidential, or Presidential candidates under proposed 11 CFR 100.93(c)(1). For example, if a non-commercial flight carried two PAC A campaign travelers and one PAC B campaign traveler, each PAC would be responsible for 50% of the fair market value of the flight.

This rate does not apply when the travel is shared with a candidate or person traveling on behalf of a candidate. The Commission is proposing this alternative to avoid permitting outside organizations to subsidize a candidate's travel. Travel on an aircraft that includes a campaign traveler flying on behalf of a candidate, candidate's authorized committee, or candidate's leadership PAC, must be fully reimbursed by that candidate, candidate's committee or, when permissible, the candidate's leadership PAC. No reimbursement would be required by the non-candidate travelers. *See* proposed 11 CFR 100.93(c)(3). For example, if a non-commercial flight carried two PAC A campaign travelers, one PAC B campaign traveler, and Senator A, traveling on behalf of his or her campaign, Senator A or Senator A's campaign committee would be responsible for the full fair market value of the flight. PAC A and PAC B would not have to reimburse for the flight costs.

The Commission invites comment on whether this result should be treated as an in-kind contribution to the PACs from Senator A. Does it matter whether or not the non-candidate travelers are representatives of political committees? If the value of the travel by the non-candidate travelers is a reportable expenditure by Senator A when the non-candidate travelers are political committee representatives, should the expenditure also be a reportable expenditure if the non-candidate travelers are not political committee representatives? Does it matter whether the non-candidate travelers are traveling at the invitation of Senator A or at the invitation of the service provider?

Alternative 2

Under this alternative, the Commission proposes to retain the existing reimbursement rate structure for non-candidate travel. Because non-candidate travel is not addressed in the new law, the existing rate structure would remain the same for all campaign travelers not traveling on behalf of a candidate or that candidate's authorized committee (*i.e.*, campaign travelers traveling on behalf of political party committees, SSFs, and other non-authorized committees). The Commission notes that this might result in the service provider being paid more than the fair market value of the flight. Does the possibility of such ''overcompensation'' to the service provider represent a concern under FECA? And, if so, in what way?

The Commission seeks comment on this approach. Should the Commission interpret the fact that new 2 U.S.C. 439a(c) does not address non-candidate travel as a form of legislative acquiescence to the Commission's current regulations on non-candidate travel reimbursement? Do the first class and coach air fare rates reflect the fair market value of the services provided? Should the Commission adopt a different reimbursement rate for non-candidate travel, such as the per committee or per passenger alternatives discussed above?

E. Additional Proposed Revisions to 11 CFR 100.93

1. Members of the Media and Security Personnel

Members of the news media ''traveling with a candidate'' for Federal office are expressly included within the definition of ''campaign traveler'' in the Commission's current rules. *See* 11 CFR 100.93(a)(3)(i)(B). The Commission is not proposing changes to this definition. Under the current rules, when a member of the media is traveling with a candidate, that candidate's committee is ultimately responsible for paying the service provider for the full costs of the travel, but may seek reimbursement from the media for the media's portion of the travel expenses.[6] The Commission proposes to revise 11 CFR 100.93(b)(1)(iii) to ensure that members of the media would not be permitted to relieve the candidates with whom they travel from responsibility for paying the service provider the full normal and usual charter rate or rental charge for travel on an aircraft, pursuant to proposed 11 CFR 100.93(c)(1). Members of the media would still be permitted to reimburse the service provider for travel on conveyances other than aircraft. The Commission seeks comments on this approach. Should the Commission instead continue to allow reimbursement from members of the

[5] The statute does address payments by political committees other than authorized committees in describing the reimbursement rate for Senate, Vice Presidential, and Presidential candidates. *See* 2 U.S.C. 439a(c)(1)(B) (''the candidate, the authorized committee, *or other political committee* pays * * *'') (emphasis added).

[6] ''If a member of the news media elects to have the candidate's authorized committee pay for the media's travel rather than paying the service provider directly, he or she may do so and the candidate's authorized committee is permitted to seek reimbursement from the media. Ultimately it is the candidate's responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate.'' 2003 E&J at 69586. *See also* 11 CFR 9004.6 and 9034.6.

media for travel on aircraft? At what rate should this reimbursement take place, for example, should it be calculated at a portion of the charter rate or at a first class rate?

Security personnel are treated differently under the Commission's current rules. Under the current rules, security personnel are not necessarily considered ''campaign travelers,'' but could qualify as such depending on the nature of any additional services that they provide a candidate. *Compare* 11 CFR 100.93(a)(3)(i)(A) with 100.93(c)(3) and (d). For example, if Secret Service personnel travel with a candidate for Federal office to the candidate's fundraiser aboard a government airplane, the candidate's authorized committee would not be required to pay for the Secret Service member's travel under the current rules unless the Secret Service agent otherwise qualified as a campaign traveler *or* the flight was required to be reimbursed at the usual charter rate. *See* current 11 CFR 100.93(c)(3) (calculation of the usual charter rate requires ''comparable commercial conveyance of sufficient size to accommodate all campaign travelers * * * *and security personnel*'') (emphasis added) and 11 CFR 100.93(e)(1)(ii). Committees can then seek reimbursement from the Secret Service for their portion of the travel expenses. *See, e.g.*, Advisory Opinion 1992–38 (Clinton/Gore) (loan proposal premised on reimbursement from the Secret Service); *see also* 11 CFR 9004.6 and 9034.6.

Under the proposed rules, when security personnel travel with a candidate or person traveling on behalf of a candidate, that candidate's committee would be responsible for the full costs of the travel. *See* proposed 11 CFR 100.93(c)(1). However, if the travel occurs on a government aircraft, the security personnel would not be included in the calculation. *See* proposed 11 CFR 100.93(e)(1). Should the Commission allow reimbursement from security personnel for travel on non-commercial, non-governmental aircraft? At what rate should this reimbursement take place, for example, should it be calculated at a portion of the charter rate or at a first class rate? Under current regulations, how and under what circumstances do committees seek reimbursement for travel expenses from the U.S. Secret Service?

2. ''Comparable Plane of Comparable Size''

New 2 U.S.C. 439a(c)(1)(B) requires that the candidate or the candidate's authorized committee use the fair market value of a ''comparable plane of comparable size'' for purposes of calculating the appropriate charter rate. The Commission interprets ''comparable size'' as an aircraft with similar physical dimensions that is able to carry a similar number of passengers.[7]

The Commission interprets ''comparable plane'' as an aircraft of similar make and model as the airplane that actually makes the trip, with the same amenities as that airplane. This interpretation is consistent with the Commission's current interpretation of a similar term, ''comparable commercial airplane,'' in the current rules. *See* 11 CFR 100.93(c)(3); *see also* proposed 11 CFR 100.93(c)(3)(iii). As explained in the 2003 E&J:

> a ''comparable commercial airplane'' means an airplane of similar make and model as the airplane that actually makes the trip, and with the same amenities as that airplane. For example, in Advisory Opinion 1984–48, the Commission interpreted a comparable airplane as being ''of the same type (*e.g.*, jet aircraft versus prop plane) and services offered (*e.g.*, plane with dining service or lavatory versus one without)'' as the plane actually used. The Commission further explained that when a candidate used a twin engine prop jet, a single engine, prop aircraft would not be a comparable aircraft. The term ''comparable commercial airplane'' is intended to require these distinctions as well as other differences such as when a plane is chartered with a crew or without, or with or without fuel.

2003 E&J at 69588–69589.

The Commission seeks comments on this approach.

3. Presidential and Vice-Presidential Candidates Accepting Public Financing

The Commission proposes to continue its policy of promoting equal treatment of travel by publicly financed candidates and presidential or vice-presidential candidates who have not accepted public funds. Therefore, proposed 11 CFR 100.93(c)(1) would apply directly to presidential and vice-presidential candidates who have not accepted public funds, while the proposed revisions to 11 CFR 9004.7 and 9034.7, discussed below, would continue to incorporate the section 100.93 rates by reference and thereby indicate that they also apply to candidates who have accepted public funds. One important distinction, however, is that a presidential candidate accepting public funds for the general election is prohibited from receiving any in-kind contribution from any person, which would include an in-kind contribution of non-commercial air travel.

The Commission seeks comments on the proposed application of the new rules to publicly financed presidential and vice-presidential candidates.

4. Travel on Behalf of Leadership PACs of Senate, Presidential, and Vice-Presidential Candidates

Under new 2 U.S.C. 439a(c), payments by leadership PACs of House candidates are subject to the same restrictions as payments by authorized committees of House candidates. *See* 2 U.S.C. 439a(c)(2). In contrast, new 2 U.S.C. 439a(c) is silent with respect to leadership PACs of Senate candidates and Federal officeholders with leadership PACs who are also presidential or vice-presidential candidates.

The Commission proposes to apply the new reimbursement rates to travel on behalf of a Senate candidate's leadership PAC. *See* 11 CFR 100.93(c)(1). The Commission seeks comment on this approach. Alternatively, should the Commission decline to extend the new reimbursement rate structure to travel on behalf of a Senate candidate's leadership PAC because the new law does not explicitly do so?

5. Commercially Reasonable Time Frame

Candidates for President, Vice-President, and the U.S. Senate must pay their pro rata share of non-commercial travel on aircraft ''within a commercially reasonable time frame after the date on which the flight is taken.'' 2 U.S.C. 439a(c)(1)(B). Proposed 11 CFR 100.93(c) would define the statutory ''commercially reasonable time frame'' as a seven-day time frame beginning on the first day of the flight. The proposed approach would be located in the introductory clause of 11 CFR 100.93(c) and thus would be applicable to all payments required under that paragraph. The Commission seeks comment on this approach.

Is seven days a ''commercially reasonable time frame'' for reimbursement or is it too short a period? Would another time period for

[7] The Commission's current rules at 11 CFR 100.93 distinguish between travel aboard an ''airplane'' and travel aboard all other conveyances, including helicopters. *See* 11 CFR 100.93(a)(3)(ii) (definition of ''service provider'' focuses on ''person who makes the airplane or other conveyance available''), 11 CFR 100.93(c) (''travel by airplane'') and 11 CFR 100.93(d) (''other means of transportation'' includes ''any other means of transportation'' and specifically lists helicopters). For internal consistency and to promote uniformity within its regulations and avoid confusion, the Commission proposes to replace all references to ''airplanes'' in 11 CFR 100.93 with ''aircraft.'' The primary impact would be that travel aboard a helicopter would be reimbursed at the pro rata share of the fair market value of the flight.

reimbursement be more appropriate or reasonable? Should the Commission instead establish the seven-day period (or some other period) as a safe harbor, and consider longer periods on a case-by-case basis to determine if the ''commercially reasonable time frame'' requirement was satisfied?

F. Proposed 11 CFR 100.93(e)—Government Conveyances

The Commission's current rules at 11 CFR 100.93(e) require reimbursement for travel aboard airplanes owned by the Federal government, or by any State or local government entity, at the same rate as travel aboard other airplanes (*i.e.*, the rate for a first-class or coach ticket aboard a commercial flight if the travel is between two cities served by regularly scheduled commercial airline service, or the equivalent charter rate if there is no such service between the cities).[8] Non-commercial campaign travel aboard other government conveyances is also required to be reimbursed at the same rate as travel aboard equivalent means of transportation not owned by a government entity. 11 CFR 100.93(e)(2).

New 2 U.S.C. 439a(c) generally prohibits candidates for the U.S. House of Representatives from using campaign funds for non-commercial campaign travel, but provides an exception for travel aboard an aircraft ''operated by an entity of the Federal government or the government of any State.'' 2 U.S.C. 439a(c)(2)(B). The new law does not specify any particular rate of reimbursement for travel aboard government aircraft, nor does it explicitly require or prohibit reimbursement for such travel.[9]

Proposed 11 CFR 100.93(e) would require all campaign travelers, including candidates for Federal office and those traveling on their behalf, who travel on aircraft provided by a Federal or State government entity (including local governments), to reimburse the appropriate government entity for the travel. *See* proposed 11 CFR 100.93(e). The proposed rules set out two alternative rates of reimbursement for travel by candidates and candidate representatives, and either rate would be acceptable.

The first proposed rate of reimbursement, which would be similar to current 11 CFR 100.93(c)(1), would be the pro rata share per represented candidate of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all of the campaign travelers. The pro rata share would be determined by dividing the normal and usual charter fare by the number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers. Under this proposal, the ''comparable aircraft'' used for determining the required reimbursement amount would not be required to accommodate the non-campaign related passengers and equipment aboard the aircraft. For example, if Presidential Candidate A, two campaign staffers traveling on behalf of Presidential Candidate A, two members of the Secret Service, and PAC representative P, travel on a twenty-seat government aircraft, reimbursement would be required at the normal and usual charter rate for comparable aircraft of sufficient size to accommodate four passengers (Presidential Candidate A, his two campaign staffers, and PAC representative P; the two Secret Service agents would not be counted). Presidential Candidate A would pay the full charter rate, and PAC representative P would not be required to reimburse for his or her travel. The Commission seeks comment on this approach. Specifically, do non-candidate campaign travelers use government aircraft when not accompanied by a candidate, or person traveling on behalf of a candidate? At what rate should travel on a government plane that does not include any candidate-related campaign travelers be calculated?

The Commission seeks comments on a variation of this first reimbursement rate, in which Presidential Candidate A and PAC representative P would each be responsible for the full cost of the normal and usual charter rate for an aircraft of sufficient size to accommodate only those campaign travelers who are traveling on their behalf. Under this variation, Presidential Candidate A would pay the normal and usual charter rate for an aircraft capable of accommodating three campaign travelers: Candidate A and his two staffers. PAC representative P would be required to pay only the normal and usual charter rate for an aircraft of sufficient size to carry one passenger.

With respect to campaign travel aboard Air Force One or other government aircraft dedicated to transporting the Vice President, the Speaker of the House of Representatives, or other such officials, the Commission intends that the reimbursement amount under this proposal would be determined with reference to an aircraft of sufficient size to accommodate the campaign travelers, and excluding all non-campaign-related personnel and equipment. The Commission acknowledges that it may be difficult, if not impossible, to apply the ''comparable plane of comparable size'' standard to circumstances in which the campaign traveler travels exclusively aboard a specially-outfitted, government-owned aircraft by virtue of his or her status as an officeholder. For example, few, if any, aircraft exist with the ''same amenities'' as Air Force One. *See* proposed 11 CFR 100.93(e)(1)(i).

The second proposed rate of reimbursement would be the private traveler reimbursement rate per campaign traveler. This rate would be the rate specified by the Federal, State, or local government agency or other government entity for private travel on its aircraft by a member of the public. The Department of Defense, for example, publishes a list of hourly reimbursement rates for both fixed-wing aircraft and helicopters and includes an ''All Other User'' rate.[10] Using the private traveler reimbursement rate, the reimbursement rate is calculated by dividing the private traveler reimbursement rate by the number of campaign travelers. Reimbursement would not be required for national security staff or other government officials on the flight that are not campaign travelers. The Commission seeks comment on this approach. Should the campaign traveler be permitted to reimburse the government entity at a lower rate specified by the government entity, such as the rate offered by some government agencies to travelers of other government agencies? Should the regulations offer a choice between alternative acceptable valuation methods, or should the Commission adopt a single method of determining the reimbursement rate? The Commission recognizes that campaign travel aboard government conveyances such as Air Force One and Air Force Two present special circumstances. Therefore, the

[8] Travel to or from a military airbase or other location not accessible to the general public is treated as travel from the nearest city with regularly-scheduled commercial airline service. 11 CFR 100.93(e)(1)(i).

[9] The Commission notes that Public Law 110–81 also amends the Senate ethics rules regarding travel. These amendments similarly require Senators to pay this pro rata share of the fair market value of a flight for non-commercial travel. *See* Public Law 110–81, Sec. 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate. These amendments, however, expressly except from these restrictions any travel aboard ''an aircraft owned or leased by a governmental entity.'' Standing Rules of the Senate, Rule XXXV, Paragraph 1(c)(1)(C)(iii).

[10] *See* Fiscal Year 2008 Reimbursement Rates, available at *http://www.defenselink.mil/comptroller/rates/fy2008/2008_f.pdf* and *http://www.defenselink.mil/comptroller/rates/fy2008/2008_h.pdf*.

Commission requests comment on how it should address Air Force One and Air Force Two in its regulations.

The proposed rules would not specify a particular time for repayment for travel on government aircraft under either of the alternative rates. Should the Commission require payment within a specific time period, such as seven days, as for travel on other aircraft under proposed 11 CFR 100.93(c)?

G. Proposed 11 CFR 100.93(g)—Exception for Aircraft Owned by Federal Candidates and Their Family Members

The amendments to 2 U.S.C. 439a include an exception for travel aboard aircraft that are ''owned or leased'' by a candidate or candidate's immediate family member, including an aircraft owned or leased by any entity in which the candidate or a member of the candidate's immediate family ''has an ownership interest,'' provided that the entity is not a ''public corporation'' and the use of the aircraft is not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439a(c)(3)(A). The exception would operate as an exception to all of the restrictions on expenditures for air travel in new 2 U.S.C. 439a(c). *See* discussion of proposed 11 CFR 113.5. The Commission seeks comment on this approach.

While the new exception relieves the restrictions on expenditures, it does not relieve candidates of the obligation to reimburse the service providers (candidates, members of their family, or entities in which either owns an interest) to avoid receiving an in-kind contribution for the use of the aircraft. *See* 11 CFR 100.93. Even though a candidate for Federal office may make an unlimited amount of contributions to his or her own campaign, those contributions must be reported by the candidate's authorized committee.[11] 11 CFR 110.10; Advisory Opinions 1991–09 (Hoagland), 1990–09 (Mueller), 1985–33 (Collins), 1984–60 (Mulloy). Contributions by all other persons, including immediate family members, are subject to the applicable amount limits and source prohibitions. 11 CFR 110.1 *et seq.*

The Commission proposes several reimbursement alternatives. Proposed 11 CFR 100.93(g) would require reimbursement for aircraft owned by candidates and their immediate family at the rates set forth in the Commission's existing rules, which would be moved to 11 CFR 100.93(g)(1)(i) through (iii): first-class, coach, or charter rates, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service. The charter rate would be required only if the travel is between two cities not served by regularly scheduled first class or coach commercial airline service.

1. Incremental Cost Alternative

As an alternative, the Commission proposes that such travel be reimbursed at the actual incremental cost of such travel. For example, in the case of a candidate piloting his or her own aircraft to a campaign event, the rate of reimbursement would be the actual cost of fuel and any incremental costs such as landing fees. Depreciation or the candidate's piloting services would not be included in the reimbursement calculation. However, under this alternative, if a pilot or crew were employed for the flight, the cost of their services would be included in the reimbursement rate. Should reimbursement not be required if the pilot or crew (including family members) are volunteers for the candidate or campaign committee?

2. Actual Value Alternative

In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, the Commission proposes as an additional alternative that reimbursement be required at the hourly, mileage, or other applicable rate charged the candidate, corporation, or immediate family member for the costs of the travel. For example, if a candidate traveled on an aircraft leased by an immediate family member at a cost of $1,000 per hour, the appropriate reimbursement rate to that family member would be $1,000 per hour.

The Commission seeks comment on the proposed approaches or any other method of calculation. For example, the Commission seeks comment on whether the exception should require reimbursement at all for travel on candidate-owned aircraft. Alternatively, should the Commission require reimbursement at the same reimbursement rate required for all other candidate travel under the proposed regulations, *i.e.*, the pro rata share of the fair market value of such flight? Moreover, should the Commission allow one or more methods for calculating the appropriate reimbursement rate?

Because the exception in 2 U.S.C. 439a(c)(3) for travel on aircraft owned by candidates or members of their immediate family functions to permit otherwise restricted or prohibited expenditures by candidates and their committees, the Commission proposes to limit the exception to travel by candidates or persons traveling on behalf of candidates. Thus, proposed 11 CFR 100.93(g) would cover travel on an aircraft owned by a candidate, the candidate's immediate family member, or an entity other than a public corporation in which the candidate or immediate family member has an ownership interest. The exception would not, however, be available for other candidates traveling on behalf of their own campaigns.[12] The Commission seeks comment on this approach.

In addition, the exception in new 2 U.S.C. 439a(c)(3) includes several terms warranting clarification. First, the term ''ownership interest'' is not defined. The Commission proposes to interpret the term ''ownership interest'' to include fractional ownership, equity, or use arrangements, as well as ''time-sharing'' arrangements in which the candidate or an immediate family member pays a fee for a specified amount of travel on the aircraft.

The Commission proposes to interpret the term ''public corporation'' as applying to any corporation with publicly traded shares. Therefore, aircraft owned by privately held corporations without publicly traded shares, partnerships without publicly traded equity interests, limited liability companies without publicly traded shares, and all other entities without publicly traded shares or equity interests would fall within this exception, so long as a candidate or member of the candidate's immediate family owns an equity interest or voting interest in that entity.

The new statutory exception limits a candidate's use of the aircraft to not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439(c)(3)(A). However, the statute does not specify the exact nature of the relationship between ownership shares and use of the aircraft.

[11] A contribution by a candidate for the House or Senate to his own campaign may also impact separate disclosure requirements for expenditures from personal funds under 2 U.S.C. 441a(i), the so-called ''Millionaires Amendment.'' 2 U.S.C. 441a(i)(1)(C); 11 CFR Part 400. The Commission seeks comment on the impact of these proposed regulations on the Millionaire's Amendment.

[12] The reimbursement rates in proposed 11 CFR 100.93(c)(3)(i) through (iii) would apply to officials of a political party committee who are traveling on behalf of the party committee, and other campaign travelers who are traveling on behalf of a political committee other than a candidate's authorized committee or leadership PAC.

Rather than account for all of the potential ownership structures of an entity that may own or lease an aircraft, the Commission is proposing a simple condition for the exception to apply: unless the candidate or immediate family member is the sole owner of the aircraft, the amount of use of the aircraft to which each ownership share is entitled must be specified in writing prior to the candidate's use of the airplane. As long as the written policy provides a reasonable relationship between the use of the aircraft and the percentage of ownership by the candidate or candidate's immediate family member, the Commission would not delve into the various ownership structures. The Commission requests comments on this proposal. If the candidate's use of the aircraft exceeds his or her proportionate ownership share, how should that excessive use be reimbursed? Should the excessive use be prohibited altogether?

The proposed rules would not specify a particular time for repayment for travel on aircraft owned by a candidate or a member of the candidate's immediate family. Should the Commission require payment within a specific time period, such as seven days, as for travel on other aircraft under proposed 11 CFR 100.93(c)?

H. Recordkeeping Requirements

In light of the proposed changes to the reimbursement rates required for candidates and candidate representatives, the Commission proposes two revisions to its current recordkeeping requirements for non-commercial travel at 11 CFR 100.93(i), which would be relocated to proposed 11 CFR 100.93(j).

First, although the Commission's current rules permit candidates and persons traveling on their behalf to pay first-class or coach rates for certain flights, candidates and their representatives would be required to pay the normal and usual charter rates under the proposed rules. *See* proposed 11 CFR 100.93(c)(1) and (2). Accordingly, the Commission proposes to establish a new paragraph in its revised recordkeeping section to specify that candidates, and those paying for travel by candidates and candidate representatives, must follow the current recordkeeping requirements for persons paying the normal and usual charter rate for air travel. *See* proposed 11 CFR 100.93(j)(3)(i) (referencing the recordkeeping requirements in proposed paragraph (j)(2) of the same section). These requirements are intended to preserve information, such as the tail number of an aircraft and the number of campaign travelers, that would enable the Commission to determine whether the correct amount of reimbursement was provided for specific flights. To avoid any inference that candidates would be permitted to pay the first class or coach rates, proposed paragraphs (j)(1) and (j)(2) would also be revised to expressly provide that candidates and person traveling on behalf of candidates would be governed by paragraph (j)(3), not (j)(1).

Second, the Commission would require that a record of the written agreement required for aircraft owned in part by a candidate for Federal office or a member of his or her immediate family be maintained by the committee. The Commission seeks comment on the appropriate duration of this record retention requirement. *See* proposed 11 CFR 100.93(j)(3)(ii). Where an aircraft is owned by an entity in which the candidate or a member of the candidate's immediate family owns an interest, this document would be required by proposed 11 CFR 100.93(g) to specify the proportionate use of the aircraft corresponding to the percentage of ownership of the candidate or member of the candidate's immediate family.

The Commission seeks comments on these proposed revisions.

V. Use of Campaign Funds for Non-Commercial Travel—11 CFR 113.5

In addition to the proposed revisions to the travel reimbursement regulations at 11 CFR 100.93, the Commission also proposes to add a new section 11 CFR 113.5 to implement the limit on expenditures for non-commercial air travel contained in new 2 U.S.C. 439a(c).

A. Proposed Change of Title for 11 CFR Part 113

Along with the proposed addition of new 11 CFR 113.5 implementing new 2 U.S.C. 439a(c), the Commission proposes to change the title of Part 113. The current title, ''Use of Campaign Accounts for Non-Campaign Purposes,'' is insufficiently broad to encompass the subject matter of the proposed rule, which regulates a use of campaign funds for campaign purposes rather than for non-campaign purposes. The Commission proposes instead the broader title, ''Permitted and Prohibited Uses of Campaign Accounts,'' to capture the content of both the existing regulations in this part and that of the proposed rule.

B. Proposed 11 CFR 113.5(a)—Rule for Presidential, Vice-Presidential and Senate Candidates

Proposed 11 CFR 113.5(a)(1) reflects the general prohibition in new 2 U.S.C. 439a(c) on the expenditure of funds by candidates for President, Vice-President or the Senate and their authorized committees and leadership PACs for aircraft flights, except in certain specified situations. The first situation is when air travel is taken on ''commercial'' flights. *See* proposed 11 CFR 113.5(a)(1). The second situation is when air travel is taken on ''non-commercial'' flights and the candidate or his or her authorized committee reimburses the provider of the airplane in the amount of the candidate's pro rata share of the fair market value of the flight within seven days of the flight. *See* proposed 11 CFR 113.5(a)(2). Proposed 11 CFR 113.5(a)(1) and (2) provide cross-references to definitions of the terms ''commercial travel,'' ''non-commercial travel,'' and ''pro rata share of the fair market value of the flight'' in proposed 11 CFR 100.93(a)(3)(iv), (v) and (vi).

Proposed 11 CFR 113.5(a) includes restrictions on expenditures by leadership PACs of Senate, presidential, and vice-presidential candidates, to conform to the Commission's proposed language in 11 CFR 100.93(c)(1).

The Commission requests comments on all of the above aspects of proposed 11 CFR 113.5(a).

C. Proposed 11 CFR 113.5(b)—Rule for House Candidates

New 2 U.S.C. 439a(c)(2) contains the applicable rule for candidates for election to office in the House of Representatives. Unlike candidates for President, Vice-President, or the U.S. Senate, House candidates, including authorized committees and leadership PACs of such candidates, are prohibited from spending campaign funds on private, non-commercial air travel. Instead, House candidates may spend campaign funds on air travel only when the flight is commercial or when the flight is operated by an entity of the Federal government or of a State government (including local governments). Other than travel permitted under 11 CFR 100.92(g), because House candidates, their authorized committees, and their leadership PACs are prohibited from spending campaign funds on non-commercial travel, the proposed rule also prohibits House candidates from accepting in-kind contributions in the form of non-commercial air travel. Proposed 11 CFR 113.15(b).

Proposed 11 CFR 113.5(b)(1) and (2) implement these provisions. Proposed subparagraph (1) contains the same ''commercial exception'' as is set forth in proposed 11 CFR 113.5(a)(2). Travel on government-operated aircraft is reflected in proposed subparagraph (2).

D. Proposed 11 CFR 113.5(c)—Exception to Rules for Aircraft Owned or Leased by Candidate or Immediate Family Member

The restrictions on expenditures in the amendments to 2 U.S.C. 439a do not apply to travel aboard aircraft that are ''owned or leased'' by the candidate or the candidate's immediate family member, and aircraft owned or leased by any entity in which the candidate or a member of the candidate's immediate family ''has an ownership interest,'' provided that the entity is not a ''public corporation'' and the use of the aircraft is not ''more than the candidate's or immediate family member's proportionate share of ownership allows.'' 2 U.S.C. 439a(c)(3)(A).

The Commission proposes to implement this exception in proposed 11 CFR 113.5(c). Proposed 11 CFR 113.5(c)(1) contains the exceptions. Proposed 11 CFR 113.5(c)(2) states that candidates and immediate family members will be considered to own or lease aircraft under the conditions described in proposed 11 CFR 100.93(g)(2), namely, when there is an ownership interest in an entity other than a public corporation that owns the aircraft. Proposed 11 CFR 113.5(c)(3) contains a cross-reference to proposed 11 CFR 100.93(g)(3), which defines the term ''immediate family member'' in accordance with new 2 U.S.C. 439a(c)(3)(B).

E. Proposed 11 CFR 113.5(d)—Unreimbursed Air Travel as Contribution

Proposed 11 CFR 113.5(d) states that the unreimbursed value of transportation provided to any campaign traveler, as defined in proposed 11 CFR 100.93(a)(3)(i), is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled, and that such contributions are subject to the limits and prohibitions of the Act.

VI. Publicly-Financed Presidential and Vice-Presidential Candidates—11 CFR 9004.7 & 9034.7

Although new 2 U.S.C. 439a(c) does not amend either the Presidential Election Campaign Fund Act (Fund Act) (26 U.S.C. 9001 *et seq.*) or the Presidential Primary Matching Payment Account Act (Matching Payment Act) (26 U.S.C. 9031 *et seq.*), the Commission proposes to make certain amendments to its regulations implementing these laws to conform to the changes it proposes to make to 11 CFR 100.93.

Sections 9004.7 and 9034.7 are identically worded regulations promulgated under the authority of the Fund Act and the Matching Payment Act, respectively, and contain cross-references to 11 CFR 100.93. Both regulations prescribe the procedures that publicly funded primary and general election presidential campaigns must follow in attributing their travel expenses to campaign-related and to non-campaign-related activities. The Commission proposes the following technical amendments to conform these regulations to proposed 11 CFR 100.93:

A. Aircraft

Proposed 11 CFR 9004.7(b)(5)(i), (iii), and (v), and 11 CFR 9004.7(b)(8) replace the word ''airplane'' with the word ''aircraft.'' These changes conform the regulations to the scope of new 2 U.S.C. 439a(c) and to proposed 11 CFR 100.93, as well as to proposed 11 CFR 113.5.

B. Recordkeeping Requirements

Currently, 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) require the authorized committees of presidential and vice-presidential candidates to maintain documentation of the lowest unrestricted non-discounted airfare as required in 11 CFR 100.93(i)(1) or (2). Sections 100.93(i)(1) and (2) contain recordkeeping requirements relating to rates of reimbursement prescribed in 11 CFR 100.93(c) and (e). Proposed 11 CFR 100.93 replaces the current reimbursement rate for non-commercial air travel by presidential and vice-presidential candidates with a rate based on the ''pro rata share of the fair market value'' of the flight and sets out the corresponding recordkeeping requirements in proposed 11 CFR 100.93(j)(3). The Commission proposes to change 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) to conform the recordkeeping requirements to those proposed in 11 CFR 100.93(j)(3). The Commission also proposes to make a conforming amendment to the final sentence in this provision, which addresses recordkeeping requirements for travel on other conveyances. Recordkeeping requirements in such cases would be addressed in proposed 11 CFR 100.93(j)(4). Thus, the Commission proposes to require recordkeeping in accordance with proposed 11 CFR 100.93(j)(4).

C. 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8)—Scope

Sections 9004.7(b)(8) and 9034.7(b)(8) identify the scope of 11 CFR 100.93 in terminology used in current section 100.93. Specifically, the provisions speak in terms of aircraft that are ''licensed for compensation or hire'' under various FAA certification authorities. The Commission proposes to change this language to conform to the proposed language used in new 2 U.S.C. 439a(c) and in proposed 11 CFR 100.93. Proposed 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8) state that travel on non-commercial airplanes is governed by 11 CFR 100.93 and that the term ''non-commercial'' is defined in accordance with proposed section 11 CFR 100.93(a)(3)(v).

The Commission invites comments from the public concerning any of the proposals outlined above. The Commission also invites comments from the public regarding any additional changes that should be made to 11 CFR 100.5(e), 100.93, 113.5, 9004.7(b)(5)(i), (iii), (v) or (b)(8), or 9034.7(b)(5)(i), (iii), (v), or (b)(8).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these final rules, which impose obligations only on Federal candidates, their campaign committees, other individuals traveling in connection with a Federal election, and the political committees on whose behalf this travel is conducted. Federal candidates, their campaign committees, and most political party committees and other political committees entitled to rely on these rules are not small entities. These rules would generally clarify or supplement existing rules and are largely intended to implement a statutory directive and simplify the process of determining reimbursement rates. The rules would not impose compliance costs on any service providers (as defined in the rules) that are small entities so as to cause a significant economic impact. With respect to the determination of the amount of reimbursement for travel, the new rules would merely reflect an extension of existing similar rules. To the extent that operators of air-taxi services or on-demand air charter services are small entities indirectly impacted by these rules, any economic

effects would result from the travel choices of individual candidates or other travelers rather than Commission requirements and, in any event, are likely to be less than $100,000,000 per year.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 113

Campaign funds, and political candidates.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would be revised to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

2. Section 100.5 would be amended by adding a new paragraph (e)(6) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(e) The following are examples of political committees:

* * * * *

(6) *Leadership PAC.* Leadership PAC means a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that leadership PAC does not include a political committee of a political party.

* * * * *

3. Section 100.93 is revised to read as follows:

§ 100.93 Travel by aircraft or other means of transportation.

(a) *Scope and definitions.* (1) This section applies to all campaign travelers who use non-commercial travel

(2) Campaign travelers who use commercial travel, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

(i) *Campaign traveler* means

(A) Any candidate for Federal office or any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

(B) Any member of the news media traveling with a candidate.

(ii) *Service provider* means the owner of an aircraft or other conveyance, or a person who leases an aircraft or other conveyance from the owner or otherwise obtains a legal right to the use of an aircraft or other conveyance, and who uses the aircraft or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased aircraft or other conveyance, the service provider is the person who makes the aircraft or other conveyance available to the campaign traveler.

(iii) *Unreimbursed value* means the difference between the value of the transportation service provided, as set forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(iv) *Commercial travel* means travel aboard:

(A) An aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under Federal Aviation Administration air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority, provided that the flight is required to be conducted under air carrier safety rules; or

(B) Other means of transportation operated for commercial passenger service

(v) *Non-commercial travel* means travel aboard any conveyance that is not commercial travel, as defined in paragraph (a)(3)(iv) of this section.

(b) *General rule.* (1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate's authorized committee, leadership PAC, or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d), (e) or (g) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler as determined in accordance with paragraphs (c), (d), (e) or (g) of this section. *See* 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties; and

(iii) Every member of the news media traveling with a candidate for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of his or her transportation as determined in accordance with paragraphs (d) or (e)(2) of this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled.

(c) *Travel on aircraft.* When a campaign traveler uses aircraft for non-commercial travel, other than a government aircraft described in paragraph (e) of this section or an aircraft described in paragraph (g) of this section, reimbursement must be provided no later than seven (7) calendar days after the date the flight began at one of the following rates to avoid the receipt of an in-kind contribution:

(1) *Travel by or on behalf of Senate, presidential, or vice-presidential candidates.* A Senate, presidential, or vice-presidential candidate traveling on his own behalf, or any person traveling on behalf of such candidate, the candidate's authorized committee, or the candidate's leadership PAC, must pay the pro rata share *per represented candidate* of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers.

(2) *House candidates.* Except as otherwise provided in paragraphs (e) and (g) of this section, a campaign traveler who is a candidate for election

for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, or a person traveling on behalf of any such candidate or any authorized committee or leadership PAC of such candidate, is prohibited from non-commercial travel on behalf of any such candidate or any authorized committee or leadership PAC of such candidate.

(3) *Other campaign travelers.* No reimbursement is required for travel by campaign travelers not covered by paragraphs (c)(1) or (c)(2) of this section if that travel is required to be reimbursed by a candidate, or any authorized committee or leadership PAC of a candidate, pursuant to paragraphs (c)(1) or (c)(2) of this section. Otherwise, a campaign traveler not covered by paragraphs (c)(1) or (c)(2) of this section, or the political committee on whose behalf the travel is conducted, must pay the service provider the pro rata share per represented committee of the normal and usual charter fare or rental charge for travel on a comparable airplane of comparable size. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of different committees represented on the flight, regardless of the total number of campaign travelers or other passengers.

(d) *Other means of transportation.* If a campaign traveler uses any means of transportation other than an aircraft, including an automobile, or train, or boat, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(e) *Government conveyances.* (1) If a campaign traveler uses an aircraft that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the governmental entity *either:*

(i) The pro rata share per represented candidate of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all campaign travelers. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers. For purposes of this paragraph, the comparable aircraft need not accommodate any authorized or required government personnel and equipment; or

(ii) The private traveler reimbursement rate, as specified by the governmental entity providing the aircraft, per campaign traveler.

(2) If a campaign traveler uses a conveyance, other than an aircraft, that is provided by the Federal government, or by a State or local government, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government entity in accordance with paragraph (d) of this section.

(f) *Date and public availability of payment rate.* For purposes of paragraphs (c), (d), (e), and (g) of this section, the payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. The payment rate must be determined by the time the payment is due under paragraph (c), (d), (e) or (g) of this section.

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay

(i) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class airfare;

(ii) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or

(iii) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the rate for Senate and Presidential campaign travelers in paragraph (c)(1) of this section.

Paragraph (g)(1)—Alternative 1 (Incremental Cost Alternative)

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay the incremental cost of such travel. The incremental cost includes, but is not limited to, the cost of fuel and crew, but does not include depreciation costs.

Paragraph (g)(1)—Alternative 2—(Actual Value Alternative)

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay, in the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, the hourly, mileage, or other applicable rate charged the candidate, corporation, or immediate family member for the costs of the travel.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under paragraph (g)(1) of this section if the candidate or the immediate family member of the candidate has an ownership interest in an entity that owns the aircraft, provided that the entity is not a corporation with publicly traded shares and that the owning entity specifies in writing the amount of use of the aircraft to which that ownership interest is entitled.

(3) For the purposes of this section, an ''immediate family member'' of a candidate is the father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law of the candidate.

(h) *Preemption.* In all respects, State and local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(i) *Reporting.* (1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a political committee on whose behalf the travel is conducted must report the actual dates of travel for

which the disbursement is made in the ''purpose of disbursement'' field.

(j) *Recordkeeping.* (1) Except as provided in paragraph (j)(3) of this section, for travel by aircraft between cities served by regularly scheduled first-class or coach commercial airline service, or for travel to or from a military base on a government airplane, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and tail number (or other unique identifier for military aircraft) of the aircraft used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers; and

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c), (e) and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.

(2) Except as provided in paragraph (j)(3) of this section, for travel by aircraft to or from a city not served by regularly scheduled commercial airline service, the candidate or political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military aircraft) of the aircraft used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The rate for the comparable charter aircraft available in accordance with paragraphs (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based.

(3) For non-commercial travel on aircraft by any candidate for Federal office, or a person traveling on behalf of such candidate, the candidate's authorized committee, or the candidate's leadership PAC, the candidate or political committee on whose behalf the travel is conducted shall maintain:

(i) The documentation required by paragraph (j)(2)(i) through (iii) of this section, and

(ii) Where the travel is aboard an aircraft owned in part by the candidate or an immediate family member of the candidate, the document specifying the amount of use of the aircraft corresponding to the candidate's or an immediate family member's ownership interest in the aircraft, as required by paragraph (g) of this section.

(4) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraphs (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

4. The authority citation for part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

5. The heading to part 113 would be revised to read as set forth above.

6. Part 113 would be amended by adding a new § 113.5 to read as follows:

§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft (2 U.S.C. 439a(c)).

(a) *Presidential, vice-presidential and Senate candidates.* Notwithstanding any other provision of the Act or Commission regulations, a presidential, vice-presidential, or Senate candidate, and any authorized committee or leadership PAC of such candidate, shall not make any expenditure for travel on an aircraft unless the flight is

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or

(2) Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro rata share of the fair market value of such a flight, as provided in 11 CFR 100.93(c), is paid by the candidate, the authorized committee, or other political committee on whose behalf the travel is conducted, to the owner, lessee, or other person who provides the aircraft within seven days after the date on which the flight is taken.

(b) *House candidates.* Notwithstanding any other provision of the Act or Commission regulations, a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, and any authorized committee or leadership PAC of such candidate, shall not make any expenditures, or receive any in-kind contribution, for travel on an aircraft unless the flight is

(1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or

(2) Provided by the Federal government or by a State or local government.

(c) *Exception for aircraft owned or leased by candidates and immediate family members of candidates.* (1) Paragraphs (a) and (b) of this section do not apply to flights on aircraft owned or leased by the candidate, or by an immediate family member of the candidate, provided that the candidate does not use the aircraft more than the candidate's or immediate family member's proportionate share of ownership allows.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under the conditions described in 11 CFR 100.93(g)(2).

(3) An ''immediate family member'' is defined in 11 CFR 100.93(g)(3).

(d) *In-kind contribution.* Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled. Such contributions are subject to the reporting requirements, limitations and prohibitions of the Act.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

7. The authority citation for part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

8. Section 9004.7 would be amended by revising paragraphs (b)(5)(i), (iii), and (v) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5)(i) If any individual, including a candidate, uses a government aircraft for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the applicable rate set forth in 11 CFR 100.93(e).

* * * * *

(iii) If any individual, including a candidate, uses a government

conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

* * * * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(3) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(j)(4) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft, and travel on other means of transportation not operated for commercial passenger service, is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

9. The authority citation for part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

10. Section 9034.7 would be amended by revising paragraphs (b)(5) (i), (iii), and (v) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5)(i) If any individual, including a candidate, uses a government aircraft for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(e).

* * * * *

(iii) If any individual, including a candidate, uses a government conveyance, other than an aircraft, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the amount required under 11 CFR 100.93(d).

* * * * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(3) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(j)(4) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel on aircraft, and travel on other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: October 18, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–20901 Filed 10–22–07; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0075; Directorate Identifier 2007–NM–171–AD]

RIN 2120–AA64

Airworthiness Directives; EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).

* * * * * * *

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 23, 2007.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0075; Directorate Identifier 2007–NM–171–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2007–05–02, effective June 6, 2007 (referred to after this as ''the MCAI''), to

correct an unsafe condition for the specified products. The MCAI states:

> It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).
>
> Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

EMBRAER has issued Temporary Revision No. 22–1 of the EMB–120 Maintenance Review Board Report (MRBR), dated November 18, 2005; and Section 6, Part D, Critical Design Configuration Control Limitation (CDCCL) of the MRBR, dated March 22, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 109 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,720, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–0075; Directorate Identifier 2007–NM–171–AD.

Comments Due Date

(a) We must receive comments by November 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Embraer Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB–120( ) aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA–E88/SFAR–88 (Special Federal Aviation Regulation No. 88).

Since this condition affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The corrective action is revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations for fuel tank systems.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 1 month after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate Tasks 15 to 18 of Section 6—''Part E—Fuel Systems Limitations,'' Temporary Revision No. 22–1 of the EMB–120 Maintenance Review Board Report (MRBR), dated November 18, 2005. For all tasks identified in the MRBR, the initial compliance times start from the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, and the repetitive inspections must be accomplished thereafter at the interval specified in the MRBR, except as provided by paragraph (f)(3) of this AD.

(i) The effective date of this AD.

(ii) The date of issuance of the original Brazilian standard airworthiness certificate or the date of issuance of the original Brazilian export certificate of airworthiness.

(2) Within 1 month after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs to include items 1) and 2) of Section 6—''Part D—Critical Design Configuration Control Limitations,'' of the EMB–120 MRBR, dated March 22, 2005.

(3) For the functional checks and detailed visual inspections, Tasks 15 to 18 of Section 6—''Part E—Fuel Systems Limitations,'' Temporary Revision No. 22–1 of the EMB–120 Maintenance Review Board Report (MRBR), dated November 18, 2005: The initial compliance time is within 4,000 flight hours or 48 months after the effective date of this AD, whichever occurs first. Thereafter those tasks must be accomplished at the repetitive interval specified in ''Part E—Fuel Systems Limitations,'' Temporary Revision No. 22–1 of the EMB–120 Maintenance Review Board Report (MRBR), dated November 18, 2005.

(4) Except as provided by paragraph (g) of this AD: After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–05–02, effective June 6, 2007, EMBRAER Temporary Revision No. 22–1 of the EMB–120 Maintenance Review Board Report (MRBR), dated November 18, 2005, and Section 6, ''Part D, Critical Design Configuration Control Limitations,'' of the EMB–120 MRBR, dated March 22, 2005, for related information.

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20821 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0074; Directorate Identifier 2007–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require replacement of the wire harness of the auxiliary hydraulic pump with a new wire harness, and routing the new wire harness outside of the tire burst area. This proposed AD results from fuel system reviews conducted by the manufacturer, as well as reports of shorted wires in the right wheel well and evidence of arcing on the power cables of the auxiliary hydraulic pump. We are proposing this AD to prevent shorted wires or electrical arcing at the auxiliary hydraulic pump, which could result in a fire in the wheel well. We are also proposing this AD to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by December 7, 2007.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0074; Directorate Identifier 2007–NM–151–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have received three reports indicating that operators found shorted wires in the right wheel well and evidence of arcing on the power cables of the auxiliary hydraulic pump, on three McDonnell Douglas Model DC–9–82 (MD–82) airplanes. One incident resulted in a fire in the wheel well. Investigation revealed that damage to the power cables was caused by structural chafing. In addition, SFAR 88 analysis determined that extra protection is required on the wire harness of the auxiliary hydraulic pump where it comes in close proximity to the center fuel tank; Model MD–90–30 airplanes have a similar installation. Boeing analysis also determined that the existing wire harness of the auxiliary hydraulic pump for Model MD–90–30 airplanes is routed within the ''tire burst'' area. Installing a new and longer wire harness for the auxiliary hydraulic pump and routing it outside of the tire burst area will minimize the possibility of chafing and wire arcing damage. Shorted wires or electrical arcing at the auxiliary hydraulic pump, if not corrected, could result in a fire in the wheel well. A potential ignition source adjacent to the fuel tanks, if not corrected, in combination with flammable fuel vapors could result in a

fuel tank explosion and consequent loss of the airplane.

The installation of the auxiliary hydraulic pump wire harness on Model DC–9–82 (MD–82) airplanes is similar to that on the affected Model MD–90–30 airplanes. Therefore, all of these models are subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD90–29A021, dated May 15, 2007. The service bulletin describes procedures for replacing the wire harness of the auxiliary hydraulic pump with a new wire harness, and routing the new wire harness outside of the tire burst area. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 110 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 16 airplanes of U.S. registry. The proposed actions would take about 7 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $3,997 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $72,912, or $4,557 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2007–0074; Directorate Identifier 2007–NM–151–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 7, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD90–29A021, dated May 15, 2007.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer, as well as reports of shorted wires in the right wheel well and evidence of arcing on the power cables of the auxiliary hydraulic pump. We are issuing this AD to prevent shorted wires or electrical arcing at the auxiliary hydraulic pump, which could result in a fire in the wheel well. We are also issuing this AD to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Within 18 months after the effective date of this AD, replace the wire harness of the auxiliary hydraulic pump with a new wire harness and route the new wire harness outside of the tire burst area, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–29A021, dated May 15, 2007.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–20823 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2007–28632; Airspace Docket No. 07–ASW–3]

RIN 2120–AA66

Proposed Modification of Restricted Area 3404; Crane, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Restricted Area 3404 (R–3404) at Crane, IN. The United States (U.S.) Navy requests that the FAA take action to modify R–3404 for the protection of nonparticipating aircraft from fragments generated during the disposal of a variety of types of ordnance.

DATES: Comments must be received on or before December 7, 2007.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2007–28632 and Airspace Docket No. 07–ASW–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2007–28632 and Airspace Docket No. 07–ASW–3) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–28632 and Airspace Docket No. 07–ASW–3.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Docket Management Facility (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On January 31, 2007, the U.S. Navy requested that the FAA take action to modify R–3404. The requested action is needed to provide additional airspace to protect nonparticipating aircraft from blast fragments generated during the disposal of a variety of types of ordnance at the Naval Support Activity Crane's (NSA Crane) Demolition Range.

The Proposal

At the request of the U.S. Navy, the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to modify R–3404. The modification would better center the restricted area over NSA Crane's blast area, enlarge the restricted area from a 1/2–nm radius to a 1–nm radius, increase the ceiling from 2,500 feet MSL to 4,100 feet MSL, and change the name of the using agency from ''Commanding Officer, Naval Ammunition Depot, Crane, IN'' to ''U.S. Navy, Crane Division, Naval Surface Warfare Center tenant of NSA Crane.''

Section 73.34 of Title 14 CFR part 73 was republished in FAA Order 7400.8N, effective February 16, 2007.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed 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 the 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 would modify R–3404, Crane, IN., for the protection of nonparticipating aircraft during the disposal of a variety of types of ordnance.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.34 [Amended]

2. § 73.34 is amended as follows:

* * * * *

R–3404—Crane, IN [Revised]

Boundaries. That airspace within a 1 NM radius of lat. 38°49′30″ N., long. 86°50′08″ W.

Designated altitudes. Surface to and including 4,100 feet MSL.

Times of Designation. Sunrise to sunset, daily from May 1 through and including November 1. Other times by NOTAM 24 hours in advance.

Controlling Agency. FAA, Terre Haute ATCT.

Using Agency. U.S. Navy, Crane Division, Naval Surface Warfare Center tenant of NSA Crane

* * * * *

Issued in Washington, DC, October 16, 2007.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. E7–20795 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 15

[Docket No. 2005P–0450]

Salt and Sodium; Petition to Revise the Regulatory Status of Salt and Establish Food Labeling Requirements Regarding Salt and Sodium; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; notice of availability of citizen petition; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing concerning FDA's policies regarding salt (sodium chloride) and sodium in food. FDA also is announcing the availability for comment of a citizen petition, submitted by the Center for Science in the Public Interest (CSPI), requesting that FDA make changes to the regulatory status of salt, require limits on salt in processed foods, and require health messages related to salt and sodium. The purpose of the hearing is for FDA to share its current framework of policies regarding salt and sodium and to solicit information and comments from interested persons on this current framework and on potential future approaches, including approaches described in the citizen petition.

DATES: The public hearing will be held on November 29, 2007, from 9 a.m. to 4:30 p.m. Registration begins on October 22, 2007. See section V of this document for other dates associated with participation in the hearing. Submit written or electronic comments (i.e., submissions other than notices of participation and written material associated with an oral presentation) by March 28, 2008. The administrative record of the hearing will remain open until March 28, 2008.

ADDRESSES: *Public hearing.* The public hearing will be held at the Harvey W. Wiley Federal Building, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD, 20740–3835 (Metro stop: College Park on the Green Line).

Registration. Submit electronic notices of participation for the hearing to *http://www.cfsan.fda.gov/register.html.* We encourage you to use this method of registration, if possible. Submit written notices of participation by mail, fax, or e-mail to Isabelle Howes, U.S. Department of Agriculture Graduate School, 600 Maryland Ave., SW, suite 270, Washington, DC 20024–2520, FAX: 202–479–6801, or e-mail: *Isabelle_Howes@grad.usda.gov.* You may also submit oral notices of participation by phone to Isabelle Howes, U.S. Department of Agriculture Graduate School (see **FOR FURTHER INFORMATION CONTACT**).

Written material associated with an oral presentation. Submit written material associated with an oral presentation by mail, fax or e-mail to Isabelle Howes.

Comments. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* For additional information on submitting comments, see section VI in this document.

FOR FURTHER INFORMATION CONTACT:

For questions about registration or written material associated with an oral presentation, or to register orally: Isabelle Howes, 202–314–4713.

For all other questions about the hearing or if you need parking or special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 301–436–1731, e-mail: *Juanita.Yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Salt

1. Salt in the Human Diet

Salt (sodium chloride) is an essential part of the diet. Both the sodium and chloride ions are required, for example, to maintain extracellular volume and serum osmolality (Ref. 1). Salt is found naturally in foods such as milk and shellfish (Ref. 1). Salt also is added intentionally as a food ingredient for multiple technical effects in foods, e.g., as a seasoning agent and flavor enhancer, a preservative and curing agent, a formulating and processing aid, and a dough conditioner (47 FR 26590, June 18, 1982 (the 1982 policy notice)).

The Dietary Guidelines for Americans, 2005 (Dietary Guidelines) (Ref. 2), a joint publication of the Department of Health and Human Services and the U.S. Department of Agriculture (USDA), forms the basis for the Federal Government's nutrition programs and policies. Chapter 8 of the Dietary Guidelines reports that, on average, the natural salt content of food accounts for only about 10 percent of total intake, while discretionary salt use (i.e., salt added at the table or while cooking) provides another 5 to 10 percent of total intake. Chapter 8 of the Dietary Guidelines also reports that approximately 75 percent of total salt intake is derived from salt added to processed food by manufacturers.

2. Adverse Health Effects of Salt

Excessive sodium has been cited by the scientific community as a contributory factor in the development of hypertension and cardiovascular disease (47 FR 26580). In general, there is a dose-dependent relationship between sodium intake and blood pressure that has been observed to occur throughout the range of levels of sodium intake (Ref. 1). Blood pressures among individuals in certain populations (e.g., persons with hypertension, diabetes, kidney disease, older persons, and African Americans) are more responsive to dietary sodium than blood pressures among the general population (Ref. 1). The Dietary Guidelines recommend that the general population consume no more than 2,300 milligrams/day (mg/d) and that persons with hypertension, blacks, and middle-aged and older

adults consume no more than 1,500 mg/d (Ref. 2).

3. Regulatory Status of Salt (1959–1982)

The definition of ''food additive'' in section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)) is a multistep definition that first broadly includes any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food. However, the definition then excludes substances that are generally recognized, among experts qualified by scientific training and experience to evaluate their safety as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or through experience based on common use in food) to be safe under the conditions of their intended use. The definition also excludes certain other substances from the definition of food additive. In particular, under section 201(s)(4) of the act, any substance used in accordance with a sanction or approval granted prior to September 6, 1958, under the act, the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) or the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) is excluded from the definition of food additive. Under the act, substances that are not food additives are not subject to the requirements in section 409 of the act (21 U.S.C. 348) for premarket review. Prior-sanctioned substances remain subject, however, to the general adulteration provisions in section 402 of the act (21 U.S.C. 342). These provisions prohibit, among other things, the use of added deleterious substances that ''may render [the food] injurious to health.''

In the **Federal Register** of November 20, 1959 (24 FR 9368), FDA clarified the regulatory status of a multitude of food substances that were used in food prior to 1958 and amended its regulations to include an initial list of food substances that, when used for the purposes indicated and in accordance with current good manufacturing practice, are generally recognized as safe (GRAS). This initial list (the ''GRAS list'') is currently published in part 182 (21 CFR part 182). Section 182.1(a) provides in part:

> ''[I]t is impracticable to list all substances that are generally recognized as safe for their intended use. However, by way of illustration, the Commissioner regards such common food ingredients as salt, pepper, vinegar, baking powder, and monosodium glutamate as safe for their intended use.''

In the early 1970s, FDA announced that the agency was conducting a comprehensive study of substances presumed to be GRAS (35 FR 18623, December 8, 1970; and 36 FR 20546; October 23, 1971). FDA also issued several regulations regarding GRAS substances and procedures associated with its comprehensive review of GRAS substances. These regulations are currently in part 170 (21 CFR part 170) and include: (1) Criteria that could be used to establish whether substances presumed to be GRAS should be listed as GRAS, become the subject of a food additive regulation, or be listed in an interim food additive regulation pending completion of additional studies (§ 170.30) (36 FR 12093, June 25, 1971); (2) procedures that the agency could use, on its own initiative, to affirm the GRAS status of substances that were the subject of its comprehensive review and were found to satisfy the established criteria (§ 170.35(a) and (b)) (37 FR 25705, December 2, 1972); and (3) the general process that the agency would use to review ingredients included in the original GRAS list (§ 170.30(e)) (41 FR 53600, December 7, 1976). Under § 170.30(e):

> ''[f]ood ingredients were listed as GRAS [in 21 CFR part 182] during 1958–1962 without a detailed scientific review of all available data and information relating to their safety. Beginning in 1969, [FDA] has undertaken a systematic review of the status of all ingredients used in food on the determination that they are GRAS or subject to a prior sanction. All determinations of GRAS status or food additive status or prior sanction status pursuant to this review shall be handled pursuant to [21 CFR 170.35, 170.38, and 180.1] * * *''

As part of FDA's approach to the comprehensive review of GRAS substances, FDA contracted with the Federation of American Societies for Experimental Biology (FASEB) for a committee of scientific experts to summarize the available scientific literature regarding substances presumed to be GRAS, including salt. FASEB provided FDA with a tentative report containing its findings and recommendations, held public hearings to provide an opportunity for interested persons to submit additional information and to express their views about the tentative report, and then submitted a final report (47 FR 26590).

In the 1982 policy notice, FDA described the uses of salt in food, reviewed the statutory framework for food ingredients, and described its comprehensive review of GRAS substances. FDA also discussed the findings and conclusions in FASEB's final report on salt. The FASEB report recognized that there are many variables and uncertainties in determining an individual's healthy salt intake. However, the FASEB report also raised concerns about salt consumption levels and concluded that:

> ''The evidence on sodium chloride is insufficient to determine that the adverse effects reported are not deleterious to the health of a significant proportion of the public when it is used at levels that are now current and in the manner now practiced.''

The FASEB report recommended the development of guidelines for restricting the amount of salt in processed foods and adequate labeling of the salt content of foods.

In the 1982 policy notice, FDA encouraged food manufacturers to reduce voluntarily the amount of added salt and other sodium-containing substances in processed foods and requested comment on this approach. FDA also announced its tentative decision to defer any revision in the regulatory status of salt until the agency could assess the impact in light of proposed sodium labeling regulations that would respond to health concerns about the levels of use of salt in the food supply. We discuss the proposed labeling regulations in section I.A.5 of this document.

In the 1982 policy notice, FDA described evidence that some uses of salt were granted sanction or approval prior to September 6, 1958, and therefore would be excluded from the definition of a food additive under section 201(s)(4) of the act (47 FR 26590). In part, this evidence relates to the inclusion of salt as an ingredient in several food standards issued before September 6, 1958. We discuss food standards in section I.A.4 of this document.

4. Food standards

Section 401 of the act (21 U.S.C. 341) gives FDA the authority to issue regulations fixing and establishing food standards, whenever it is the judgment of the Secretary of Health and Human Services that such action will promote honesty and fair dealing in the interest of consumers. Food standards are established to define the basic nature, and describe the essential characteristics, of a food consistent with consumer beliefs and expectations, and to establish its common or usual name. The process to amend existing standards requires either notice and comment rulemaking or formal rulemaking, depending on the specific standard.

Among other things, food standards establish the name of the food and the ingredients that are mandatory (i.e., required ingredients) or permitted (i.e.,

optional ingredients) in the manufacture of the food. Foods that are marketed under the standardized name must conform to all the requirements of the relevant standard(s) of identity. Conversely, foods that do not meet the requirements of the relevant standard(s) of identity cannot be marketed under the standardized name. Rather, such foods must be named using descriptors that accurately and adequately describe the food and that sufficiently distinguish it from the standardized food. Examples of foods subject to standards of identity include cheeses and related cheese products (part 133 (21 CFR part 133)); bakery products (part 136 (21 CFR part 136)); and cereal flours and related products (part 137 (21 CFR part 137)).

Salt is a required or optional ingredient in many standardized foods. For example, salt is a required ingredient in ''self rising flour'' (§ 137.180), ''self rising white corn meal,'' (§ 137.270) and ''cheddar cheese'' (§ 133.113). In addition, salt is an optional ingredient in bakery products such as ''bread, rolls and buns'' (§ 136.110) and ''dry curd cottage cheese'' (§ 133.129). However, such standardized foods do not require a specific amount of salt and, thus, there is flexibility for food companies to lower salt concentrations by adjusting their formulations regarding the amount of salt added in the preparation of these standardized foods. The primary consideration for lowering salt concentrations in standardized foods where it is required is to ensure that the intended technical effect of the salt ingredient is accomplished.

The provisions in § 130.10 (21 CFR 130.10) allow standardized foods to deviate from certain requirements of a standard of identity to make the food eligible to bear a FDA-defined nutrient content claim. (A ''nutrient content claim'' (defined in section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A))) is a claim that characterizes the level of a nutrient in a food. We have established regulations implementing section 403(r)(1)(A) of the act with respect to nutrient content claims (§ 101.13 (21 CFR 101.13 and subpart D)).) Under § 130.10, the levels of sodium or salt in standardized foods can be altered to make the food eligible to bear a FDA-defined sodium- or salt-related claim such as ''sodium free,'' ''low sodium,'' ''reduced sodium,'' ''salt free,'' and ''unsalted'' (See § 101.61 (21 CFR 101.61)). For example, although the standard of identity for ''self rising flour'' in § 137.180 requires the addition of salt in the manufacture of a food named ''self rising flour,'' manufacturers may deviate from this requirement for the specific purpose of making the food eligible for the ''unsalted'' claim in accordance with the provisions of § 101.61(c)(2). Similarly, other standardized foods can be modified to eliminate or reduce the sodium content of the food to manufacture sodium-free or lower sodium versions of the standardized food, such as ''low sodium bread'' or ''salt free cottage cheese.''

5. Sodium Labeling

In 1984, as a followup to the 1982 policy notice, FDA established in § 101.13 definitions for terms related to sodium content, e.g., ''sodium free,'' ''low sodium,'' and ''no added salt'' and required that information about sodium be included with other nutritional information wherever it appears on food labels (49 FR 15510, April 18, 1984). FDA later revised and redesignated § 101.13 as nutrient content regulations at §§ 101.56 (21 CFR 101.56) (Nutrient content claims for ''light'' and ''lite'') and 101.61 (Nutrient content claims for the sodium content of food) (58 FR 2302 at 2414 and 2417; January 6, 1993) in response to the Nutrition Labeling and Education Act of 1990 (NLEA). Section 101.61 addresses the use of terms such as ''sodium free,'' ''low sodium,'' ''reduced sodium,'' and ''no added salt'' (58 FR 2302 at 2417) and § 101.56 addresses the use of the terms ''light'' and ''lite,'' including the use of those terms in relation to sodium content (58 FR 2302 at 2414).

FDA also published a number of other labeling regulations in the January 6, 1993 **Federal Register** in response to NLEA, which bears on how sodium is declared on the label; namely, the agency's revised nutrition labeling regulations that required nutrition labeling of sodium content on virtually all processed food products (§ 101.9(c)(4) (21 CFR 101.9(c)(4))) (58 FR 2079 at 2176) and established a reference value or ''Daily Value'' (DV) for sodium (§ 101.9(c)(9)) (58 FR 2206 at 2227), and the agency's new regulation (§ 101.74 (21 CFR 101.74)) establishing a health claim regarding low sodium diets and reduced risk of hypertension (58 FR 2820). FDA subsequently established regulations (§ 101.65 (21 CFR 101.65)) requiring that foods labeled as ''healthy'' contain less than specified amounts of certain food components, including sodium (59 FR 24232, May 10, 1994; amended at 70 FR 56828, September 29, 2005).

B. CSPI's Prior Challenges to the GRAS Status of Salt

In 1978, CSPI submitted a citizen petition requesting that FDA establish limits for sodium in processed foods and reclassify salt as a food additive. In a letter dated August 18, 1982 (Ref. 3), FDA denied the petition, stating that the agency had decided to leave salt in part 182. In 1984, CSPI sought review of FDA's actions in the United States District Court of the District of Columbia. (See *Center for Science in the Pub. Interest* v. *Novitch*, Food, Drug, and Cosm. L. Rep. (CCH) 38,275 (No. 83–801) (D.D.C. June 11, 1984)). CSPI argued that FDA's denial of its petition was arbitrary and capricious because it violated FDA's procedures for reviewing substances on the initial GRAS list. CSPI also argued that FDA's decision to defer any change to the GRAS status of salt constituted unreasonable delay in violation of the Administrative Procedures Act (5 U.S.C. 706(1)). The district court concluded that FDA's decision was consistent with its regulations and the act and rejected the argument that FDA had unreasonably delayed reconsideration of the GRAS status of salt. CSPI did not appeal.

In 2005, CSPI sought a writ of mandamus, in the United States Court of Appeals for the District of Columbia, compelling FDA to publish in the **Federal Register** a proposed rule either affirming or denying the GRAS status of salt and providing an opportunity for comment on the proposal. The court dismissed CSPI's petition for lack of jurisdiction, explaining that CSPI had not sought a remedy from FDA or initiated any proceeding in FDA before resorting to the court. (See In re Center for Science in the Public Interest, 2005 U.S. App. (No. 05–1057) (D.C. Cir. 2005)).

C. CSPI's Prior Citizen Petitions Regarding Label Requirements for Salt

The 1978 CSPI citizen petition also requested that FDA require sodium content labeling on packaged foods and require a special symbol on the labels of high-sodium foods. FDA denied the petition in a letter dated August 18, 1982 (Ref. 3). In that denial letter, FDA considered that mandatory labeling for all processed foods was not justified and noted that the 1982 sodium labeling proposed rule would affect approximately one third of all processed food at that time. In addition, FDA considered a decision regarding special symbols for sodium-containing products to be premature because FDA was researching the utility of such symbols and vignettes.

In 1981, CSPI submitted a citizen petition requesting that FDA require warning labels on packages of salt weighing half an ounce or more. FDA denied that petition in a letter dated

October 7, 1982 (Ref. 4). In that denial letter, FDA considered an isolated warning appearing on the label of one class of food products to be inappropriate given that many foods contribute to an individual's sodium intake.

D. Citizen Petition Submitted by CSPI in 2005 (Docket No. 2005P–0450)

In a citizen petition dated November 8, 2005, CSPI requested that the agency take certain regulatory actions regarding salt. Specifically, CSPI requested that FDA initiate rulemaking to revoke the GRAS status for salt, amend prior sanctions for the use of salt, require food manufacturers to reduce the amount of sodium in all processed foods, require a health message on retail packages of salt one-half ounce or larger, and reduce the DV for sodium from its current level of 2,400 mg/d to 1,500 mg/d. CSPI also requested that FDA take regulatory action to reduce the amount of sodium in processed foods sold directly to restaurants, e.g., by regulating salt in precooked French fries that are purchased by restaurants who then add more salt.

In its petition, CSPI acknowledges that FDA has implemented several labeling requirements related to the sodium content of food through the NLEA as well as other labeling provisions, but asserts that these measures have not done enough to reduce sodium consumption.

CSPI summarizes several published clinical and population-based studies regarding the effect of sodium on blood pressure to support its view that the link between cardiovascular disease and excessive sodium intake has been clearly defined in the scientific community (Refs. 5 to 8). CSPI discusses the potential impact on public health of reductions in blood pressure, citing published estimates that reductions in blood pressure and resultant reductions in the incidence of hypertension would reduce the risk of stroke and heart disease significantly, resulting in fewer deaths from cardiovascular disease (Refs. 9 to 13).

CSPI provides a table summarizing various estimates of the average consumption of sodium collected between 1971 and 2000. CSPI argues that the data show that per capita sodium consumption has increased from 2,800 mg/d in the years 1976–1980 to 3,400 mg/d in the years 1999–2000. (CSPI reports that it derived these estimates from dietary recall surveys conducted by the Centers for Disease Control and Prevention (i.e., the National Health and Nutrition Examination Surveys) and USDA (i.e., the Continuing Survey of Food Intakes of Individuals)). CSPI also cites a clinical study, based on urinary sodium excretion, estimating an average sodium intake of 4,000 mg/d in the United States (Ref. 14). CSPI compares these estimates to the current DV for sodium (i.e., 2,400 mg/d) and to recommendations in the Dietary Guidelines (Ref. 2) for the general population (i.e., no more than 2,300 mg/d) and for persons with hypertension, blacks, and middle-aged and older adults (i.e., no more than 1,500 mg/d). CSPI concludes that the available data demonstrate current intake of sodium is significantly higher than the intake recommended by governmental and scientific organizations around the world.

CSPI discusses the sources of sodium in the food supply, noting that some of the salt in the diet occurs naturally as an inherent component of foods, such as in milk. CSPI acknowledges that one reason for the increased consumption of sodium by the U.S. population in recent years is increased consumption of food in general. However, CSPI notes that the Dietary Guidelines estimate that 75 percent of the sodium in the diet is derived from processed foods. CSPI states that regulatory action to reduce the sodium content of the diet should therefore focus on these foods. CSPI discusses the feasibility of reducing salt levels in foods, stating that reductions can be made without adversely affecting public health or taste. CSPI also describes the activities of the British government's Food Standards Agency, which has introduced voluntary goals for the reduction of sodium in processed foods by food category (Ref. 15).

Based on the health effects of salt cited in its petition, CSPI asserts that salt should no longer be considered ''safe.'' As a result, CSPI argues that salt should not be considered as a GRAS food ingredient and that prior sanctions for certain uses of salt should be revoked.

CSPI also asserts that FDA has authority to require the labeling requested in its petition under several provisions of the act and FDA's regulations in Title 21 of the Code of Federal Regulations. These include the misbranding provisions of section 403(a) of the act (together with the associated definition in section 201(n) of the act and the associated regulation in 21 CFR 1.21) and the premarket approval provisions of section 409 of the act.

In August 2006, FDA issued a tentative response to CSPI's citizen petition, indicating the need for additional information before a final response could be rendered (Ref. 16).

II. Purpose and Scope of the Hearing

The purpose of the hearing is for the agency to solicit comment, information and discussion from interested persons on the regulatory status of salt, and food labeling requirements regarding salt and sodium, particularly with respect to the feasibility and potential effectiveness of the regulatory actions requested in CSPI's citizen petition. FDA is aware that other organizations are in general agreement with some of the recommendations in CSPI's petition. For example, at the July 2006 annual meeting of the American Medical Association (AMA), the AMA announced recommendations, in the form of a report issued by the AMA's Council on Science and Health, to the agency echoing many of the regulatory actions suggested by CSPI (Ref. 17). The agency is very much interested in hearing the views of other interested parties, including the AMA.

The agency also is interested in discussions regarding other potential approaches for reducing salt intake. Because FDA has separate plans to issue an advanced notice of proposed rulemaking that would address DVs, including the DV for sodium (Ref. 18), comments regarding the DV for sodium are outside the scope of the public hearing announced in this document.

The scope of this hearing is determined by this notice. FDA invites general comments on the citizen petition (other than the requested actions regarding DVs) as well as comments on the issues and questions listed in section III of this document.

III. Issues and Questions for Discussion

The following issues and questions will be discussed at the public hearing:

Issue 1: FDA considered revoking the GRAS status of salt and declaring it to be a food additive in 1982, but rejected this approach for several reasons, including the following: (1) The agency would have to establish a limitation for each technical effect for which salt is used in each food category, and it would be extremely difficult to prescribe and enforce ''fair use'' limitations for salt that would be safe and effective for all consumers (including those hypertensive patients on severe sodium restrictions) given the fact that salt has numerous technical functions in a wide variety of processed foods and may often be used for several different technical effects in a single food and (2) many uses of salt are prior sanctioned and the agency would have to show that salt in food is a ''poisonous or

deleterious substance'' for it to take regulatory action against a prior sanctioned ingredient. Failing to do this, the practical effect of regulating those remaining uses of salt not authorized by prior sanction might be quite small and the issuance and enforcement of limitations for uses of salt would therefore constitute an extraordinary regulatory burden for FDA. These facts and the uncertainty about the precise role of salt as a basic causative factor in essential hypertension left unclear whether the use of salt in a particular food would render that food uniformly injurious to health. Therefore, FDA concluded in 1982 that informative labeling would be more responsive to the health concerns about sodium (47 FR 26590). FDA is not aware of any fundamental changes to these considerations since it published the 1982 policy notice.

Question 1. Could a food additive regulation be constructed to prescribe limitations for uses of salt? If so, how might the regulation be constructed?

Question 2. Would reducing the salt content of food, even in a modest way, impact the safety or quality of various foods given the wide variety of technical functions for which salt is used in food? How feasible would it be to mitigate this impact if true? Could it be mitigated by, for example, the addition of other ingredients?

Question 3. If you agree with the underlying premise of CSPI's petition (i.e., that the sodium content of processed foods should be reduced), but disagree with one or more of the specific actions requested by CSPI, what other actions would you recommend?

Question 4. How could FDA partner with interested stakeholders regarding the development of appropriate recommendations or other information to reduce the salt content of processed foods?

Issue 2: Food labeling initiatives introduced by FDA during the last 25 years have been designed to provide consumers with more information about the sodium content of foods. For example, our regulations currently require declarative statements on the label about the sodium content of processed food (§ 101.9(c)(4)), define nutrient content claims for foods based on their salt content (§§ 101.61 and 101.56), provide for a health claim regarding low sodium diets and reduced risk of hypertension (§ 101.74), and stipulate maximum sodium concentrations for foods that are to be labeled as ''healthy'' (§ 101.65(d)(2)). In addition to the goal of providing information to consumers, these labeling initiatives are also intended to encourage food manufacturers to reduce the salt content of foods and to provide incentives to manufacturers to produce lower sodium foods. CSPI argues that these measures have not ultimately served to reduce salt intake and that further, more aggressive regulatory action is needed.

Question 5. How would you describe the effectiveness of the following FDA regulations in reducing salt intake by the public? (1) Declaration of sodium content in the Nutrition Facts panel (§ 101.9(c)); (2) sodium content claims (§§ 101.61 and 101.56); health claims (§ 101.74); and (4) ''healthy'' claims (§ 101.65(d)(2))? How would you change these labeling requirements to make them more effective?

Question 6. What, if any, data, such as consumer studies, are available regarding the potential for label statements about the health effects of salt to reduce salt intake?

Question 7. To what extent could FDA's labeling policies provide incentives to manufacturers to reduce the salt content of processed foods? For example, would there be an incentive to manufacturers to reduce the salt content of processed foods if FDA used enforcement discretion to permit a claim about a reduction in salt or sodium when that claim does not satisfy the criteria for a defined nutrient content claim? Would there be an incentive to manufacturers to reduce the salt content of processed foods if FDA encouraged the use of health messages to identify products with reduced salt? How would such incentives differ from the incentives provided by currently authorized label statements?

IV. Notice of Hearing Under 21 CFR Part 15

By delegation from the Commissioner of Food and Drugs (the Commissioner) (Staff Manual Guide 1410.21 paragraph 1.f.(5)), the Assistant Commissioner for Policy finds that it is in the public interest to permit persons to present information and views at a public hearing regarding the regulatory framework for salt and sodium, particularly with respect to CSPI's petition to revise the regulatory status of salt and establish food labeling requirements regarding salt and sodium and is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the hearing (either by making a presentation or as a member of the audience) must file a notice of participation (see **DATES**, **ADDRESSES**, **FOR FURTHER INFORMATION CONTACT**, and section V of this document). By delegation from the Commissioner (Staff Manual Guide 1410.21 paragraph 1.f.(5)), the Assistant Commissioner for Policy has determined under § 15.20(c) that advance submissions of oral presentations are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e), and that the submission of a comprehensive outline or summary is an acceptable alternative to the submission of the full text of the oral presentation. For efficiency, we request that individuals and organizations with common interests consolidate their requests for oral presentation and request time for a joint presentation through a single representative. After reviewing the notices of participation and accompanying information, we will schedule each oral presentation and notify each participant of the time allotted to the presenter and the approximate time that the presentation is scheduled to begin. If time permits, we may allow interested persons who attend the hearing but did not submit a notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing.

After the hearing, the schedule and a list of participants will be placed on file in the Division of Dockets Management (see **ADDRESSES**) under the docket number listed in brackets in the heading of this notice.

To ensure timely handling of any mailed notices of participation, written material associated with presentations, or comments, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this notice along with the statement ''Salt and Sodium; Petition to Revise the Regulatory Status of Salt and Establish Food Labeling Requirements Regarding Salt and Sodium; Public Hearing.''

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted,

subject to the procedures and limitations in § 10.206, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). For additional information about transcripts, see section VII in this document.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the appropriate contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of these provisions as specified in §§ 10.19 and 15.30(h). In particular, § 15.21(a) states that the notice of hearing will provide persons an opportunity to file a written notice of participation with the Division of Dockets Management within a specified period of time. If the public interest requires, e.g., if a hearing is to be conducted within a short period of time, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given. If the public interest requires, the notice may also provide for submitting notices of participation at the time of the hearing. In this document, the conditions for the hearing specify that notices of participation be submitted electronically to an agency Web site, to a contact person who will accept notices of participation by mail, telephone, fax, or e-mail, or in person on the day of the hearing (as space permits). In addition, the conditions for the hearing specify that written material associated with an oral presentation be provided to a contact person who will accept it by mail, fax, or e-mail rather than to the Division of Dockets Management. We are using these procedures to facilitate the exchange of information between participants and the agency. By delegation from the Commissioner (Staff Manual Guide 1410.21 paragraph 1.f.(5)), the Assistant Commissioner for Policy finds under § 10.19 that no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law if notices of participation are submitted by any of the procedures listed in this notice.

V. How to Participate in the Hearing

Registration by submission of a notice of participation is necessary to ensure participation and will be accepted on a first-come, first-served basis. Registration begins on October 22, 2007. The notice of participation may be submitted electronically, orally, or by fax, mail, or e-mail (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). We encourage you to submit your notice of participation electronically. A single copy of any notice of participation is sufficient.

The notice of participation must include your name, title, business affiliation (if applicable), address, telephone number, fax number (if available), and e-mail address (if available). If you wish to request an opportunity to make an oral presentation during the open public comment period of the hearing, your notice of participation also must include the title of your presentation, the sponsor of the oral presentation (e.g., the organization paying travel expenses or fees), if any; and the approximate amount of time requested for the presentation. Presentations will be limited to the questions and subject matter identified in section III of this document and, depending on the number of requests received, we may be obliged to limit the time allotted for each presentation (e.g., 5 minutes each).

Under § 15.20(c), if you request an opportunity to make an oral presentation you must submit your presentation (either as the full text of the presentation, or as a comprehensive outline or summary). You may submit your presentation by e-mail, fax, or mail. A single copy of your presentation is sufficient. See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** for information on where to send your presentation.

Persons who wish to request an opportunity to make an oral presentation must submit a notice of participation by November 8, 2007, and also must submit either the full text of the oral presentation, or a comprehensive outline or summary of the oral presentation, by November 21, 2007. All other persons wishing to attend the hearing must submit a notice of participation by November 21, 2007. Persons requiring special accommodations due to a disability must submit a notice of participation by November 21, 2007, and should inform the contact person of their request (see **FOR FURTHER INFORMATION CONTACT**). Persons wishing to park onsite should inform the contact person of their request by November 26, 2007. Individuals who request an opportunity to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing.

We will also accept notices of participation onsite on a first-come, first served basis; however, space is limited and registration will be closed when the maximum seating capacity is reached. Requests for an opportunity to make a presentation from individuals or organizations that did not make such a request in advance may be granted if time permits.

Persons who submit a notice of participation in advance of the hearing should check in at the onsite registration desk between 8 a.m. and 9 a.m. Persons who wish to submit a notice of participation onsite on the day of the hearing may do so at the registration desk between 8 a.m. and 9 a.m. We encourage all participants to attend the entire hearing. Because the hearing will be held in a Federal building, hearing participants must present photo identification and plan adequate time to pass through the security system.

All submissions and comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments for consideration at or after the hearing in addition to, or in place of, a request for an opportunity to make an oral presentation (see section V of this document). Submit two paper copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. Transcripts

Transcripts of the hearing will be available for review at the Division of Dockets Management (see **ADDRESSES**) and on the Internet at *http://www.fda.gov/ohrms/dockets* approximately 30 days after the hearing. You may place orders for copies of the transcript through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, at a cost of 10 cents per page.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified Web site addresses, but FDA is not responsible for any subsequent changes

to the Web sites after this document publishes in the **Federal Register**.)

1. *Dietary Reference Intakes for Water, Potassium, Sodium, Chloride, and Sulfate*, Chapter 6, ''Sodium and Chloride'' pp. 1, 2, 43. Food and Nutrition Board, Institute of Medicine of the National Academies, The National Academies Press, 2004.

2. Department of Health and Human Services and Department of Agriculture, Dietary Guidelines for Americans, 2005. (Available at *http://www.healthierus.gov/dietaryguidelines*, accessed and printed on June 21, 2007.)

3. Letter from Joseph P. Hile, Associate Commissioner for Regulatory Affairs, FDA to Michael F. Jacobson, August 18, 1982.

4. Letter from Joesph P. Hile, Associate Commissioner for Regulatory Affairs, FDA to M.F. Jacobson, B. Liebman, B. Silverglade, October 7, 1982.

5. Sacks, F.M., Svetkey L.P., Vollmer W.M., et al., ''Effects on Blood Pressure of Reduced Dietary Sodium and the Dietary Approaches to Stop Hypertension (DASH) Diet,'' *The New England Journal of Medicine*, 344: 3–10, 2001.

6. Whelton, P.K., Appel L.J., Espeland M.A., et al. ''Sodium Reduction and Weight Loss in the Treatment of Hypertension in Older Persons (TONE).'' *The Journal of the American Medical Association*, 279: 839–846, 1998.

7. Kumanyika, S.K., Cook N.R., Cutler J.A., et al. ''Sodium Reduction for Hypertension Prevention in Overweight Adults: Further Results From the Trials of Hypertension Prevention Phase II,'' *Journal of Human Hypertension*, 19: 33–45, 2005.

8. Khaw, K.T., Bingham S., Welch A., et al., ''Blood Pressure and Urinary Sodium in Men and Women: The Norfolk Cohort of the European Prospective Investigation Into Cancer (EPIC-Norfolk),'' *The American Journal of Clinical Nutrition*, 80: 1397–1403, 2004.

9. Cook, N.R., Cohen J., Hebert P.R., et al., ''Implications of Small Reductions in Diastolic Blood Pressure for Primary Prevention,'' *Archives of Internal Medicine*, 155: 701–709, 1995.

10. He, F.J. and MacGregor, G.A., ''How Far Should Salt Intake be Reduced?'' *Hypertension*, 42: 1093–1009, 2003.

11. Stamler, J., Stamler R., Neaton J.D., ''Blood Pressure, Systolic and Diastolic, and Cardiovascular Risks,'' *Archives of Internal Medicine*, 153: 598–615, 1993.

12. Tuomilehto, J., Jousilahti P., Rastenyte D., et al., ''Urinary Sodium Excretion and Cardiovascular Mortality in Finland: A Prospective Study,'' *Lancet* 357: 848–51, 2001.

13. Havas, S., Roccella E.J., Lenfant C., ''Reducing the Public Health Burden From Elevated Blood Pressure Levels in the United States by Lowering Intake of Dietary Sodium,'' *American Journal of Public Health*, 94: 19–22, 2004.

14. Zhou, B.F., Stamler J., Dennis B., et al., ''Nutrient Intakes of Middle-Aged Men and Women in China, Japan, United Kingdom, and United States in the Late 1990s: The INTERMAP Study,'' *Journal of Human Hypertension*, 17:623–630, 2003.

15. ''Salt in Processed Foods'' Food Standards Authority (UK), 2005 (Available at *http://www.food.gov.uk/healthiereating/salt/saltmodel*, accessed and printed on June 21, 2007.)

16. Letter from Laura M. Tarantino, Director of the Office of Food Additive Safety, FDA, to Michael F. Jacobson, June 5, 2006.

17. American Medical Association, Report 10 of the Council on Science and Public Health (A–06), Promotion of Healthy Lifestyles I: Reducing the Population Burden of Cardiovascular Disease by Reducing Sodium Intake, Action of the AMA House of Delegates 2006 Annual Meeting, 2006.

18. Food and Drug Administration, Center for Food Safety and Applied Nutrition, CFSAN FY 2007 Report to Stakeholders, June 2007, available at *http://www.cfsan.fda.gov/~dms/cfsan607.html#fy07pp*.

Dated: October 17, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5216 Filed 10–19–07; 10:35 am]

BILLING CODE 4160–01–S

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AC38

Amend Certain Paragraphs in 36 CFR 261.2 and 261.10 To Clarify Issuing a Criminal Citation for Unauthorized Occupancy and Use of National Forest System Lands and Facilities by Mineral Operators

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Forest Service is reopening the comment period for an additional 30 days and invites written comments on this proposed rule. The proposed rule was published in the **Federal Register** on May 10, 2007 (72 FR 26578), and should be referenced when preparing responses. This proposed rule would allow, if necessary, a criminal citation to be issued for unauthorized mineral operations on National Forest System lands.

DATES: Comments on this proposed rule must be received in writing by November 23, 2007.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director, Minerals and Geology Management (MGM) Staff, (2810), at Mail Stop 1126, Washington, DC 20250–1126; by electronic mail to *36cfr228a@fs.fed.us;* or by fax to (703) 605–1575; or by the electronic process available at the Federal e-Rulemaking portal at *http://www.regulations.gov*. If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Office of the Director, MGM Staff, 5th Floor, Rosslyn Plaza Central, 1601 North Kent Street, Arlington, Virginia 22209, Monday through Friday (except for Federal holidays) between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (703) 605–4545 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janine Clayton, Minerals and Geology Management Staff, (703) 605–4788, or electronic mail to *jclayton01@fs.fed.us*.

Dated: October 16, 2007.

Gloria Manning,

Associate Deputy Chief, NFS.

[FR Doc. E7–20758 Filed 10–22–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Summer-Run Kokanee Population in Issaquah Creek, WA, as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the summer-run Issaquah Creek kokanee (*Oncorhynchus nerka*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that the summer-run Issaquah Creek kokanee may represent a distinct population segment, and therefore a listable entity, under section 3(16) of the Act. Therefore, we will not be initiating a further status review in response to this petition.

DATES: This finding announced in this document was made on October 23, 2007. You may submit new information concerning this species for our consideration at any time.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503. Please submit any new information, materials, comments, or questions concerning the summer-run Issaquah Creek kokanee or this finding to the above address (Attention: Issaquah Creek kokanee), or via electronic mail (e-mail) at *FW1WWO_ICkok@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Western Washington Fish and Wildlife Office (see **ADDRESSES**) by telephone at (360–753–4327), or by facsimile to (360–753–9405). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition History

On February 22, 1999, we responded to a November 2, 1998, letter from Mr. Ron Sims, Kings County Executive, regarding the status of kokanee in Lake Sammamish. Our response letter questioned whether Mr. Sims' letter was in fact a petition. On March 16, 2000, we received a petition, dated March 15, 2000, from Save Lake Sammamish, Washington Trout, Sierra Club Cascade Chapter, Washington Environmental Council, Friends of the Earth, King County Conservation Voters, and Defenders of Wildlife. The petitioners requested that we emergency list the population of native summer-run (or early-run) kokanee that spawn in Issaquah Creek, a tributary of Lake Sammamish in King County, Washington, as an endangered distinct population segment (DPS) and designate critical habitat under the Act. The petition clearly identified itself as such and provided the names and addresses of the petitioners. We responded in two letters dated April 17, 2000, and November 6, 2000, stating that addressing the petition at that time was not practicable due to our workload addressing court orders and court-approved settlement agreements for other listing actions and that we would address the petition as funding became available. This petition finding fulfills that commitment.

On July 10, 2007, we received a petition to list Lake Sammamish kokanee as threatened or endangered under the Act. We are in the process of analyzing that petition and intend to publish a 90-day finding on that petition in the near future.

Species Information

The kokanee and the sockeye salmon are two forms of the same species, *Oncorhynchus nerka* (Order Salmoniformes, Family Salmonidae), that are native to watersheds in the north Pacific from southern Kamchatka to Japan in the western Pacific and from Alaska to the Columbia River in North America (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403). Adult kokanee look like sockeye salmon, but are generally smaller in size at maturity because they are confined to freshwater environments, which are less productive than the ocean (Gustafson *et al.* 1997, p. 29). Both sockeye and kokanee turn from silver to bright red during maturation, while the head is olive green and the fins are blackish red (Craig and Foote 2001, p. 381).

Sockeye salmon are anadromous, migrating to the Pacific Ocean following hatching and rearing in freshwater to spend 2 to 3 years in marine waters before returning to freshwater environments to spawn. Kokanee are non-anadromous, spending their entire lives in freshwater habitats (Meehan and Bjorn 1991, pp. 56–57). Kokanee young are spawned in freshwater streams and subsequently migrate to a nursery lake (Burgner 1991, pp. 35–37). Kokanee remain in the lake until maturity and return to natal freshwater streams to spawn and die.

Taylor *et al.* (1996, pp. 411–414) found multiple episodes of independent divergence between sockeye and kokanee throughout their current range. As ancestral sockeye populations expanded to new river systems, those that could not access the marine environment on a regular basis evolved into the non-anadromous kokanee form. This rapid adaptive evolution happened multiple times such that kokanee populations are genetically more similar to their sympatric (occupying the same geographic area without interbreeding) sockeye populations than kokanee in other river systems (Taylor *et al.* 1996, pp. 401, 413–414).

Kokanee in the Lake Washington and Lake Sammamish watersheds are separated into three groups: (1) Summer-run, (2) middle-run, and (3) late-run kokanee, based on spawn timing and location (Berge and Higgins 2003, p. 3; Young *et al.* 2004, p. 66). Summer-run kokanee spawn during late summer (August through September) in Issaquah Creek and are the only run of kokanee known to spawn in that creek (sockeye salmon spawn there in October). Middle-run kokanee spawn in late September through November, primarily in larger Sammamish River tributaries. Late-run kokanee spawn from late fall into winter (October through January) in tributaries of Lake Sammamish. The petition and this petition finding address only the summer-run kokanee in Issaquah Creek.

Berggren (1974, p. 9) and Pfeifer (1995, pp. 8–9 and 21–22) report escapements (the number of fish arriving at a natal stream or river to spawn) of summer-run Issaquah Creek kokanee numbering in the thousands during the 1970s. Since 1980, the escapement of summer-run Issaquah Creek kokanee has plummeted (Berge and Higgins 2003, p. 18). Between 1998 and 2001, only three summer-run kokanee redds (gravel nests of fish eggs)

were observed in Issaquah Creek. In July 2001 and 2002, the Washington Department of Fish and Wildlife installed a fish weir across Issaquah Creek in an attempt to capture all migrating kokanee and spawn them in a hatchery for a supplementation program. However, no kokanee were observed or captured in these attempts (WDFW 2002, pp. 5–7).

Distinct Vertebrate Population Segments

The petitioners state that the summer-run Issaquah Creek kokanee is a DPS based on their August spawning period, fry emergence timing, coloration at the time of spawning, and genetic distinctness, and asked the Service to emergency list the DPS as endangered. Under the Act, we can consider for listing any species, subspecies, or DPS of any species of vertebrate fish or wildlife that interbreeds when mature, if information is substantial to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance (see Senate Report 151, 96th Congress, 1st Session), we developed a joint policy with the National Oceanic and Atmospheric Administration entitled ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act'' (61 FR 4725; February 7, 1996). According to this policy, the three elements considered regarding the potential recognition of a DPS as endangered or threatened are: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) significance of the population segment in relation to the remainder of the taxon; and (3) conservation status of the population segment in relation to the Act's standards for listing (i.e., when treated as if it were a species, is the population segment endangered or threatened?). Criteria for all three elements must be satisfied to meet the definition of a DPS. The petition discusses all three factors, but does not explicitly state whether they are evaluating these factors based on the standards set forth in the DPS policy. Following is our evaluation of these elements in relation to the petitioned entity, the summer-run Issaquah Creek kokanee.

Discreteness

Discreteness refers to the separation of a population segment from other members of the taxon based on either: (1) Physical, physiological, ecological, or behavioral factors; or (2) international boundaries that result in significant differences in control of exploitation, habitat management, conservation status, or regulatory mechanisms.

Data contained in the petition, referenced in the petition, and otherwise available to the Service suggests that there is substantial information regarding the behavioral discreteness of summer-run Issaquah Creek kokanee. Timing of spawning and fry emergence for this population is earlier than any other kokanee or sockeye population in the Sammamish Basin (Berggren 1974, pp. 9 and 38; Pfeifer 1992, pp. 117 and 141; Young *et al.* 2004, p. 65). This difference in spawn timing may result in the reproductive isolation of summer-run kokanee. Based on the physical and behavioral factors referenced in the petition, we find that there is substantial information indicating that summer-run Issaquah Creek kokanee may meet the discreteness element of our DPS policy.

Significance

If a population segment is considered discrete under one or more of the conditions listed in the Service's DPS policy, its biological and ecological significance will then be considered. In carrying out this evaluation, the Service considers available scientific evidence of the potential DPS's importance to the taxon to which it belongs. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in a unique or unusual ecological setting; (2) evidence that loss of the discrete segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside of its historic range; or (4) evidence that the discrete segment differs markedly from other populations in its genetic characteristics (61 FR 4721).

The petition states that the summer-run Issaquah Creek kokanee population is significant because it is native to the Sammamish Basin and probably unique among kokanee and sockeye populations in the western United States. The petition points to several studies suggesting this population is genetically distinguishable from a number of other kokanee and sockeye populations. Our analysis of these statements relative to the DPS policy follows.

1. Persistence of the population segment in an ecological setting that is unique for the taxon.

Neither the petition nor information in our files indicates that Issaquah Creek may be a unique or unusual ecological setting for kokanee.

2. Evidence that loss of the population segment would result in a significant gap in the range of taxon.

Neither the petition nor information in our files indicates that loss of summer-run Issaquah Creek kokanee may result in a significant gap in the range of the taxon. According to the petition, Issaquah Creek is one of several tributaries to Lake Sammamish that are occupied by kokanee. There are also kokanee populations in tributaries to the Sammamish River (below Lake Sammamish). Furthermore, the taxon occurs throughout the North Pacific, from southern Kamchatka to Japan in the western Pacific and from Alaska south to the Columbia River system in the eastern Pacific (Page and Burr 1991, p. 52; Taylor *et al.* 1996, pp. 402–403).

3. Evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range.

Neither the petition nor information in our files indicates that summer-run Issaquah Creek kokanee may represent the only surviving natural occurrence of this species. The petitioners note that there are at least 78 different kokanee populations from British Columbia, Colorado, Idaho, Montana, Oregon, Utah, and Washington.

4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The petition cites several studies indicating that Issaquah Creek kokanee may be genetically differentiated from other kokanee and sockeye populations (Seeb and Wishard 1977, Wishard 1980, Hendry 1995, Hendry *et al.* 1996). These citations appear to be credible scientific publications and we accept the characterization of these publications provided in the petition for the purpose of this 90-day finding. However, we note that the definition of the term ''significant,'' as applied in these genetics studies is not the same as its usage when determining whether or not a population meets the significance criterion under the DPS policy. These studies found that there were ''significant'' differences in allele frequencies (the frequency of one member of a pair or series of genes occupying a specific position on a specific chromosome) between summer-run Issaquah Creek kokanee and the 11 other populations that they studied. However, these ''significant'' differences in allele frequencies must be placed into

the appropriate spatial context of the species' distribution.

The studies cited by the petitioners looked at four kokanee populations, inclusive of Issaquah Creek kokanee, and eight sockeye populations, all from the Lake Washington and Lake Sammamish Basins or hatchery strains. Taylor *et al.* (1996, pp. 409–410) looked at 750 *Oncorhynchus nerka* from 24 different populations throughout the range of the species and identified two major genetic groupings, the ''northwestern group'' (Kamchatka, Alaska, and northwest British Columbia) and the ''southern group'' (Fraser River and Columbia River systems). Given the large range of the species and the broader genetic relationships described by Taylor *et al.* (1996, pp. 409–410), the studies referenced by the petitioners looked only at a relatively small subset (both geographically and in total number) of *O. nerka*, and do not indicate that Issaquah Creek kokanee may have marked genetic differences that may make them significant to the taxon.

Information in our files also fails to indicate that Issaquah Creek kokanee may be markedly genetically divergent or that they may be evolutionarily significant to the taxon. Although Coyle *et al.* (2001, p. 17) conclude that summer-run Issaquah Creek kokanee have significant genetic differences compared with other conspecific populations of kokanee and sockeye salmon and are a valid DPS, their analysis does not support these findings. The authors acknowledge that genetic differences between early-run Issaquah Creek kokanee and late-run Lake Sammamish kokanee are unknown (but see our discussion of more recent genetic work by Young *et al.* 2004, below), and the adaptive significance of early-run spawning and early fry emergence are unknown. Further, the authors acknowledged that while this population possesses size and coloration not typical of other kokanee populations in the Sammamish Basin, these are unlikely to be defining characteristics of the population. Although the authors point to the population's adaptation to warmer temperatures and lower stream flows (when compared to other kokanee populations in the Sammamish Basin) as evidence of a distinct adaptation to its environment, they also state that Kootenai Lake kokanee in British Columbia have early-run timing similar to that of summer-run Issaquah Creek kokanee.

Coyle *et al.* (2001, p. 19) cite a study by Bentzen and Spies (2000, p. 6) as evidence that early-run Issaquah Creek kokanee are significantly different genetically to other conspecific populations of kokanee and sockeye salmon. However, Benzen and Spies (2000, p. 1–9) only studied kokanee populations from Issaquah Creek and Lake Whatcom, did not include other tributaries of Lake Sammamish in their study, and only examined three populations of sockeye salmon. Therefore, Bentzen and Spies' (2000, p. 6) conclusion that Issaquah Creek kokanee are significantly different from other conspecific populations of kokanee is applicable only to the small number of conspecific populations they examined, and only in the context that there were statistically significant differences at microsatellite loci (regions within genes where short sequences of DNA are repeated). An important distinction must be made between a statistically significant difference in allele frequencies using highly variable loci (e.g., microsatellites) and a biologically meaningful difference in genetic markers (Hedrick 1999, p. 316–317). This distinction is important because patterns of adaptive loci may not be correlated with highly variable loci, such as microsatellite loci. It is this high variability in microsatellite loci that enables the detection of very small genetic differences with statistical significance (Hedrick 1999, p. 316–317). While Bentzen and Spies (2000, p. 6) report statistically significant differences in allele frequencies between the two populations of kokanee and three populations of sockeye they studied, they provide no argument for how these differences may be biologically important or how may constitute marked genetic differences that are significant to the taxon.

The most recent genetic work on kokanee in the Sammamish Basin shows that allele frequencies in Issaquah Creek and Lake Sammamish tributaries differ from those of other introduced strains within the basin and also showed greater genetic distance between middle-run and late-run kokanee than the genetic distance between either group and summer-run Issaquah Creek kokanee (Young *et al.* 2004, pp. 69–70). However, the authors note that the study had a small sample size for summer-run Issaquah Creek kokanee (n=13 individuals) and that inferences regarding the summer-run Issaquah Creek kokanee should be treated with caution. While this study provides some evidence that summer-run Issaquah Creek kokanee may be genetically differentiated from other kokanee in the Lake Washington and Lake Sammamish basins, it did not address whether the summer-run Issaquah Creek kokanee may be markedly genetically divergent from kokanee outside of the Lake Washington and Lake Sammamish basins or how such genetic divergence might be important to the taxon as a whole.

The petition, in combination with information in our files, does not indicate how either the genetic makeup, early spawning, or color variation of summer-run Issaquah Creek kokanee may be significant to the taxon. Therefore, we conclude that the petition does not present substantial information indicating summer-run Issaquah Creek kokanee may meet the significance criterion of our DPS policy. Furthermore, neither the petition nor information in our files presents substantial information that summer-run Issaquah Creek kokanee may represent a significant portion of the species' range. Consequently we conclude that the petition does not present substantial information indicating that summer-run Issaquah Creek kokanee may be a listable entity under the Act.

The petition presented information for the five listing factors in section 4 of the Act in an effort to identify threats that may be leading to the decline of the summer-run Issaquah Creek kokanee. These factors are pertinent only in cases where the organism being proposed for listing may be a listable entity as defined by section 3(15) of the Act. Because the petition does not present substantial information indicating that summer-run Issaquah Creek kokanee may meet the significance criterion for a DPS or may represent a significant portion of the species' range, the five threat factors are not analyzed here.

Finding

The Service has reviewed the petition to list the summer-run Issaquah Creek kokanee, the literature cited in the petition that was available to us, and other available scientific literature and information in our files. Based on this review, we find the petition does not present substantial information indicating that the summer-run Issaquah Creek kokanee may meet the criteria for being classified as a DPS under the Act. Although statistically significant differences in allele frequencies have been reported between summer-run Issaquah Creek kokanee and other kokanee and sockeye populations in the Sammamish Basin, information provided in the petition and other available information do not indicate how these differences may be biologically important or how they may constitute marked genetic differences

that are significant to the taxon. Therefore, we will not commence a status review in response to this petition.

If you wish to provide information regarding summer-run Issaquah Creek kokanee, you may submit your information or materials to the Manager, Western Washington Fish and Wildlife Office (see **ADDRESSES**).

References Cited

A complete list of all references cited is available upon request from the Western Washington Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this document are Western Washington Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 15, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–20748 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Mountain Whitefish (Prosopium williamsoni) in the Big Lost River, ID, as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the mountain whitefish (*Prosopium williamsoni*) occurring in the Big Lost River in Idaho as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing the mountain whitefish in the Big Lost River may be warranted. This finding is based on insufficient information indicating that mountain whitefish in the Big Lost River may represent a species, subspecies, or distinct population segment (DPS) and, therefore, a listable entity under section 3(16) of the Act. Accordingly, we will not be initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of mountain whitefish occurring in the Big Lost River at any time. This information will help us to monitor and encourage the ongoing conservation of mountain whitefish in the Big Lost River.

DATES: The finding announced in this document was made on October 23, 2007. You may submit new information concerning the mountain whitefish occurring in the Big Lost River for our consideration at any time.

ADDRESSES: Submit data, information, comments, and materials concerning this finding to the Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709. The supporting file for this finding is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffery Foss, Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**); telephone 208–378–5243; facsimile 208–378–5262. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Such findings are based on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish a notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information, as defined by the Code of Federal Regulations (CFR), with regards to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that the petition presents substantial scientific or commercial information, we are required to promptly commence a status review of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information readily available in our files at the time of the petition review. We evaluated this information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

On June 15, 2006, we received a petition, dated June 14, 2006 (hereafter cited as 'Petition' 2006), from the Western Watersheds Project ('petitioner'). The petitioner requested that mountain whitefish in the Big Lost River, Idaho, be listed as threatened or endangered in accordance with section 4 of the Act. The petitioner also requested that critical habitat be designated. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in title 50 of the Code of Federal Regulations (CFR), 424.14(a). In an August 21, 2006 letter to the petitioner, we acknowledged receipt of the petition, and explained that we would not be able to address the petition at that time due to other priorities relating to court orders and litigation settlement agreements. We further indicated that we had reviewed the petition and determined than an emergency listing was not necessary.

The petition requested that we list the mountain whitefish in the Big Lost River of Idaho as a separate species, subspecies, or in the alternative as a distinct population segment. The petition contends that mountain whitefish occupying the Big Lost River have experienced ''a population decline and extirpation, and a decreased range.'' Threats identified in the Big Lost River include ''loss and degradation of habitat due to irrigation diversions, livestock grazing, off-road vehicle use, roads; and predation, competition, and disease from non-native fish species.'' The petition asserts that this situation is in contrast to other populations of mountain whitefish in other drainages.

The petition was accompanied by a single document, the ''Big Lost River Mountain Whitefish Status Report,''

prepared by Ecosystem Sciences Foundation and dated February 2006 (hereafter cited as 'ESF Status Report 2006'). This report contained information related to the taxonomy, life history, demographics, genetics, habitat, threats, and the past and present distribution of mountain whitefish in the Big Lost River. The petition incorporated by reference any citations used in the ESF Status Report 2006, but did not provide actual copies of those references.

Species Information

Mountain whitefish (*Prosopium williamsoni*) are members of the Salmonidae family and are found throughout mountainous areas of western North America in Canada and the United States. In the United States, the species is known to occur in the States of Washington, Oregon, Idaho, Wyoming, Montana, Colorado, Utah, Nevada, and California (NatureServe 2007). Mountain whitefish are relatively common and widespread in most river basins in Idaho (American Fisheries Society 2007). Their preferred habitat is cold water streams and lakes in western North America, and typically third or fourth order streams (Van Kirk et al. 2003, p. 8).

While the majority of populations of mountain whitefish occur in riverine environments, some populations are restricted to lakes or isolated sink basins. Mountain whitefish in the Big Lost River reside in a ''sink'' drainage which was once part of a large Pleistocene lake system that included Lake Terreton (Van Kirk et al. 2003, p. 6). As the waters receded, the Big Lost River and four adjacent drainages lost their surface connection to the Snake River, resulting in five isolated sink drainages in Idaho.

There are additional populations of mountain whitefish that occur in other sink drainages, such as tributaries in the Lahontan Basin in California and Nevada and the Bonneville Basin in Utah. Populations in these basins are similar to the population in the Big Lost River in that all are relict populations of mountain whitefish that formerly resided in large Pleistocene lake systems that are now closed basins.

Mountain whitefish in the Big Lost River are thought to be most closely related to populations that occur in the upper Snake River based on genetic data from Whiteley et al. (2006) and Campbell and Cegelski (2005). The species most likely entered the Big Lost River approximately 10,000 years ago (Van Kirk et al. 2003, p. 8). Today, mountain whitefish in the Big Lost River are physically isolated from other populations within the Snake River basin.

Mountain whitefish, also known as mountain herring, are about 57 centimeters (cm) (22 inches (in)) in length. The general body shape is slender with a somewhat round cross section, and body coloration is typically silver on the sides, dusky olive green or blue on the back, and the belly is a dull white (Simpson and Wallace 1982, p. 77). It has been suggested that individuals from the Big Lost River appear to be different from other populations of mountain whitefish in coloration and body shape, but data to confirm this observation has not yet been collected (A. Whiteley, pers. comm. 2007a).

The spawning season for mountain whitefish is in the fall, and is correlated with stream temperature (Simpson and Wallace 1982, p. 77; Wydoski 2001, p. 694). Unlike other salmonids, mountain whitefish are broadcast spawners in which a nest or redd is not created; females scatter eggs and the males fertilize them (McGinnis 1984, p. 137).

Mountain whitefish are thought to be opportunistic bottom feeders that consume whatever is in abundance, including fish eggs during the spawning season (McGinnis 1984, p. 137). It is known to actively feed on both aquatic and terrestrial insects, but is also a piscivore (eats other fish) (NatureServe 2007). Mountain whitefish reach sexual maturity at 3 to 4 years, and have been observed to live up to 12 years (Wydoski 2001, p. 694).

Listable Entity Evaluation

In making a 90-day finding on a petition to list a species, we must first establish that the subject of the petition may constitute a ''species'' under section 3(16) of the Act. In this case, the petitioner has requested that the mountain whitefish occupying the Big Lost River in Idaho be listed as a separate species, subspecies, or in the alternative, as a distinct population segment. For vertebrates, the Act allows listing of these three entities (16 U.S.C. 1532(16)).

Evaluation of the Mountain Whitefish in the Big Lost River as a Species or Subspecies

The mountain whitefish in the Big Lost River of Idaho are currently recognized as members of the single species *Prosopium williamsoni,* which is considered common and widespread throughout the mountainous western United States northward into Canada (NatureServe 2007). The mountain whitefish in the Big Lost River are not recognized as a separate species or subspecies by the American Fisheries Society (Nelson et al. 2004, p. 86), nor by the Integrated Taxonomic Information System (2007). The State of Idaho does not consider the mountain whitefish occupying the Big Lost River to be either a significant species or a species of concern (Idaho Comprehensive Wildlife Strategy 2005).

The petitioner's arguments for the recognition of mountain whitefish in the Big Lost River as a species, subspecies or distinct population segment (discussed separately, below), rely primarily on the analysis of molecular data. Because of the complex and highly technical nature of molecular analysis, we consulted with a fisheries genetics expert within the Service to assess the petitioner's assertions to the potential significance of the genetics information presented. Dr. Donald E. Campton, Senior Scientist at the U.S. Fish and Wildlife Service's Abernathy Fish Technology Center and former President of the Genetics Section of the American Fisheries Society, served as our consultant on this finding.

The petitioner contends that ''the best available science demonstrates that the Big Lost River Mountain Whitefish should be protected as a separate species or subspecies of whitefish because all genetic analyses demonstrate that it is genetically unique—so much so that the genetic distance observed between Big Lost River mountain whitefish and surrounding populations is at least as large as that seen between other subspecies or even species. [ESF] Status Report [2006], pp. 6, 14–15.'' The ESF Status Report 2006, p. 6 cites Whiteley and Gamett (2002) for the basis of this assertion. Whiteley and Gamett (2002) is an abstract of a presentation given at the Sinks Symposium of the Idaho Chapter of the American Fisheries Society in February 2002 (Van Kirk et al. 2003, p. 13).

We contacted Mr. Gamett to determine whether any written document was available reflecting the content of that presentation, but found that the abstract was the only written record. The Symposium Proceedings (Van Kirk et al. 2003) were available to us in our files. The abstract does not state that ''the genetic distance is at least as large as that seen between other subspecies or even species,'' but rather that ''consideration of the Big Lost River mountain whitefish as a separate subspecies may be warranted.'' This appears to represent the personal opinions of the presenting researchers, no data are presented to support the petitioner's claim regarding genetic distance, and the ESF Status Report

2006 cited by the petitioner appears to have overstated the conclusions of Whiteley and Gamett (2002).

Data available in our files from a 2005 Idaho Department of Fish and Game Report do not support the contention that mountain whitefish found in the Big Lost River are genetically equivalent to a subspecies or species. In analyzing the sequence divergence of mitochondrial DNA between whitefish populations, Campbell and Cegelski (2005, Figure 3) found that the percent sequence divergence of mountain whitefish from the Big Lost River compared to other populations within the Upper Snake River Basin ranged from 0.33 to 0.49 percent. The authors note that, for comparison purposes, sequence divergence between recognized subspecies of cutthroat trout range (*Oncorhynchus clarki lewisi* and *O. c. bouvieri*) from 1.4 to 1.9 percent, and sequence divergence between different species of trout (*O. mykiss* and *O. clarki*) range from 4.0 to 4.5 percent (Campbell and Cegelski 2005, p. 6); these are far higher levels of mtDNA sequence divergence than was observed between mountain whitefish in the Big Lost River and other populations within the Upper Snake River assemblage. According to this report, the genetic distance between mountain whitefish in the Big Lost River and surrounding populations is far less than that observed between other subspecies or species of salmonids. Furthermore, several other populations of mountain whitefish examined by Campbell and Cegelski (2005, Figure 3) exhibited levels of divergence equal to or greater than that exhibited by fish from the Big Lost River (the Boise River populations, for example). This issue is discussed in further detail in the distinct population segment analysis presented below.

The petitioner's citation of pages 14–15 of the ESF Status Report 2006 in support of their contention that mountain whitefish in the Big Lost River merit consideration as a separate species or subspecies apparently refers to several different statements and sources, beginning with the citation of Whiteley (2002) as stating that ''the Big Lost [mountain whitefish] should be considered as a separate group. This group is highly genetically differentiated from all other populations analyzed to date'' (ESF Status Report 2006, p. 15).

The ESF Status Report 2006 presented only conclusions from the Whiteley 2002 reference, but provided no data or analysis to support those conclusions. Only the name of the author, a title, and the name of a genetics laboratory in the Biological Sciences Department at the University of Montana was provided under the Whiteley 2002 citation (ESF Status Report 2006, p. 18) and we were unable to locate a publication by that name through a search of the published literature. We therefore contacted Mr. Whiteley and asked for a copy of the referenced publication. Mr. Whiteley informed us that the document cited was an unpublished report to a funding agency (A. Whiteley, pers. comm. 2007b), and referred us to a recently published, peer-reviewed paper on the genetics of mountain whitefish (Whiteley et al. 2006, already contained in our files and discussed further below). In responding to us, Mr. Whiteley also stated that he believes that mountain whitefish in the Big Lost River are more divergent than two other ''species'' of whitefish, *Prosopium spilonotus* and *P. abyssicola* (A. Whiteley, 2007b; quotes from author's original communication). However, Mr. Whiteley went on to indicate that the classification of these mountain whitefish species is not clearly defined (that they may not be ''good'' species; A. Whiteley, 2007b, quotes from author's original communication) and subject to debate.

The petitioner further references the following statements: ''In analysis of all the genetic information available at that time, Gamett et al. (2004) concluded that Big Lost River whitefish are genetically different from all other whitefish and they are likely a unique species or subspecies of fish,'' and ''Given the most recent genetic studies of Miller et al. (2005) and Campbell et al. (2005), all of which confirm past studies and conclusions—the Big Lost mountain whitefish must be managed as a separate species from all other mountain whitefish'' (ESF Status Report 2006, p. 15). The Gamett et al. (2004) citation appears to be a reference to an oral presentation made at a meeting of the Idaho Fish and Game Commissioners (ESF Status Report 2006, p. 16), and it was therefore unavailable to us. The citations for both Miller et al. (2005) and Campbell et al. (2005) appear to be references to abstracts, papers, or posters presented at a meeting of the American Fisheries Society and were not available to us.

In our files we had a recent publication, W, Whiteley et al. (2006), regarding the genetics of mountain whitefish which was not cited in the ESF Status Report 2006. In this publication, the researchers utilized both allozymes and microsatellites to examine the genetic structure of mountain whitefish populations throughout the northwestern United States and British Columbia, plus two populations from western Alberta. The results indicated three large-scale genetic assemblages of mountain whitefish in this region based on allozyme data, and five large-scale genetic assemblages based on the microsatellite data (Whiteley et al. 2006, p. 2778).

The Big Lost River population was included within the resulting Upper Snake River assemblage in both cases and is described as the ''most genetically divergent'' site in that assemblage. However, the data indicate that the degree of genetic divergence of mountain whitefish in the Big Lost River from other populations in the upper Snake River region is substantially less than the genetic divergence observed between the major assemblages. The authors note low levels of within-population genetic variation in several physically isolated populations of mountain whitefish, including not only the Big Lost River, but also the Big Wood River, Bull River, and Thutade Lake (Whiteley et al. 2006, p. 2780). They also note a higher degree of genetic differentiation in several physically isolated sites in the Upper Snake region, which is to be expected when gene flow is precluded geographically. In addition to the Big Lost River, this pattern was observed in the Henry's Fork and several Bonneville Basin sites (Whiteley et al. 2006, p. 2781).

This most recent analysis of the genetic relationships of mountain whitefish (Whiteley et al. 2006) does not support the contention that mountain whitefish of the Big Lost River are distinctive or unique genetically as compared to other populations in the upper Snake River assemblages, or as compared to populations within other assemblages relative to the rest of the species. Rather, the authors point to a high degree of genetic differentiation between many populations of mountain whitefish in the Upper Snake River due to the topography of the region, and characterize those populations as ''more finely subdivided than elsewhere'' (Whiteley et al. 2006, p. 2781). The authors also point out that the degree of genetic differentiation observed in mountain whitefish among tributaries within river basins is less than that observed in populations of other salmonids, such as bull trout (*Salvelinus confluentus*) and westslope cutthroat trout (*Oncorhynchus clarki lewisi*) (i.e., bull trout and westslope cutthroat trout show greater levels of genetic differentiation between populations within river basins than do mountain whitefish) (Whiteley et al. 2006, p. 2783). Despite this high degree of

genetic structuring, it has not been suggested in literature, that each of these bull trout or westslope cutthroat trout populations be considered as separate subspecies or species. The mountain whitefish in the Big Lost River exhibit less genetic differentiation than these populations.

Also referenced by the petitioner in the ESF Status Report 2006 is the statement that ''Whitefish in the Big Lost River are fixed for microsatellite alleles that are rare or not present in the surrounding rivers'' (ESF Status Report 2006, p. 15). The petition cites Whiteley and Gamett (2002), which is the previously mentioned abstract from a meeting of the Idaho Chapter of the American Fisheries Society (Van Kirk et al. 2003, p. 13), available to us in our files. It refers to ''the fixation of a unique allele in the Big Lost River population at one of the microsatellite loci.'' The ESF Status Report 2006 implies that there are multiple rare or unique microsatellite alleles in the Big Lost River population, when in fact the abstract indicates there was only one unique allele.

Although we were not provided with the data to support this statement, even if we assume that one microsatellite allele has become fixed in mountain whitefish occupying the Big Lost River, that information does not in and of itself confer any biological or ecological importance (e.g., as measured by morphological, physiological, or behavioral traits) because microsatellite alleles are considered selectively neutral, the frequencies of which largely reflect random or stochastic processes (e.g., genetic drift, population bottlenecks, founder effects, mutation rates) rather than selection for traits that confer increased fitness (Ashley and Dow 1994, p. 185). Indeed, the total lack of variability observed in microsatellites sampled for mountain whitefish in the Big Lost River (Whiteley et al. 2006, p. 2775) indicates that this population has likely undergone a past population bottleneck relative to other populations with a subsequent loss of genetic variability and random fixation (e.g., via drift of a unique [or nearly unique] allele) (D. Campton, pers. comm. 2007). Under such conditions, genetic distance may increase quickly, but is not in and of itself indicative of biological significance (Hedrick 1999, pp. 315, 316).

We have no information, and the petitioner has offered none, to indicate that the fixation of this single microsatellite allele may in any way be biologically important or significant to the taxon as a whole. Such fixed allelic differences between geographically isolated freshwater populations of salmonid fishes are not considered uncommon (Allendorf and Waples 1996, p. 257).

In sum, mountain whitefish occurring in the Big Lost River are not currently recognized as a subspecies or species (Nelson et al. 2004, p. 86; ITIS 2007), and neither the information provided in the petition nor in our files suggest that mountain whitefish in the Big Lost River may represent a distinct species or subspecies. Even considering the additional information supplied by Mr. Whiteley, our conclusion remains the same. Although no universally accepted definition of species and subspecies exists, in general such classifications are based on multiples lines of evidence, including factors such as morphology, behavior, and genetic characters (Haig et al. 2006, p. 1586). Information in our files indicates that the genetic distance observed between mountain whitefish in the Big Lost River and surrounding populations is substantially less than that observed between other subspecies or species of salmonids (Campbell and Cegelski 2005, p. 6).

Likewise, the petition provides no substantial information to support its assertion that the mountain whitefish in the Big Lost River constitute a genetically unique stock; although the population possesses one unique haplotype, almost every population sampled had at least one unique haplotype, and some had several (Campbell and Cegelski 2005, Table 1). All available evidence indicates that there is a high degree of genetic structuring between populations of mountain whitefish, as is frequently observed in populations of freshwater salmonids (Allendorf and Waples 1996, p. 257; Whiteley et al. 2006, p. 2783), but that the degree of genetic differentiation between mountain whitefish in the Big Lost River and surrounding populations is no greater than that observed between other populations of mountain whitefish (Whiteley et al. 2006, p. 2781; Campbell and Cegelski 2005, Figure 3, p. 5).

Although mountain whitefish in the Big Lost River may be genetically differentiated from other populations of the species, the data demonstrate that the same can be said of many populations of whitefish throughout the species' range; this widespread genetic structuring of populations alone does not indicate that each of these individual populations may warrant consideration as a separate subspecies or species (Haig et al. 2006, p. 1588). We conclude that the petitioner did not present substantial information indicating that mountain whitefish in the Big Lost River may be a species or subspecies.

Evaluation of Mountain Whitefish in the Big Lost River as a Distinct Population Segment

Under the Act, we can consider for listing any species, subspecies, or distinct population segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). The petitioner has asked us to consider listing mountain whitefish occurring in the Big Lost River of Idaho as a DPS. We, along with the National Marine Fisheries Service, developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (February 7, 1996, 61 FR 4722) to help us in determining what qualifies as a DPS under the Act. The policy identifies three elements that are to be considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act:

1. Discreteness of the population segment in relation to the remainder of the species to which it belongs;
2. The significance of the population segment to the species to which it belongs; and
3. The population segment's conservation status in relation to the Act's standards for listing.

Discreteness

The petitioner asserts that the mountain whitefish occupying the Big Lost River basin are discrete due to the terminal nature of the Big Lost River within a sink drainage and the isolation of this population. Our DPS policy states that a population segment of a vertebrate species may be considered discrete if it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. We agree that mountain whitefish in the Big Lost River may be considered discrete, since they occur in a closed basin lacking a surface connection to any major river system and are therefore physically separated from the remainder of the populations in the taxon. We therefore conclude that there is substantial information indicating that mountain whitefish in the Big Lost River may satisfy the discreteness criterion of the DPS policy.

Significance

If a population segment is considered discrete, our DPS policy directs us to consider available scientific evidence of the importance of this discrete population to the remainder of the taxon (species) to which it belongs. The policy

suggests four potential factors to consider in evaluating significance:

1. Persistence of the discrete population in an ecological setting unusual or unique for the taxon,
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon,
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or
4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The petitioner points to two of these four factors in arguing for the significance of a possible DPS, contending that mountain whitefish occupying the Big Lost River are significant ''because it [mountain whitefish] exists in a unique ecological setting that has contributed to its genetic differentiation, and because it differs markedly in its genetic characteristics from other whitefish populations.'' The petition asserts that the Big Lost River is a unique ecological setting because it is one of five so-called ''sinks drainages'' that are a collection of closed surface drainage basins in southeastern Idaho, and that this physical isolation has led to genetic and other differences.

The petitioner's argument that the mountain whitefish of the Big Lost River occupy a unique ecological setting relative to the rest of the species rests on the fact that the Big Lost River basin is a closed surface drainage basin. However, as noted earlier, the mountain whitefish also occurs in isolated populations in sink drainages in the Bonneville Basin in Utah and the Lahontan Basin in California and Nevada. Therefore, the mere fact that these mountain whitefish are found in a physically isolated drainage is not in and of itself unique, unusual, or significant to the species as a whole.

In addition, other mountain whitefish occur in other types of physically isolated settings, such as above impassable waterfalls (e.g., Big Wood River and Henry's Fork of the Snake River in Idaho, or Bull River and Thutade Lake in British Columbia; Whiteley et al. 2006, p. 2780). The petitioner does not provide any information that the Big Lost river drainage is ecologically unusual or unique in any other way (e.g., in terms of prey species, community composition, water chemistry, substrate), apart from its physical isolation. As other populations of mountain whitefish also occur in closed drainage basins within the range of the species, and other populations occur within other physically isolated settings, the petition information does not indicate that the ecological setting of the Big Lost River is unique or unusual for the species.

We next evaluate whether the mountain whitefish in the Big Lost River differ markedly from the remainder of the species in its genetic characteristics. The petition contends that mountain whitefish in the Big Lost River meet the significance criterion of the DPS policy ''given the high level of genetic, morphological, and physical uniqueness of the Big Lost River Mountain Whitefish to the species as a whole.'' As evidence, the petitioner states that ''Big Lost River Mountain Whitefish are isolated and evolving separately from all other whitefish populations; the Big Lost River Mountain Whitefish have coloration and morphological differences—morphologically Big Lost River Mountain Whitefish are distinct from all other mountain whitefish; Big Lost River Mountain Whitefish are fixed for microsatellite alleles that are rare or not present in the surrounding rivers; biologically, Big Lost River Mountain Whitefish are an evolutionarily independent unit because they are isolated from surrounding populations and have been for some time; and the Big Lost River Mountain Whitefish is highly genetically differentiated from all other whitefish populations analyzed to date. [ESF] Status Report [2006], pp. 14–15.''

We have already addressed in our evaluation of whether this population may be a separate species or subspecies, the petition's points regarding the fixation of a single microsatellite allele and the degree of genetic differentiation observed in mountain whitefish of the Big Lost River. In short, we concluded that the ESF Status Report 2006 had overstated the findings of Whiteley and Gamett 2002 by implying that more than one microsatellite allele was fixed in this population, when the abstract indicates that they only detected the fixation of a unique allele at a single microsatellite locus. We also found that the petitioner had not provided substantial information to indicate that the fixation of this one microsatellite allele may be significant to the taxon as a whole, particularly since microsatellites are considered likely to be neutral markers (Ashley and Dow 1994, p. 185), and fixed allelic differences between isolated populations of freshwater fishes are not considered to be uncommon (Gyllensten 1985, p. 691; Allendorf and Waples 1996, p. 257).

We likewise concluded that the petitioner had not provided substantial information indicating that the genetic distance between mountain whitefish in the Big Lost River and surrounding populations was so great as to merit classification as a separate subspecies or species. Here, however, we must address whether the petitioner has provided us with substantial information indicating that there may be marked genetic differences between mountain whitefish found in the Big Lost River and the remainder of the species such that mountain whitefish occurring in the Big Lost River may be considered significant to the taxon as a whole. The petitioner relies upon pages 14–15 in the ESF Status Report 2006 in support of its significance argument regarding the genetic status of mountain whitefish in the Big Lost River.

The first part of the discussion on these pages cites the studies of Miller et al. (2005) and Campbell et al. (2005), neither of which was directly available to us. According to the ESF Status Report 2006, Miller et al. (2005) defined two distinct clades of mountain whitefish and possibly four separate species, although the four possible species are not identified, and Campbell et al. (2005) found evidence for three large genetic assemblages of mountain whitefish, but neither reference apparently specifically addresses mountain whitefish in the Big Lost River (ESF Status Report 2006, p. 14).

The ESF Status Report 2006 also cites Whiteley (2002) as identifying mountain whitefish from the Big Lost River as genetically most similar to the Upper Snake River populations above Shoshone Falls. The ESF Status Report 2006 quotes from Whiteley (2002) that ''This group is highly genetically differentiated from all other populations analyzed to date. It is most genetically similar to populations from the upper Snake River (above Shoshone Falls) * * * These fish also have coloration and morphological differences, which provides additional evidence that they are highly differentiated from other mountain whitefish populations'' (ESF Status Report 2006, p. 15).

As noted earlier, the Whiteley (2002) citation in the ESF Status Report 2006 does not provide a reference to any obtainable published work or data, and when we requested the information from the author, he informed us that the quotations cited in the ESF Status Report 2006 were from an unpublished report to a funding agency, and provided us with a more recent published paper, Whiteley et al. (2006)

(A. Whiteley, pers. comm. 2007a, b). This publication was also available to us in our files. Similar to the described findings of Campbell et al. 2005, Whiteley et al. (2006) found evidence for three large genetic assemblages of mountain whitefish in the Pacific Northwest, which they termed Cascadia, the Upper Missouri, and Upper Snake.

As described above, mountain whitefish in the Big Lost River were one of several populations included within the Upper Snake assemblage. Although described as the ''most genetically divergent'' site in that assemblage, this publication identifies several other populations of mountain whitefish that, due to their physical isolation, exhibit low levels of within-population genetic variation (Big Lost River, Big Wood River, Bull River, and Thutade Lake) and that demonstrate a high degree of genetic differentiation, presumably due to reduced gene flow as a result of physical barriers (Big Lost River, Henry's Fork and several Bonneville Basin sites) (Whiteley et al. 2006, pp. 2780–2781). Thus the mountain whitefish found in the Big Lost River are not particularly distinctive or unique genetically in relation to the species as a whole, as several other isolated populations of the species exhibit similar levels of genetic variability and differentiation.

In a personal communication to the Service, Mr. Whiteley also indicated that mountain whitefish in the Big Lost River ''fall into the upper Snake River group and thus are not completely differentiated from all other whitefish populations analyzed to date'' (A. Whiteley, 2007b). He went on to state that the degree of differentiation for mountain whitefish in the Big Lost River is the greatest he has observed, and that it is the single most divergent population from other nearby populations in the species' range. While we acknowledge that mountain whitefish in the Big Lost River may be genetically distinguished from other nearby populations, the petitioner provides no data to support the contention that this degree of divergence may be considered a marked level of differentiation, particularly in light of the fact that other populations of mountain whitefish, such as those in the Boise River, show a greater degree of difference, as described below.

In considering the potential genetic distinctiveness of mountain whitefish in the Big Lost River, we evaluated the recent work of Campbell and Cegelski (2005), available in our files, which examined the phylogeography of mountain whitefish in Idaho, Utah, and Montana based on sequence analyses of the cytochrome–b gene of mitochondrial DNA (mtDNA). These data reveal that populations of mountain whitefish in general, and not just in the Big Lost River, are characterized by fixed, or nearly fixed, haplotypic differences between populations: Only 2 haplotypes out of 18 were shared by multiple populations (Campbell and Cegelski 2005, pp. 4–5).

The possession of a unique haplotype is therefore not unique to the mountain whitefish of the Big Lost River; on the contrary, the publication by Campbell and Cegelski (2005) demonstrates that most populations of mountain whitefish sampled possess unique haplotypes. For example, in a sample of 7 individuals from the Boise River, the researchers identified 3 different haplotypes not observed in any of the 10 other populations sampled. The Big Lost River population possessed one unique haplotype, Haplotype 9. An analysis of the percent sequence divergence data presented in Figure 4 (Campbell and Cegelski 2005, p. 6) demonstrates that Haplotype 9 in the Big Lost River population differs from Haplotype 8 in the Henry's Fork population by 0.33 percent. This degree of divergence is far less than that observed between other populations of whitefish examined in this study, especially as compared to populations in the Lower Snake River assemblage. Haplotype 6, for example, from the Boise River, differs from Haplotype 5 observed within the same population by 1.49 percent.

Campbell and Cegelski (2005) also found evidence for three broad genetic assemblages of mountain whitefish, which they term the Upper Snake River, Lower Snake River, and Upper Missouri River, and found that mountain whitefish from the Big Lost River, which have been isolated within that drainage, fall within the Upper Snake River Basin assemblage. The authors conclude that their results, in conjunction with ''previous research indicating that mountain whitefish in the Big Lost [River] appear to be genetically and morphologically distinct'' (citing Whiteley and Gamett 2003 [*sic*; 2002]), justify conserving the mountain whitefish occurring in the Big Lost River independent of other populations in the larger genetic assemblage to which they belong.

We encourage the conservation of mountain whitefish and other native species as components of the natural biodiversity of the Big Lost River. However, the desirability of conserving mountain whitefish is not the same issue as whether the mountain whitefish found in the Big Lost River may qualify as a listable entity under the Act. Under the ''significance'' prong of the DPS policy we are required to apply a different and specific set of criteria. Based on the information in the petition and our files, we do not find substantial or reliable information indicating that mountain whitefish in the Big Lost River may be considered any more distinct genetically than any of several other populations of mountain whitefish examined, all of which may well be argued to merit conservation efforts outside of the realm of the Act.

As noted above, the most recent genetic work (Whiteley et al. 2006) indicates that there are several physically isolated populations of mountain whitefish that, as expected under a scenario of reduced gene flow, show some divergence from their presumed common populations of origin. Particularly when a population has gone through a presumed bottleneck, as evidenced by the lack of microsatellite variation observed in mountain whitefish in the Big Lost River, the amount of genetic distance is expected to increase very quickly (Hedrick 1999, p. 315). Such increased distance does not, however, automatically confer biological significance in the absence of any indication of adaptive differences. The research clearly indicates that throughout the relatively broad range sampled, most populations of mountain whitefish have diverged to the point of possessing unique haplotypes, and that other populations of mountain whitefish exhibit a greater degree of genetic divergence than observed in mountain whitefish from the Big Lost River (Campell and Cegelski 2005, Figure 3). Mountain whitefish in general appear to exhibit a high degree of genetic structure between populations, as observed in many species of freshwater fishes (Gyllensten 1985, p. 691; Allendorf and Waples 1996, p. 257; Whiteley et al. 2006, p. 2783). The petition does not provide substantial evidence that the mountain whitefish in the Big Lost River are any more different than any of several other populations of whitefish throughout the species' range.

In addition to genetics, the petitioner contends that differences in coloration and morphology of mountain whitefish in the Big Lost River provide additional evidence that they are ''highly differentiated'' from all other populations, citing the ESF Status Report 2006, pp. 14–15. The ESF Status Report 2006 contains no data or other analysis to support its assertions regarding color and morphological differences, but cites Whiteley (2002) as the source of this information; however, as described earlier, no obtainable

reference is available (ESF Status Report 2006, p. 18). When we contacted the author and asked if he could provide us with the data demonstrating the referenced coloration and morphological differences. Mr. Whiteley replied, ''I don't have any data on morphological variation for whitefish from the Big Lost. The references you cite all go back to personal observations by myself'' (A. Whiteley, pers. comm., 2007a).

Although he believes that ''whitefish in the Big Lost [River] look different,'' Mr. Whiteley stated that ''these traits have not been quantified'' (A. Whiteley, pers. comm. 2007a). This suggests that the authors of the ESF Status Report 2006 erred in alluding to ''phenotypic studies'' if, in fact, they were referring to a researcher's personal observations (ESF Status Report 2006, p. 6). Therefore, we do not consider the statement in the ESF Status Report 2006 to this effect to be reliable.

We accept Mr. Whiteley's description (A. Whiteley, pers. comm. 2007a) that mountain whitefish from the Big Lost River may differ in color and form. However, based purely on Mr. Whiteley's opinion of the nature of these differences (shorter heads and possibly differing in body shape), we conclude that the petitioner has not provided us with substantial and reliable information to support the claim that the mountain whitefish in the Big Lost River have a ''high level of [genetic], morphological and physical uniqueness * * * to the species as a whole.'' We have no evidence before us to suggest that any differences in color or morphology that may exist are anything other than natural phenotypic variation that is often observed in different populations of fish.

Natural variation in characteristics such as body shape in fish is commonly attributable to environmental factors, such as water temperature during development (e.g., Barlow 1961). Additionally, many fish exhibit a considerable degree of intraspecific variation in morphology, which has been experimentally demonstrated to be the result of phenotypic plasticity in response to the environment rather than a heritable response to selection (e.g., Mittelbach et al. 1999). Head depth is a common plastic trait in fish related to diet (e.g., Day et al. 1994). We have no information in our files, nor has the petitioner provided any substantial information, to suggest that any apparent differences in morphology or coloration of the mountain whitefish are in any way biologically meaningful such that they may be significant to the species as a whole. We also considered the additional information provided by Mr. Whiteley (A. Whiteley, pers. comm. 2007a). Even considering this additional information, our conclusion remains the same.

DPS Conclusion

Our DPS policy directs us to evaluate the significance of a discrete population in the context of its importance to the remainder of the taxon. Based on an analysis of the information presented by the petitioner, Service staff expertise, and information within our files, our evaluation indicates that the genetic, morphological, and coloration differences cited by the petitioner do not indicate that mountain whitefish found in the Big Lost River may differ markedly from other populations of mountain whitefish such as to be significant to the species as a whole. Therefore, the differences do not rise to the level of significance under the criteria set by our DPS policy. Because the mountain whitefish occupying the Big Lost River fail to meet the significance criteria for a DPS under the policy, we have determined that they do not constitute a listable entity under the Act. We also note that the petitioner did not petition us to list the Big Lost River mountain whitefish on the basis of a significant portion of the species' range, nor did the petitioner provide specific information indicating that the mountain whitefish within the Big Lost River basin represented a significant portion of the range of the species. Therefore, we did not specifically analyze whether the mountain whitefish in the Big Lost River basin represented a significant portion of the range of the species.

Finding

We have reviewed and evaluated the petition and literature cited in the petition in relation to information available to us. On the basis of this review and evaluation, we find that the petition does not present substantial scientific information to indicate that listing the mountain whitefish in the Big Lost River of Idaho may be warranted. This finding is based on lack of substantial information indicating that the mountain whitefish occurring in the Big Lost River qualify as a listable entity under section 3(16) of the Act. We find that mountain whitefish occurring in the Big Lost River do not constitute a separate species or subspecies, and although they may be considered discrete, neither the petition nor our files contain substantial information to indicate that this population may be biologically or ecologically significant according to the criteria under our DPS policy. Although we are not commencing a status review in response to this petition, we will continue to monitor the status and trends, potential threats, and ongoing management actions that might affect mountain whitefish in the Big Lost River. We encourage interested parties to continue to gather data that will assist with conservation of mountain whitefish in the Big Lost River basin. If you wish to provide information regarding mountain whitefish in the Big Lost River, you may submit your information or materials to the Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**).

References Cited

A complete list of all references cited is available on request from the Snake River Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is the Snake River Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 15, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–20767 Filed 10–22–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0612243157–7232–03]

RIN 0648–AT87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would implement a joint Amendment 27 to the FMP for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and Amendment 14 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of

Mexico (Shrimp FMP)(Amendment 27/14) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would reduce the commercial and recreational quotas for red snapper, reduce the commercial minimum size limit for red snapper, reduce the recreational bag limit for red snapper, prohibit the retention of red snapper under the bag limit for the captain and crew of a vessel operating as a charter vessel or headboat, require the use of non-stainless steel circle hooks when using natural baits to fish for Gulf reef fish, require the use of venting tools and dehooking devices when participating in the commercial or recreational reef fish fisheries, and provide for seasonal closures of the Gulf shrimp fishery to reduce red snapper bycatch consistent with the Amendment's framework procedure. In addition, the proposed rule would establish a target reduction of shrimp trawl bycatch mortality of red snapper, assume a 10-percent reduction in post-hurricane fishing effort and landings when evaluating alternative TACs and management measures or in the alternative, not assume the 10% effort reduction, and establish a framework procedure to adjust the target effort level and closed season for the Gulf shrimp fishery. The measures contained in this proposed rule are intended to satisfy a U.S. District Court Order to establish a revised red snapper rebuilding plan by December 12, 2007, and to end overfishing of the red snapper resource in the Gulf of Mexico.

DATES: Written comments must be received on or before December 7, 2007.

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

- *E-mail: 0648–AT87.Proposed27–14@noaa.gov.* Include in the subject line the following document identifier: 0648–AT87.Proposed27–14.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Fax:* 727–824–5308; Attention: Peter Hood.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Copies of Amendment 27/14, which include a supplemental environmental impact statement (SEIS), an initial regulatory flexibility analysis (IRFA), a regulatory impact review (RIR), and a fishery impact statement, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org*; or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish and shrimp fisheries of the Gulf of Mexico are managed under their respective FMPs (Reef Fish FMP and Shrimp FMP). The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council) and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Multiple fisheries influence the status of the red snapper stock in the Gulf of Mexico, including the commercial and recreational red snapper fisheries and the shrimp trawl fishery, which takes red snapper incidentally when harvesting shrimp. A 2005 stock assessment concluded the Gulf of Mexico red snapper stock is overfished and undergoing overfishing, and red snapper fishing mortality rates are too high in both the directed and shrimp fisheries. In response to the 2005 assessment, the Council began drafting Amendment 27/14 to address overfishing and revise the red snapper rebuilding plan. In August 2006, the Council voted to delay consideration of the amendment until January 2007, pending completion of 2006 recreational effort and landings data and shrimp effort data.

On March 12, 2007, the United States District Court for the Southern District of Texas, Houston Division, issued a ruling on legal challenges to the current red snapper rebuilding plan contained in Amendment 22 to the Reef Fish FMP (*Coastal Conservation Association* v. *Gutierrez et al.*, Case No. H–05–1214, consolidated with *Gulf Restoration Network et al.*, v. *Gutierrez et al.*, Case No. H–05–2998). The Court required a new rebuilding plan by December 12, 2007. However, consistent with the Court ruling, if the revised rebuilding plan cannot be implemented by December 12, 2007, additional rule-making may be required to implement one or more of the measures contained in Amendment 27/14 on an interim basis.

Therefore, to reduce fishing mortality and maintain stock rebuilding in the interim, NMFS published a temporary rule, effective May 2, 2007 (72 FR 15617, April 2, 2007). The temporary rule reduced the recreational quota from 4.47 million lb (2.03 million kg) to 3.185 million lb (1.445 million kg), and the commercial quota from 4.65 million lb (2.11 million kg) to 3.315 million lb (1.504 million kg). The recreational bag limit was reduced from four fish to two fish per person per day to constrain the recreational harvest to its quota during the existing April 21 through October 31 fishing season. The commercial minimum size limit was reduced from 15 inches (38 cm) total length (TL) to 13 inches (33 cm) TL to reduce discard mortality. To reduce red snapper bycatch mortality in the shrimp fishery, a target reduction goal was established to reduce red snapper bycatch mortality by at least 50 percent compared to the bycatch mortality rate during the 2001–2003 time period. Under the Magnuson-Stevens Act, NMFS has the ability to extend these interim measures if necessary.

The measures in the temporary rule and this proposed rule are consistent with the March 12, 2007 Court ruling. The measures in the proposed rule are designed to address long-term reductions in red snapper fishing mortality rates of the directed red snapper fisheries, shrimp fishery, and other reef fish fisheries.

Revised Rebuilding Plan

The proposed actions are intended to implement revisions to the Council's red snapper rebuilding plan with a goal of having at least a 50-percent probability of ending overfishing for red snapper between 2009 and 2010 and rebuilding the stock to the biomass level associated with maximum sustainable yield (MSY) by 2032. Under the proposed actions, the probability of ending overfishing by 2010 is estimated to be greater than 50 percent. The annual total allowable catch (TAC) during the first 3 years of the plan is 0.3 million lb (0.136 million kg) lower than the maximum annual TAC allowed under the rebuilding projections. Although the rebuilding plan does not account for additional reductions in release mortality expected from the proposed required use of circle hooks, dehooking devices, and venting tools, these proposed measures would further

increase the probability of ending overfishing by 2010. Also, NMFS continues to develop bycatch reduction devices (BRDs) which promise better performance than those presently used in the shrimp fishery.

Beginning in 2011, the recommended revisions to the rebuilding plan would allow for harvest levels to begin increasing, while maintaining greater than a 50-percent probability of rebuilding the red snapper stock by the target date of 2032. Future TACs and quotas are modeled around yields associated with a fishing mortality producing MSY (proxy = 26-percent spawning potential ratio), in association with achieving needed reductions in bycatch and discard mortality in both the directed and shrimp fisheries. Under the recommended revisions to the rebuilding plan, the TAC would increase to 7.0 million lb (3.175 million kg) in 2011, and reach 14.0 million lb (6.35 million kg) by 2032. The recommended revisions to the rebuilding plan would also allow the shrimp bycatch mortality reduction target to drop from 74 percent in 2008 to 67 percent in 2011, and thereafter, the target would decline at a constant rate from 67 to 60 percent by 2032.

Any change made to the rebuilding plan and implementing measures, however, is contingent on successfully ending overfishing in the next 3 years and would require further action be recommended by the Council and subsequently approved by NMFS. To increase the probability of successfully rebuilding the red snapper stock, the rebuilding plan and management measures would be reviewed and adjusted, as necessary, based on periodic stock assessments.

Measures To Reduce Directed Fishing Mortality

To reduce fishing mortality and end overfishing of the red snapper stock in the Gulf of Mexico, the proposed rule would reduce the existing quotas for the commercial and recreational fisheries. The proposed rule would establish a commercial quota of 2.55 million lb (1.16 million kg) and a recreational quota of 2.45 million lb (1.11 million kg). Because of the individual fishing quota program in the commercial fishery, no measures are proposed to further constrain commercial harvest to its 2.55 million lb (1.16 million kg) quota, but measures are proposed to constrain the recreational harvest to its quota of 2.45 million (1.11 million kg). The Council considered various size limit and bag limit combinations which would determine the length of the recreational fishing season. The proposed two-fish bag limit would allow a June 1 through September 15 (107-day) recreational fishing season. In addition to the two-fish bag limit, constraining the captain and crew of for-hire vessels to a zero-fish bag limit would allow the fishing season to be extended through the end of September (122 days). Based on extensive public comment, the Council chose to assume a 10-percent reduction in post-hurricane fishing effort and landings when evaluating recreational management measures. Application of this assumption, along with implementation of the two-fish bag limit and the zero-fish captain and crew limit of for-hire vessels, would allow the recreational fishing season to extend from May 15 through October 15 (154 days). Although preliminary data suggest some declines have occurred since the 2005 hurricane season, the magnitude of reductions varies by fishing sector, is often less than 10 percent, and in some cases effort or landings have increased. Further, it is unknown how long post-hurricane reductions in landings and fishing effort may continue as the fisheries recover. The Council's recommended alternative for Action 1 of Amendment 27/14 includes, among other things, a recreational fishing season of 107 days, which when coupled with the zero captain and crew bag limit, results in a 122-day recreational season (June 1–September). However, the Council's recommended alternative for Action 2 would apply an assumed 10-percent reduction in post-hurricane recreational fishing effort to the measures in Action 1. Doing so results in a recreational fishing season of 154 days. In light of the foregoing discussion, NMFS proposes the recommended recreational season in Action 1, 107 days, coupled with the zero captain and crew bag limit, which results in a 122-day recreational season (June 1–September). NMFS also proposes, in the alternative, the longer 154-day recreational fishing season resulting from the Council's recommended alternative for Action 2. NMFS specifically requests comments on the assumed 10-percent reduction in effort and landings as recommended in Amendment 27/14, which would affect the designation of the length of the recreational fishing season established by this rule.

The existing 16-inch (41-cm) TL recreational minimum size limit would remain unchanged. Public comments during development of the amendment indicated most anglers preferred a longer fishing season rather than a lower minimum size limit. Lowering the recreational minimum size limit would have substantially shortened the fishing season to compensate for increases in angler catch rates. Although most anglers preferred a longer fishing season, they did not support a further reduction of the bag limit to one fish to further extend the fishing season because a one-fish bag limit was considered too low to provide a satisfactory recreational fishing trip.

Measures To Reduce Bycatch Mortality in the Directed Fishery

Reductions in red snapper bycatch (regulatory discards) are needed in all sectors of the directed red snapper fishery to reduce overfishing in the short term and to recover the stock over the long term. The proposed rule would reduce the commercial size limit from 15 inches (38 cm) TL to 13 inches (33 cm) TL. This reduction in the size limit is expected to reduce dead discards by 40 to 60 percent and allow the stock to recover in a shorter time period. The proposed rule would also require the use of circle hooks, venting tools, and dehooking devices to reduce bycatch and bycatch mortality when fishing for Gulf reef fish in the exclusive economic zone (EEZ). It is unknown to what extent bycatch or bycatch mortality will be reduced by these gears, but all of these gears have been shown to increase the survival of released fish.

Measures To Reduce Shrimp Trawl Bycatch Mortality

To end overfishing of red snapper between 2009 and 2010, the 2005 assessment for red snapper indicated the benchmark 2001–2003 level of red snapper bycatch mortality attributable to shrimp fishing must be reduced by 74 percent. The proposed rule would establish an initial reduction target 74 percent less than the benchmark. The proposed rule would also describe the process by which the target goals for bycatch mortality could be reduced over time, consistent with the stock rebuilding plan and subsequent stock assessments, through appropriate rulemaking. If stock rebuilding targets are met over the next 3 years and overfishing is ended, the target bycatch mortality goal for the shrimp fishery would then be decreased to 67 percent of the 2001–2003 benchmark beginning in 2011. Thereafter, the target goal would be reduced at a constant rate to achieve a target reduction goal of 60 percent less than the benchmark by 2032. However, any such change would occur only after the Council and NMFS reviewed updated information regarding the status of the red snapper stock and the rebuilding projections.

Subsequent to the benchmark years of 2001–2003, effort in the offshore shrimp fishery has declined dramatically due to external economic issues, such as increasing fixed costs (fuel, ice, etc.), imports, and stagnant shrimp prices. Juvenile red snapper are more abundant in the 10–30 fathom (18–55 m) depth strata from Mobile Bay, Alabama, to Brownsville, Texas, and effort reductions in this particular area are substantial. Effort within this area can be used as a proxy for bycatch mortality on juvenile red snapper. Bycatch mortality on juvenile red snapper in 2005 for the 10–30 fathom (18–55 m) depth strata was approximately 60 percent less than the benchmark 2001–2003 period, and in 2006, bycatch mortality was 65 percent less than the benchmark period. Early estimates for 2007 suggest effort in the Gulf shrimp fishery may be lower than in 2006.

To ensure the remaining reductions needed to meet the 74-percent target, the proposed rule would set forth the procedure by which NMFS would establish seasonal area closures for the Gulf shrimp fishery consistent with the framework procedures established in Amendment 27/14. Such closures, if necessary, would be established within some or all of the area that approximates the 10–30 fathom (18–55 m) depth strata from Mobile Bay, Alabama, to the Louisiana-Texas boundary. The proposed rule identifies an eastern zone, a Louisiana zone, and a Texas zone, bounded by coordinates marking the maximum closed area. The geographical scope and duration of the closure would be dependent on the level of effort reduction needed to meet the 74-percent reduction target. As an example, if the closure included the maximum area defined and covered the typical 60-day time period of the Texas closure, based on the level of effort expended in this area during recent years, such a closure would provide as much as a 24-percent reduction in fishing mortality on juvenile red snapper. Should additional closure of the shrimp fishery be needed after reopening Federal waters off Texas in July, the closure could be expanded to include waters off Texas as well as areas east of Texas.

To implement such a closure in accordance with the framework procedures established in Amendment 27/14, on or about March 1, NMFS would use the most recent 12-month period of shrimp effort data available, and assess the level of effort within the areas where red snapper are abundant. The NMFS Southeast Regional Administrator would, based on an assessment from the NMFS Southeast Fisheries Science Center, determine the geographical scope and duration of a closure needed to meet the bycatch mortality reduction target, and implement a closure intended to begin on the same date and time as the Texas closure. Coordinating the timing of the framework closure with that of the long-standing Texas closure would facilitate enforcement efforts by simplifying regulations for both fishermen and law enforcement agents. If the RA determines that a framework closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP such as coordination of any closure with the Texas closure, and good cause exists to waive notice and comment pursuant to the Administrative Procedure Act, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with Amendment 27/14, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared a SEIS for this amendment. A notice of availability for the draft SEIS was published on April 20, 2007 (72 FR 19928). A notice of availability for the final SEIS was published on August 3, 2007 (72 FR 43271).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from the Council (see **ADDRESSES**). A summary of the IRFA follows.

The Magnuson-Stevens Act provides the statutory basis for the proposed rule. The proposed rule would reduce the commercial quota from 4.65 million lb (2.14 million kg) to 2.55 million lb (1.16 million kg) and the recreational quota from 4.47 million lb (2.06 million kg) to 2.45 million lb (1.11 million kg), reduce the recreational bag limit from four fish to two fish and the bag limit for captain and crew of for-hire vessels to zero, reduce the commercial minimum size limit from 15 inches (38 cm) TL to 13 inches (33 cm) TL, require participants in all Gulf reef fish fishery sectors to use non-stainless steel circle hooks (when using natural baits) and to use venting tools and dehooking devices, and provide for seasonal area closures of the Gulf shrimp fishery to reduce red snapper bycatch consistent with Amendment 27/14's framework procedure. In addition, the proposed rule would assume a 10-percent reduction in recreational red snapper effort and landings due to hurricane effects or in the alternative, not assume the 10-percent effort reduction, establish a target reduction goal for shrimp trawl bycatch mortality on red snapper, establish options for time-area closures for the shrimp fishery that would maintain the target reduction goal, and establish a framework whereby NMFS could adjust the target reduction goal and time-area closures. NMFS specifically requests comments on the assumed 10-percent reduction in effort and landings as recommended in Amendment 27/14, which would affect the designation of the length of the recreational fishing season established by this rule.

The purpose of this proposed rule is to reduce red snapper catch, bycatch, and discard mortality in the directed commercial and recreational fisheries and the shrimp fishery in order to end overfishing for red snapper between 2009 and 2010 and rebuild the stock by 2032 in compliance with the red snapper rebuilding plan.

No duplicative, overlapping or conflicting Federal rules have been identified.

Management actions considered in this proposed rule are expected to affect all vessels that operate in the commercial red snapper fishery, all vessels that have a Federal reef fish for-hire permit, and all dealers and processors that handle product from these fisheries. Although this proposed rule contains actions that pertain to the commercial shrimp fishery, these actions are not expected to impose any direct adverse impacts on the fishery or associated entities.

Prior to the January 2007 implementation of the red snapper individual fishing quota program (IFQ), 136 entities held Class 1 licenses that allowed a commercial vessel trip limit of up to 2,000 lb (907 kg) of red snapper and 628 entities held Class 2 licenses that allowed a trip limit of up to 200 lb (91 kg) of red snapper. Between 2002 and 2004, the top 50 red snapper vessels

in terms of landings harvested 2.77 million lb (1.26 million kg) of red snapper, on average, or 64 percent of the industry total. Vessels ranked 51 to 131 harvested 1.29 million lb (0.59 million kg), on average, or 30 percent of the industry total for the same period. Thus, the top 131 red snapper vessels accounted for approximately 94 percent of the total industry red snapper landings. Red snapper are mainly harvested by fishermen using vertical-line gear. These fishermen accounted for approximately 90 percent of commercial red snapper Gulf harvests, on average, between 2002 and 2004.

Average annual gross receipts (2004 dollars) and net income (gross receipts minus all costs) per vessel vary by gear type, area fished, and volume of catch. High-volume vessels using vertical lines averaged gross receipts and net income of $110,070 and $28,466 in the northern Gulf, but only $67,979 and $23,822 in the eastern Gulf. Low-volume vessels using vertical lines averaged gross receipts and net income of $24,095 and $6,801 in the northern Gulf, but $24,588 and $4,479 respectively in the eastern Gulf. Vessels using bottom longlines averaged gross receipts and net income of $116,989 and $25,452 for high-volume vessels, but only $87,635 and $14,978 respectively for low-volume vessels.

The current fleet permitted to operate in the Gulf reef fish for-hire sector is estimated to be 1,625 vessels. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The average charterboat is estimated to generate $76,960 in annual revenues and $36,758 in annual profits, whereas the appropriate values for the average headboat are $404,172 and $338,209, respectively. On average, both charterboats and headboats operate at about 50 percent of their passenger capacity per trip.

The measures in this action would also be expected to affect fish dealers, particularly those that receive red snapper from harvesting vessels. A Federal permit is required for a fish dealer to receive reef fish from commercial vessels, and there are 227 dealers currently permitted to buy and sell reef fish species. All reef fish processors would be included in this total because all processors must be dealers. Most of these dealers are located in Florida (146), with 29 in Louisiana, 18 in Texas, 14 in Alabama, 5 in Mississippi, and 15 in states outside the Gulf. In addition, vessels identify the dealers who receive their fish on logbook reports. Commercial reef fish vessels with Federal permits are required to sell their harvest only to permitted dealers. From 1997 through 2002, on average, 154 reef fish dealers actively bought and sold red snapper. These dealers were distributed around the Gulf as follows: 7 in Alabama, 96 in Florida, 22 in Louisiana, 7 in Mississippi, and 22 in Texas. On average, Florida dealers purchased approximately $1.8 million of red snapper, followed by Louisiana ($1.4 million), Texas ($1.3 million), Mississippi ($174,000), and Alabama ($88,000). These dealers may hold permits for multiple fisheries, but it is not possible to determine what percentage of their total business comes from the red snapper fishery.

Although it is unknown how many eligible shrimp permit holders will apply for moratorium permits and, thus, would be potentially affected by this action, 2,666 vessels would qualify for the shrimp permit and are assumed to constitute the potentially affected universe of shrimp vessels. The average annual gross revenue (all harvest species) per qualifying vessel in 2005 was approximately $116,000, while the comparable figure for qualifying vessels active in the Gulf shrimp fishery, *i.e.*, vessels with recorded shrimp landings in 2005, was approximately $152,000. In the same year, the maximum annual gross revenue from shrimp by a vessel was approximately $757,000 for both all qualifying and active qualifying vessels, whereas the figure for all harvest species was approximately $1.89 million by an inactive qualifier and $757,000 for an active qualifier.

The most recent projection of performance in the commercial shrimp fishery indicated that the average vessel, across all vessel size categories, experienced a negative 33-percent rate of return and that economic losses would continue until 2012. Thus, almost any but the most minor additional financial burden would be expected to generate a significant adverse impact on affected vessels and potentially hasten additional exit from the fishery.

In 2005, 609 dealers were identified operating in the commercial shrimp fishery. Employment information for this sector is not available. In 2005, 60 processors in the shrimp fishery were identified, employing approximately 3,400 persons, or an average of 56 employees per entity. The maximum number of employees for a shrimp processor in 2005 was 353.

The Small Business Administration (SBA) defines a small business in the commercial fishing industry as an entity that is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has total annual average receipts not in excess of $4.0 million annually (NAICS codes 114111 and 114112, finfish and shellfish fishing). For for-hire vessels, these same criteria apply except that the annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries). For seafood processors and dealers, the SBA uses an employee threshold rather than a receipts threshold. The threshold is 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide for a seafood processor and 100 or fewer persons for a seafood dealer.

Some persons/entities are known to own multiple vessels (*i.e.* fleet operations) in the commercial red snapper fishery and in the commercial reef fish fisheries in general, but the extent of such operations is unknown. The maximum number of reef fish permits reported owned by the same person/entity is 6 permits. Additional permits and the revenues associated with those permits may be linked to an entity through affiliation rules, but such affiliation links cannot be made using existing data. Further, a definitive determination of whether any commercial entity would be considered a large entity cannot be made using average revenue information. However, since the average total revenue in the commercial red snapper fishery between 2002 and 2004 was $11.652 million, given the number of license holders in the fishery is 764, the summary statistics and the maximum number of permits owned by a single person/entity provided above, NMFS determined that all commercial reef fish harvest entities that would be affected by this action are small entities.

Fleet operations also exist in the for-hire sector, with at least one entity reported to hold 12 permits. The bulk of the fleet, however, consists of single permit operations. Thus, based on the average revenue figures above, all for-hire operations affected by this proposed rule are small entities.

Average employment per reef fish dealer is unknown. Although dealers and processors are not synonymous entities, total employment for reef fish processors in the Southeast is approximately 700 individuals, both part and full time. While all processors must be dealers, a dealer need not be a processor. Further, processing fish is a much more labor intensive than buying fish. Therefore, given the employment estimate for the processing sector and the number of dealers that participated in the fishery on average per year from

1997–2002 (154 dealers), NMFS assumed that the maximum number of employees for reef fish dealers and processors are unlikely to surpass the SBA employment benchmarks. Therefore, all reef fish dealers and processors affected by this proposed rule are small entities.

While gross revenues vary between shrimp vessels of different physical size, these differences do not affect the assessment of maximum gross revenue per vessel and the subsequent determination of whether shrimp vessels constitute large or small entities. As with the other sectors, fleet operations are known to exist in the commercial shrimp fishery, but the magnitude of such cannot be determined using available data. Given these findings, and the maximum revenue per vessel figures noted above, NMFS determined that all shrimp vessels that could be affected by this proposed rule are small entities.

Similar to the reef fish industry, processing shrimp is more labor intensive than buying shrimp. Thus, average employment in the shrimp dealer sector is assumed to be less than that in the processing sector. Because the maximum number of employees for a shrimp processor does not exceed the SBA threshold, all shrimp dealers and processors that could be affected by this proposed rule are small entities.

The proposed red snapper recreational and commercial quota decreases are expected to reduce profits in the for-hire and commercial sectors. In the for-hire sector, declines in profits, approximated by net operating revenue (gross revenue minus operating costs except labor) decreases, are expected due to declines in individual angler trip bookings. Under the proposed 2.45 million lb (1.11 million kg) recreational quota and two-fish bag limit, the estimated annual net operating revenue losses to the for-hire sector are approximately $1.1 million. It is not possible to accurately estimate the extent to which individual for-hire operations will be affected by the proposed quota reduction. However, a simple average suggests that, for the 1,625 vessels active in the for-hire sector, the average annual net operating revenue loss would approximate $680 per vessel. This simple arithmetic mean does not provide information on losses that may be incurred by a specific for-hire operation. Depending on the geographic location of their operation, level of activity, reliance on red snapper trips, diversity of species available, and preferences of their core clientele, some vessels likely would be impacted more than others. Quantifying the number of vessels that might face greater economic losses is not possible with available data. However, in general, the average impact per vessel will vary inversely with the number of vessels included in this core group. For example, if expected economic impacts were borne by 10 to 25 percent of the fleet, average losses in net operating revenue per vessel would be expected to range from approximately $2,700 to $6,800.

The assessment of impacts on for-hire profits was based on the recreational quota and not season length. Although industry comment indicated that a longer open season was preferable to a shorter season, regardless of total allowable catch, and would result in less economic losses, estimating the differential economic impacts of season length was not possible with available data, and the estimated reduction in for-hire profits as a result of the proposed recreational quota is neutral with respect to season length. If red snapper season length is a significant factor in for-hire profits, then the estimated $1.1 million losses could understate by an indeterminate amount the impacts of the shorter season that would occur if a 10-percent reduction in recreational red snapper effort and landings due to hurricane effects is not assumed in the determination of season length.

For the commercial red snapper sector, reductions in profits, as measured by changes in net operating revenue to owners, captains, and crew, are expected to result from revenue losses associated with lower snapper harvests. Net operating revenue losses due to the commercial quota reduction would be mitigated by the action to lower the commercial size limit. The impact analysis for the commercial red snapper sector assumed the fishery was operating under an individual fishing quota program (IFQ), which was implemented in January 2007. Under the IFQ, the number of vessels operating in the fishery is expected to decline substantially as quota shares are consolidated. However, since the IFQ program has only recently been implemented, substantive data on the expected contraction is not yet available to indicate the size and type of fleet that will ultimately occur. Therefore, analysis of the quota reduction impacts assumed the fleet would contract to homogenous fleets of a specific vessel size and accompanying operational characteristics, with the resultant fleet comprised of either more small vessels (35 ft (10.7 m)) or fewer large vessels (65 ft (19.8 m)).

Under the status quo commercial quota of 4.65 million lb (2.14 million kg), for the smallest (35 ft (10.7 m)) and largest (65 ft (19.8 m)) vessel length class considered, the fleet would be composed of either ninety-five 35-ft (10.7-m) vessels or thirty-nine 65-ft (19.8-m) vessels. The average annual net operating revenue per vessel within each vessel size class was estimated at $274,000 and $667,000, respectively. Under the proposed 2.55 million lb (1.16 million kg) commercial quota, projected losses in net operating revenues to owners, captains, and crew in the commercial sector are estimated to be approximately $11.5 million. The fleet would be composed of either fifty-two 35-ft (10.7-m) or twenty-two 65-ft (19.8-m) vessels, representing a reduction of either forty-three 35-ft (10.7-m) vessels or seventeen 65-ft (19.8-m) vessels. For each of these potential fleets, the corresponding average net operating revenue for remaining vessels was estimated at $278,000 and $665,000, respectively. Average short-term net operating revenue losses per vessel are therefore estimated at $121,000 and $295,000 for the 35-ft (10.7-m) and 65-ft (19.8-m) vessel classes, respectively.

The proposed commercial quota reduction is also expected to adversely impact dealers and processors involved in the red snapper trade. Although substantial decreases in revenues collected from domestic red snapper are anticipated, the lack of firm-level gross revenues and profit data precludes quantification of the expected losses. To mitigate the adverse economic impacts that would result from the proposed 45-percent decrease in the commercial quota, dealers and processors may increase their reliance on imported snapper and their use of other reef fish species as substitutes.

Preventing captain and crew from retaining a red snapper bag limit while on charter is not expected to affect the profitability of for-hire operations because the sale of recreational reef fish landings is already prohibited. The proposed requirement for all persons aboard reef fish vessels to use non-stainless steel circle hooks (when using natural baits), venting tools, and dehooking devices is expected to result in minimal impacts on the profitability of small entities because of the current widespread use of circle hooks, their competitive pricing, and the availability of dehooking devices and venting tools for less than $15 each.

The management measures considered in this proposed rule do not affect the reporting or record-keeping requirements for reef fish and shrimp vessels, dealers, or processors. This proposed action does not require additional records or report preparation.

Four alternatives, including the status quo, were considered for the action to set TAC and, thus, establish the recreational and commercial quotas in the red snapper fishery. Three of the alternatives include multiple options and sub-options to manage the recreational fishery under the respective TACs and quotas. The first alternative, the status quo, would not be consistent with assumptions related to expected reductions in directed and bycatch mortality rates and would not, as indicated by the March 12, 2007 Court Opinion (*Coastal Conservation Association* v. *Gutierrez et al.*, Case No. H–05–1214, consolidated with *Gulf Restoration Network et al.*, v. *Gutierrez et al.*, Case No. H–05–2998), be associated with a sufficient probability of the red snapper rebuilding plan's success. If implemented, the status quo alternative would result in drastic TAC and quota reductions in subsequent years and, thus, greater adverse economic impacts during that time in order for the resource to continue on the designated recovery path.

The second alternative to the proposed TAC action would have reduced the red snapper TAC to 7.0 million lb (3.175 million kg), with resultant commercial and recreational quotas of 3.57 and 3.43 million lb (1.62 and 1.44 million kg), respectively. This alternative has the potential of generating, depending upon the sub-option selected, lower short-term adverse economic impacts than the proposed action. However, a 7.0 million lb (3.175 million kg) TAC is neither consistent with the current mortality reduction assumptions nor is it in accordance with the findings of the recent Court Opinion. Like the status quo, this alternative would require greater TAC reductions in subsequent years, thereby generating greater adverse economic impacts over that time than the proposed rule.

The third alternative to the proposed TAC action would have reduced the red snapper TAC to 3.0 million lb (1.36 million kg), with resultant commercial and recreational quotas of 1.53 and 1.47 million lb (0.69 and 0.67 million kg), respectively. This alternative would have reduced the TAC and quotas more than necessary to end overfishing within the specified time period and would be expected to result in an overly restrictive management approach with unnecessary and greater adverse economic impacts than the proposed rule.

Three alternatives, including the proposed status quo action and the alternative proposed 10-percent reduction, were considered for the action addressing post-hurricane effort and landings reduction. Although some post-hurricane reduction in effort and landings is demonstrated by available data, the reductions are not consistent across the entire fishery and are not expected to persist as the industry recovers. The proposed action could potentially result in a shorter season than necessary to end overfishing, thereby increasing short-term adverse economic impacts. The alternative proposed action, a 10-percent reduction in post-hurricane effort in the red snapper fishery, would extend the fishing season and yield greater short-term economic benefits than the proposed action. However, this reduction may not be supported by available data and may therefore result in a failure to meet conservation goals, resulting in long-term negative economic impacts relative to the proposed action. The alternative to the proposed actions would assume a 25-percent reduction in post-hurricane effort and landings. This alternative, which would result in a longer season than the proposed action, would result in greater short-term economic benefits than the proposed action. However, a 25-percent reduction is not supported by available data, is believed to be an excessive assumption, and would be expected to result in a failure to meet conservation goals, resulting in substantial long-term negative economic impacts relative to the proposed action.

Two alternatives, including the status quo, were considered for the captain and crew bag limit action. Analyses indicate that under the proposed action to reduce the captain and crew bag limit to zero, the recreational red snapper fishing season could remain open 4–16 days longer relative to the status quo. The status quo alternative would require more restrictive measures on recreational anglers (i.e., shorter open season, lower bag limit) to achieve rebuilding goals, because the fish retained by the captain and crew would represent an additional source of mortality that would have to be factored into harvest controls. These more restrictive measures would be expected to result in greater reductions in trip demand than the proposed angler restrictions, resulting in increased reductions in for-hire profits and angler value than the proposed action.

Three alternatives, including the status quo, were considered for the commercial red snapper minimum size limit. The first alternative to the proposed action, the status quo, would be expected to result in continued unnecessary bycatch mortality and would not, therefore, meet the Council's objectives. The proposed 13-inch (33-cm) minimum size limit in the commercial sector would be expected to result in decreased economic impacts to the fishery and associated industries due to anticipated increases in the operational efficiency of commercial vessels and a potential price premium for smaller fish. The third alternative would eliminate the commercial minimum size limit. Eliminating the commercial size limit would exacerbate user conflicts between the commercial and recreational sectors since the recreational sector would have a 16-inch (41-cm) minimum size limit, while the commercial sector would not have any minimum size limit. Further, since no commercial market is known to exist for red snapper smaller than 12 inches (30 cm), no additional benefits would be expected to accrue to the commercial sector, and total economic impacts to the commercial sector would be expected to be comparable to those of the proposed action.

Three alternatives, including the status quo, were considered for the gear requirement action. The two alternatives encompassing gear requirements contained options that specified the fisheries over which the requirements would apply. The proposed action would require the use of non-stainless steel circle hooks when using natural baits, and require the use of venting tools and dehooking devices from all participants in the reef fish fisheries of the Gulf of Mexico. By reducing bycatch and bycatch mortality in the red snapper and reef fish fisheries, the proposed action would contribute to improving the likelihood of success of the red snapper rebuilding plan and is expected to result in long-term net economic benefits. The sub-options that reduced the fisheries to which the proposed gear requirements would apply would be expected to result in less reduction in bycatch mortality and long-term economic benefits than the proposed rule. However, in general, however, little economic impact is anticipated because of the already widespread use of circle hooks and the fact that venting/dehooking devices are relatively inexpensive (less than $15 each).

The first alternative to the proposed gear action would not impose any new gear requirements on fishermen and would not, in the short term, result in any direct adverse economic impacts. However, this alternative would not contribute to improving the likelihood of success of the red snapper rebuilding plan. Relative to the proposed action, this alternative could result in more severe restrictions on fishery

participants in the long run and, thus, generate greater adverse economic impacts.

The second alternative and associated fishery sub-options to the proposed gear action would specify only a minimum hook size. Compared to the proposed action, this alternative would be less effective in reducing bycatch and bycatch mortality. As a result, in the long run, it would be expected to result in smaller economic benefits than the proposed action.

Six alternatives, including the status quo, were considered for the bycatch reduction target in the commercial shrimp fishery. The status quo would not have established a bycatch reduction target, would not ensure consistent reductions in bycatch fishing mortality on juvenile red snapper in the shrimp fishery, and would not be consistent with the 2005 SEDAR assessment recommendations to further reduce bycatch fishing mortality rates on the red snapper stock. The proposed action, which would establish a target reduction of shrimp trawl bycatch mortality on red snapper 74 percent less than the benchmark years of 2001–2003, is consistent with the proposed quotas and an increased probability of the red snapper rebuilding plan's success. The proposed action, which also specifically outlines the future progression of the bycatch mortality reduction target if overfishing is successfully ended by 2010 based upon review of status reports and other relevant information, would be an administrative action with no expected direct adverse economic effects.

The second and third alternatives to the proposed bycatch reduction target would establish lower reduction targets than the proposed action. Like the proposed action, these alternatives are not expected to result in direct adverse economic impacts. However, the lower targets do not contribute sufficiently to increasing the likelihood of the red snapper rebuilding plan's success and could be expected to require further effort reductions, resulting in more severe management measures in the long run. The fourth alternative to the proposed action would, as the proposed action, establish a 74-percent reduction in shrimp trawl bycatch mortality on red snapper, but would not specify changes to the target or the method by which the target might be adjusted in the future. Similarly, the fifth alternative to the proposed action would establish a 74-percent reduction in shrimp trawl bycatch mortality on red snapper, but would also explicitly link future adjustments to the bycatch reduction target to red snapper stock assessment updates.

Four alternatives, including the status quo, were considered for the action to potentially establish fishing restrictions for the EEZ shrimp fishery in the Gulf of Mexico. The first alternative to the proposed action, the status quo, would not establish potential fishing restrictions for the Gulf shrimp fishery. The status quo would not result in direct or indirect adverse economic impacts because potential restrictions would not be established for the shrimp fishery. However, if status quo effort reductions in the fishery are not sufficient to achieve target goals, this alternative may result in more severe future restrictions and potentially greater adverse economic impacts than the enactment of potential effort restrictions at this time.

The proposed action would, if necessary, establish a seasonal closure beginning on the same start date as the closure of the EEZ off Texas in the 10- to 30-fathom (18- to 55-m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico. This measure, which would ensure that target reductions in shrimp trawl bycatch mortality are met, is consistent with the proposed quotas, and would contribute to increasing the likelihood of the red snapper rebuilding plan's success. The proposed action is administrative in nature and thus would not be expected to result in any direct economic effects. Direct economic impacts would only accrue if, in the future, it is determined that the proposed bycatch reduction target has not been met and thus a seasonal closure is necessary. The direct economic effects of the closure would be analyzed at that time, as appropriate.

The second and third alternatives to the proposed action would also establish seasonal closures, as necessary, in the 10 to 30-fathom (18- to 55-m) zone of selected areas within statistical zones 10–21 in the Gulf of Mexico but would consider alternative time frames for the closures. As with the proposed action, these alternatives are administrative in nature and thus would not be expected to result in any direct economic effects. Direct economic impacts would only accrue if, in the future, it is determined that the proposed bycatch reduction target has not been met and thus a seasonal closure is necessary. However, compared to the long-term benefits expected to accrue to the red snapper fishery from the proposed action, smaller long-term economic benefits to the red snapper fishery are expected to result from these alternatives. Greater positive impacts associated with the proposed action are attributable to the specified starting date of a potential closure, which would coincide with the movement of age 1 snapper from shrimp grounds to larger structures.

Two alternatives, including the status quo, were considered for the action to establish a framework procedure to adjust effort in the commercial shrimp fishery. The second alternative would establish a framework procedure. The proposed action, which would allow the Regional Administrator to implement closures based upon annual shrimp effort assessments conducted by the Southeast Fisheries Science Center, is expected to be the quickest and most efficient approach to establishing recommended closures. Two other options were considered under the second alternative. These options would establish less expedient means of implementing recommended closures. Direct adverse economic impacts would not be expected to result from the alternatives included in this action because the establishment of a framework procedure to adjust effort in the commercial shrimp fishery is an administrative action.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 19, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definitions for ''circle hook,'' ''dehooking device,'' and ''venting device'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Circle hook means a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular, or oval, shape.

* * * * *

Dehooking device means a device intended to remove a hook embedded in

a fish to release the fish with minimum damage.

* * * * *

Venting device means a device intended to deflate the swim bladder of a fish to release the fish with minimum damage.

* * * * *

3. In § 622.31, paragraph (o) is added to read as follows:

§ 622.31 Prohibited gear and methods.

* * * * *

(o) *Stainless steel hooks in the Gulf EEZ.* Stainless steel hooks may not be used to fish for Gulf reef fish when using natural bait in the Gulf EEZ.

4. In § 622.34, paragraph (l) is added and the first sentence of paragraph (m) and is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the Gulf shrimp fishery to reduce red snapper bycatch.* During a closure implemented in accordance with this paragraph (l), trawling is prohibited within the specified closed area(s).

(1) *Procedure for determining need for and extent of closures.* Each year, in accordance with the applicable framework procedure established in the FMP for the Shrimp Fishery in the Gulf of Mexico (FMP), the RA will, if necessary, establish a seasonal area closure for the shrimp fishery in all or a portion of the areas of the Gulf EEZ specified in paragraphs (l)(2) through (l)(4) of this section. The RA's determination of the need for such closure and its geographical scope and duration will be based on an annual assessment, by the Southeast Fisheries Science Center, of the shrimp effort and associated shrimp trawl bycatch mortality on red snapper in the 10–30 fathom area of statistical zones 10–21, compared to the 74-percent target reduction of shrimp trawl bycatch mortality on red snapper from the benchmark years of 2001–2003 established in the FMP. The framework procedure provides for adjustment of this target reduction level, consistent with the red snapper stock rebuilding plan and the findings of subsequent stock assessments, via appropriate rulemaking. The assessment will be based on shrimp effort data for the most recent 12-month period available and will include a recommendation regarding the geographical scope and duration of the closure. The Southeast Fisheries Science Center's assessment will be provided to the RA on or about March 1 of each year. If the RA determines that a closure is necessary, the closure falls within the scope of the potential closures evaluated in the FMP, and good cause exists to waive notice and comment, NMFS will implement the closure by publication of a final rule in the **Federal Register**. If such good cause waiver is not justified, NMFS will implement the closure via appropriate notice and comment rulemaking. NMFS intends that any closure implemented consistent with this paragraph (l) will begin on the same date and time as the Texas closure.

(2) *Eastern zone.* The eastern zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°14′	88°57′
B	29°24′	88°34′
C	29°34′	87°38′
D	30°04′	87°00′
E	30°04′	88°41′
F	29°36′	88°37′
G	29°21′	88°59′
A	29°14′	88°57′

(3) *Louisiana zone.* The Louisiana zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	29°09.25′	92°36′
C	28°35′	90°44′
D	29°09′	89°48′
E	28°57′	89°34′
F	28°40′	90°09′
G	28°18′	90°33′
H	28°25′	91°37′
I	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(4) *Texas zone.* The Texas zone is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	29°09.1′	93°41.4′
B	28°44′	95°15′
C	28°11′	96°17′
D	27°44′	96°53′
E	27°02′	97°11′
F	26°00.5′	96°57.3′
G	26°00.5′	96°35.85′
H	26°24′	96°36′
I	26°49′	96°52′
J	27°12′	96°51′
K	27°39′	96°33′
L	27°55′	96°04′
M	28°21.7′	93°28.4′
A	29°09.1′	93°41.4′

(m) * * * The recreational fishery for red snapper in or from the Gulf EEZ is closed from January 1 through May 31 and from October 1 through December 31, each year. * * *

* * * * *

5. In § 622.37, paragraph (d)(1)(iv) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(iv) Red snapper—16 inches (40.6 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (b)(1)(iii) and 13 inches (38.1 cm), TL, for a fish taken by a person not subject to the bag limit.

* * * * *

6. In § 622.39, paragraph (b)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—2. However, no red snapper may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

* * * * *

7. In § 622.41, paragraph (m) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(m) *Required gear in the Gulf reef fish fishery.* For a person on board a vessel to fish for Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified in paragraphs (m)(1) through (m)(3) of this section.

(1) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits.

(2) *Dehooking device.* At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

(3) *Venting tool.* At least one venting tool is required and must be used to deflate the swimbladders of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to

5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

8. In § 622.42, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Red snapper—2.55 million lb (1.16 million kg), round weight.

* * * * *

(2) *Recreational quota for red snapper*. The following quota applies to persons who harvest red snapper other than under commercial vessel permits for Gulf reef fish and the commercial quota specified in paragraph (a)(1)(i) of this section—2.45 million lb (1.11 million kg), round weight.

* * * * *

9. In § 622.48, paragraph (i) is revised to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(i) *Gulf shrimp*. Closed seasons and areas, target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol, certified BRDs, and BRD specification.

* * * * *

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Notices

Federal Register

Vol. 72, No. 204

Tuesday, October 23, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace; Announcement of Food for Peace Public Law 480 Title II Program Policies and Proposal Guidelines Fiscal Year 2008; Notice

Pursuant to the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, as amended), notice is hereby given that the final Food for Peace Public Law 480 Title II Program Policies and Proposal Guidelines Fiscal Year 2008 are available to interested parties for general viewing.

Individuals who wish to access the current guidelines should visit the Food for Peace Web site at *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/*, or contact the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–102, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Juli Majernik,

Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. E7–20808 Filed 10–22–07; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Service: Membership of Performance Review Board

ACTION: Notice.

SUMMARY: The following persons are members of the 2007 Senior Executive Service Performance Review Board: Gloria Steele, Chair; Franklin Moore; James Painter; Max Hilaire.

FOR FURTHER INFORMATION CONTACT: Darren Shanks, 202–712–5685.

Dated: October 16, 2007.

Frank McDonough,

Chief, Employee and Labor Relations Division.

[FR Doc. E7–20810 Filed 10–22–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 17, 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.

Animal and Plant Health Inspection Service

Title: Cooperative Wildlife Damage Management Programs.

OMB Control Number: 0579–NEW.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS), is a service program that responds to requests by persons and agencies needing help with wildlife damage. Assistance is available to all citizens upon request. The primary statutory authority for the APHIS/WS program is the Act of March 1931 (7 U.S.C. 426–426c; 46 Stat. 1468) as amended. Section 426 of the Act authorizes the Secretary of Agriculture to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. Information provided by customers in the WS programs is voluntary so that WS can prepare to help them. APHIS/WS will collect information using several forms.

Need and Use of the Information: Information collected in most situations is used in routine business communication activities by WS as part of its cooperative programs initiated by request from the public and government entities. The collected information from the forms will help WS modify and improve its programs to better fulfill mission objectives, suit the needs of Cooperators, and provide increasingly superior service.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 95,000.

Frequency of Responses: Reporting: On occasion; Biannually; Annually.

Total Burden Hours: 5,287.

Animal and Plant Health Inspection Service

Title: Request for Credit Account Approval for Reimbursable Services.

OMB Control Number: 0579–0055.

Summary of Collection: The Debt Collection Improvement Act of 1996 (Pub. L. 104–134 Section 31001(x)) of 31 U.S.C. 7701, requires that agencies collect tax identification numbers from all person doing business with the

Government for purposes of collecting delinquent debts. The services of an inspector to clear imported and exported commodities requiring release by Agency personnel are covered by user fees during regular working hours. If an importer/exporter wishes to have a shipment of cargo or animals cleared at other hours, such services will usually be provided on a reimbursable overtime basis, unless already covered by a user fee. The Animal and Plant Health Inspection Service (APHIS) will collect information using APHIS form 192, Application for Credit Account and Request for Service.

Need and Use of the Information: APHIS will collect information to conduct a credit check on prospective applicants to ensure credit worthiness prior to extending credit services. Without this information, customers (including small business) would have to pay each time a service is provided.

Description of Respondents: Business or other for-profit.

Number of Respondents: 256.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 64.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–20786 Filed 10–22–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 7, 2007, 9 a.m., in the Herbert C. Hoover Building, Room 4830, and November 8, 2007, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, November 7

Public Session

1. Welcome and Introduction.
2. SEMI Comments: China Rule, VEU, Industry Forecast.
3. Industry Encryption Presentation.
4. Range and Standards.
5. History of Encryption Hardware.
6. MIMO Technology Overview.
7. *Discussion:* Draft Wassenaar Proposals for 2008.
8. *Discussion:* Comprehensive Review of Commerce Control List.

Thursday, November 8

Closed Session

9. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* , no later than October 31, 2007.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 16, 2007, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 17, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–5221 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2007, the Department of Commerce (the Department) published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 20986 (April 27, 2007). The period of review is March 1, 2006 through February 28, 2007.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and to extend the 120–day period to 180 days.

The Department requires additional time to evaluate respondent's (Saha Thai Steel Pipe Company, Ltd.) questionnaire responses in order to

conduct a thorough analysis of all information on the record. Specifically, the Department needs to analyze respondent's sales to affiliated resellers, their downstream sales and the levels of trade at which these transactions occurred. Therefore, the Department finds that it is not practicable to complete the preliminary results of this review within the original time limit and is extending the deadline for completion of the preliminary results of this administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand by 120 days, from December 1, 2007 to March 30, 2008. Because March 30, 2008 is a Sunday, the Department will issue the preliminary results no later than March 31, 2008, which is the next business day after the 120–day extension period.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 16, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–20846 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–826]

Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 11, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order on certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Brazil. *See Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 37723 (July 11, 2007) (*Preliminary Results*). The review covers one producer/exporter, V&M do Brasil, S.A. (VMB). The period of review (POR) is August 1, 2005, through July 15, 2006.[1] We invited interested parties to comment on our Preliminary Results. The Department received no comments concerning our preliminary results; therefore, our final results remain unchanged from our preliminary results. The final results are listed in the section ''Final Results of Review'' below.

EFFECTIVE DATE: October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2007, the International Trade Commission determined revocation of the antidumping duty orders on seamless pipe from Argentina and Brazil would not likely lead to continuation or recurrence of material injury to an industry in the United States. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Argentina, Brazil, and Germany*, 72 FR 26153 (May 8, 2007), and *ITC Publication 3918* (May 2007), Investigation No. 731–TA–707–709 (Second Review). Thus, the Department revoked the antidumping duty orders on seamless line pipe from Argentina and Brazil, pursuant to sections 751(c) and 751(d) of the Act. *See Revocation Pursuant to Second Five-year (''Sunset'') Reviews of Antidumping Duty Orders: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Argentina and Brazil*, 72 FR 28027 (May 18, 2007) (*Revocation of Seamless Pipe from Argentina and Brazil*). The Department stated in the *Revocation of Seamless Pipe from Argentina and Brazil* that it will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is July 16, 2006. As a result, the Department is completing the instant review of seamless pipe from Brazil. Accordingly, the period of review for this proceeding is from August 1, 2005, to July 15, 2006.

On July 11, 2007, the Department published the preliminary results of this review in the **Federal Register**. See Preliminary Results. We invited parties to comment on the *Preliminary Results*. We received no comments or a request for a hearing.

Scope of the Antidumping Duty Review

The products covered by this antidumping duty review are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this antidumping duty review are currently classifiable under subheadings 7304.19.10.20, 7304.19.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if

[1] Since the effective date of revocation of the antidumping duty order pursuant to the sunset review (see *infra* Background Section) is July 16, 2006, the POR is August 1, 2005, through July 15, 2006.

temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple–certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple–certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold–drawing when used in the production of cold–drawn pipe or tube.

Excluded from this order are shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot–finished or cold–drawn) that 1) has been cut into lengths of six to 120 inches, 2) has had the inside bore ground to a smooth surface, 3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and 4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight 1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO_2), 2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), 3) from a trace amount to five percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R_2O_3), or 4) from a trace amount to five percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass–lined pressure pipes are commonly manufactured for use in glass–lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents. The glass–lined pressure pipes excluded from this antidumping duty review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the *Preliminary Results*. As there have been no changes from or comments on the *Preliminary Results*, we are not attaching a Decision Memorandum to this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results*. The final weighted–average dumping margin for the period August 1, 2005, through July 15, 2006, is as follows:

Manufacturer / Exporter	Margin (percent)
V&M do Brasil, S.A.	0.00

Assessment Rates

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). Since the importer–specific assessment rate calculated in the final results of this review is 0 percent, we will instruct CBP to liquidate without regard to antidumping duties for these entries. *See* 19 CFR 351.106(c)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the

transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The Department notified CBP to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after July 16, 2006, the effective date of revocation of the antidumping duty order.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 16, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–20844 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an Export Trade Certificate of Review from Houston Industries, USA, L.L.C.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 07–00004.'' A summary of the application follows.

Summary of the Application

Applicant: Houston Industries, USA, L.L.C. (''HIUSA''), 2319 East Highland Avenue #354s, Phoenix, Arizona 85016.

Contact: Paul A. Houston, President, Telephone: (615) 293–4116.

Application No.: 07–00004.

Date Deemed Submitted: October 16, 2007.

Members (in addition to applicant): None.

HIUSA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All Products.

2. Services

All Services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provision of Export Trade Facilitation Services, HIUSA may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive arrangements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. HIUSA and its individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules so HIUSA may determine the availability of Products for export and effectively coordinated with its distributors in Export Markets.

Dated: October 17, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–20787 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Monday, November 12, 2007, 9 a.m. to 5:30 p.m.; Tuesday, November 13, 2007, 9 a.m. to 5:30 p.m.; Wednesday, November 14, 2007, 9 a.m. to 5:30 p.m.; Thursday, November 15, 2007, 9 a.m. to 5:30 p.m.; Friday, November 16, 2007, 9 a.m. to 5:30 p.m. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, and final judging of the 2007 applicants. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 12, 2007 at 9 a.m. and adjourn at 5:30 p.m. on November 16, 2007. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room E, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 25, 2007, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 12, 2007.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E7–20840 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA) Proposes To Revise Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its safety codes and standards and requests proposals from the public to amend existing or begin the process of developing new NFPA safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline stated in the ROC. Certified motions will then be posted on the NFPA website. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Website at *http://www.nfpa.org* or contact the NFPA Codes and Standards Administration.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471.

FOR FURTHER INFORMATION CONTACT: Milosh Puchovsky, Secretary, Standards Council, at the above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Proposals, that is, a public notice asking for any interested persons to submit specific written proposals for developing or revising the Document. The Call for Proposals is published in a variety of publications. Interested parties have approximately twenty weeks to respond to the Call for Proposals.

Following the Call for Proposals period, the Technical Committee holds a meeting to consider and accept, reject or revise, in whole or in part, all the submitted Proposals. The Committee may also develop its own Proposals. A document known as the Report on Proposals, or ROP, is prepared containing all the Public Proposals, the Technical Committees' action and each Proposal, as well as all Committee-generated Proposals. The ROP is then submitted for the approval of the Technical Committee by a formal written ballot. If the ROP does not receive approval by a two-thirds vote calculated in accordance with NFPA rules, the Report is returned to the Committee for further consideration and is not published. If the necessary approval is received, the ROP is published in a compilation of Reports on Proposals issued by NFPA twice yearly for public review and comment and the process continues to the next step.

The Reports on Proposals are sent automatically free of charge to all who submitted proposals and each respective committee member, as well as anyone else who requests a copy. All ROPs are also available for free downloading at *http://www.nfpa.org.*

Once the ROP becomes available, there is a 60-day comment period during which anyone may submit a Public Comment on the proposed changes in the ROP. The committee then reconvenes at the end of the comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the committee is required for approval of actions on the Comments. All of this information is compiled into a second Report, called the Report on Comments (ROC), which, like the ROP, is published and made available for public review for a seven-week period.

The process of public input and review does not end with the publication of the ROP and ROC. Following the completion of the Proposal and Comment periods, there is yet a further opportunity for debate and discussion through the Technical Report Sessions that take place at the NFPA Annual Meeting.

The Technical Report Session provides an opportunity for the final Technical Committee Report (i.e., the ROP and ROC) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at a Technical Report Session, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion. A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Technical Report Session.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Annual Technical Report Sessions, check the NFPA Web site at: *http://www.nfpa.org/itemDetail.asp?categoryID=822&itemID=22818.*

The specific rules for the types of motions that can be made and who can make them are set forth in NFPA's Regulation Governing Committee Projects which should always be consulted by those wishing to bring an issue before the membership at a Technical Report Session.

Interested persons may submit proposals, supported by written data, views, or arguments to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office or on NFPA's Web site at *http://www.nfpa.org.*

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the codes or standard.

Document–edition	Document title	Proposal closing date
NFPA 10–2007	Standard for Portable Fire Extinguishers	5/30/2008
NFPA 101–2007	Guide on Alternative Approaches to Life Safety	11/26/2007
NFPA 105–2007	Standard for the Installation of Smoke Door Assemblies and Other Opening Protectives	11/26/2007
NFPA 110–2005	Standard for Emergency and Standby Power Systems	11/26/2007
NFPA 111–2005	Standard on Stored Electrical Energy Emergency and Standby Power Systems	11/26/2007
NFPA 1124–2006	Code for the Manufacture, Transportation, Storage, and Retail Sale of Fireworks and Pyrotechnic Articles	11/26/2007
NFPA 1201–2004	Standard for Providing Emergency Services to the Public	4/1/2008
NFPA 1221–2007	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems	11/26/2007
NFPA 1250–2004	Recommended Practice in Emergency Service Organization Risk Management	4/1/2008
NFPA 130–2007	Standard for Fixed Guideway Transit and Passenger Rail Systems	11/26/2007
NFPA 1620–2003	Recommended Practice for Pre-Incident Planning	5/30/2008

Document–edition	Document title	Proposal closing date
NFPA 1710–2004	Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.	11/26/2007
NFPA 1720–2004	Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations and Special Operations to the Public by Volunteer Fire Departments.	11/26/2007
NFPA 1801–P*	Standard on Thermal Imagers for the Fire Service	1/25/2008
NFPA 1936–2005	Standard on Powered Rescue Tools	4/1/2008
NFPA 1977–2005	Standard on Protective Clothing and Equipment for Wildland Fire Fighting	2/8/2008
NFPA 1991–2005	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	11/30/2007
NFPA 1992–2005	Standard on Liquid Splash-Protective Ensembles and Clothing for Hazardous Materials Emergencies	11/30/2007
NFPA 2–P*	Hydrogen Technologies Code	5/30/2008
NFPA 20–2007	Standard for the Installation of Stationary Pumps for Fire Protection	11/26/2007
NFPA 214–2005	Standard on Water-Cooling Towers	5/30/2008
NFPA 25–2008	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems	5/30/2008
NFPA 255–2006	Standard Method of Test of Surface Burning Characteristics of Building Materials	11/26/2007
NFPA 302–2004	Fire Protection Standard for Pleasure and Commercial Motor Craft	11/26/2007
NFPA 495–2006	Explosive Materials Code	5/30/2008
NFPA 498–2006	Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives	5/30/2008
NFPA 556–P*	Guide for Identification and Development of Mitigation Strategies for Fire Hazard to Occupants of Passenger Road Vehicles.	11/26/2007
NFPA 70–2006	Recommended Practice for Electrical Equipment Maintenance	5/30/2008
NFPA 72–2007	National Fire Alarm Code®	11/2/2007
NFPA 750–2006	Standard on Water Mist Fire Protection Systems	5/30/2008
NFPA 80–2007	Standard for Fire Doors and Other Opening Protectives	11/26/2007
NFPA 804–2006	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants	5/30/2008
NFPA 805–2006	Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants	5/30/2008
NFPA 806–P*	Performance Based Standard for Fire Protection for Advanced Nuclear Reactor Electric Generating Plants	5/30/2008
NFPA 850–2005	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	5/30/2008
NFPA 851–2005	Recommended Practice for Fire Protection for Hydroelectric Generating Plants	5/30/2008
NFPA 99–2005	Standard for Health Care Facilities	11/26/2007
NFPA 99–2005	Standard for Hypobaric Facilities	11/26/2007
NFPA 99–2005	Standard on Gas and Vacuum Systems	11/26/2007

*P Proposed NEW drafts are available from NFPA's Web site—*http://www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, MA 02269–7471.

Dated: October 17, 2007.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E7–20841 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Protection Association (NFPA): Request for Comments on NFPA's Codes reg; and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Since 1896, the National Fire Protection Association (NFPA) has accomplished its mission by advocating scientifically based consensus codes and standards, research, and education for safety related issues. NFPA's *National Fire Codes®*, which holds over 270 documents, are administered by more than 225 Technical Committees comprised of approximately 7,000 volunteers and are adopted and used throughout the world. NFPA is a nonprofit membership organization with approximately 80,000 members from over 70 nations, all working together to fulfill the Association's mission.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The process contains five basic steps that are followed both for developing new documents as well as revising existing documents. These steps are: Calling for Proposals; Publishing the Proposals in the Report on Proposals (ROP); Calling for Comments on the Committee's disposition of the Proposals and these Comments are published in the Report on Comments (ROC); having a Technical Report Session at the NFPA Annual Meeting; and finally, the Standards Council Consideration and Issuance of documents.

Note: Under new rules effective Fall 2005, anyone wishing to make Amending Motions on the Technical Committee Reports (ROP and ROC) must signal their intention by submitting a Notice of Intent to Make a Motion by the Deadline of October 17, 2008. Certified motions will be posted by November 14, 2008. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the annual June 2009 Association Technical Meeting. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these new rules and for up-to-date information on schedules and deadlines for processing NFPA Documents, check the NFPA Web site at *http://www.nfpa.org* or contact the NFPA Codes and Standards Administration.

The purpose of this notice is to request comments on the technical reports that will be published in the NFPA's 2008 Fall Revision Cycle. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Eighteen reports are published in the 2008 Fall Revision Cycle Report on

Proposals and will be available on December 21, 2007. Comments received on or before February 29, 2008 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 2008 Fall Revision Cycle Report on Proposals is available and downloadable from NFPA's Web site—*http://www.nfpa.org* or by requesting a copy from the NFPA, Fulfillment Center, 11 Tracy Drive, Avon, Massachusetts 02322. Comments on the report should be submitted to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471.

FOR FURTHER INFORMATION CONTACT: Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Milosh Puchovsky, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–7471. Commenters may use the forms provided for comments in the Reports on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before February 29, 2008 for the 2008 Fall Revision Cycle Report on Proposals will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 2008 Fall Revision Cycle Report on Comments by August 22, 2008. A copy of the Report on Comments will be sent automatically to each commenter.

2008 FALL REVISION CYCLE REPORT ON PROPOSALS

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

NFPA 36 Standard for Solvent Extraction Plants	P
NFPA 52 Vehicular Fuel Systems Code	P
NFPA 53 "Recommended Practice on Materials, Equipment and Systems Used in Oxygen-Enriched Atmospheres"	P
NFPA 55 "Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks".	P
NFPA 82 Standard on Incinerators and Waste and Linen Handling Systems and Equipment	P
NFPA 150 Standard on Fire and Life Safety in Animal Housing Facilities	P
NFPA 170 Standard for Fire Safety and Emergency Symbols	P
NFPA 211 "Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances"	P
NFPA 225 Model Manufactured Home Installation Standard	C
NFPA 241 "Standard for Safeguarding Construction, Alteration, and Demolition Operations"	P
NFPA 271 Standard Method of Test for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.	P
NFPA 501 Standard on Manufactured Housing	C
NFPA 501A "Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities"	C
NFPA 909 "Code for the Protection of Cultural Resources Properties—Museums, Libraries, and Places of Worship"	P
NFPA 1670 Standard on Operations and Training for Technical Search and Rescue Incidents	P
NFPA 1963 Standard for Fire Hose Connections	P
NFPA 1965 Standard for Fire Hose Appliances	P
NFPA 1975 Standard on Station/Work Uniforms for Fire and Emergency Services	C

Dated: October 17, 2007.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E7–20843 Filed 10–22–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Federal Advisory Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5. U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intends to establish a new Federal advisory committee.

This discretionary advisory committee, the Secretary of the Navy Advisory Panel, will provide the Secretary of the Navy independent advice and recommendations on the critical matters concerning the Department of the Navy. The Panel's focus will include acquisition reform, the shipbuilding defense industrial base, intelligence organization, and related maritime issues. In accordance with DoD policy and procedures, the Secretary of the Navy is authorized to act upon the advice emanating from this advisory committee.

The Secretary of the Navy Panel shall be authorized to establish subcommittees, as necessary and consisted with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered committee, and shall report all their recommendations and advice to the Secretary of the Navy Advisory Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Secretary of the Navy Advisory Panel.

The Secretary of the Navy Advisory Panel shall be composed of not more than 15 members, who are eminent authorities in the fields of national security policy, intelligence, science, engineering, or business and industry. The Secretary of the Navy Panel, in keeping with the DoD policy to make every effort to achieve a balanced membership, shall include a cross section of experts that are directly affected, interested and qualified to advise on U.S. defense and naval issues.

Panel and subcommittee members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall serve as Special Government Employees under the authority of 5 U.S.C. 3109. Panel and subcommittee members shall be appointed on an annual basis by the Secretary of Defense, and with the exception of travel and per diem for official travel, they shall serve without compensation. The Secretary of the Navy shall select the Panel's chairperson from the total Panel membership.

The Secretary of the Navy Advisory Panel shall meet at the call of the Panel's Designated Federal Officer, in consultation with the chairperson. The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all committee and subcommittee meetings.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Secretary of the Navy Advisory Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Secretary of the Navy Advisory Panel.

All written statements shall be submitted to the Designated Federal Officer for the Secretary of the Navy Advisory Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Secretary of the Navy Advisory Panel's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Secretary of the Navy Advisory Panel. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, DoD Committee Management Office, 703–601–2554, extension 128.

Dated: October 17, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–5218 Filed 10–22–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an ''Open Meeting'' of the National Defense University Visitors (BOV)

AGENCY: Department of Defense; National Defense University.

ACTION: Notice of ''Open Meeting.''

SUMMARY: The National Defense University (NDU), Designated Federal Officer, has scheduled a meeting of the Board of Visitors. Request subject notice be published in the **Federal Register**. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

DATES: The meeting will be held on November 19–20, 2007 from 11:00 to 17:00 on the 19th and continuing on the 20th from 8:30 to 13:30.

Location: The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of an ''Open Meeting'' is Jeanette Tolbert at (202) 685–3955, Fax (202) 685–3328 or *TolbertJ@ndu.edu*.

SUPPLEMENTARY INFORMATION: State of the University, National Security Professional Development, Accreditation, and Federal Policy. The meeting is open to the public; limited space is made available for observers and will be allocated on a first-come, first-serve basis.

Dated: October 17, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–5217 Filed 10–22–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Southern Beltway Transportation Project From I–79 to the Mon/Fayette Expressway, Washington County, PA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed transportation improvements between Interstate 79 (I–79) and the Mon/Fayette Expressway (Turnpike 43), known locally as a Southern Beltway Transportation Project, in Washington County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Scott Hans, Acting Chief, Regulatory Branch, Department of the Army, Pittsburgh District Corps of Engineers, William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222–4186, Telephone: (412) 395–7154; or David P. Willis, Environmental Manager, Pennsylvania Turnpike Commission, P.O. Box 67676, Harrisburg, Pennsylvania 17106–7676, Telephone: (717) 939–9551.

SUPPLEMENTARY INFORMATION: The Corps, in cooperation with the Pennsylvania Turnpike Commission, will now prepare an Environmental Impact Statement (EIS) on a proposal for a limited access toll highway in Washington County, south of Pittsburgh, Pennsylvania. The proposed highway would extend from Interstate 79 south of the Allegheny County and Washington County line, easterly to the Mon/Fayette Expressway (Turnpike 43), near Finleyville, Washington County. The study corridor is approximately 19 kilometers (12 miles) long and 2.5 kilometers (1.5 miles) wide. Previously, the Federal Highway Administration (FHWA) served as the lead federal agency, with the Corps as a cooperating agency. The Financial Plan most recently submitted by the Pennsylvania Turnpike Commission to the Southwestern Pennsylvania Commission (SPC), the local Metropolitan Planning Organization, was not considered reasonable by SPC. As a result, the I–79 to Mon/Fayette Expressway Project was not included on SPC's Transportation Improvement Plan (TIP) when it was updated and adopted in July 2007. Subsequently, the FHWA

has withdrawn its involvement from the EIS process. In order to advance this project, the Pennsylvania Turnpike Commission has decided to continue project development without federal funding and FHWA oversight. Since this project will require a Section 404 permit from the Corps, the Corps will become the lead federal agency.

The proposed highway is considered necessary to improve the movement of people and goods from the Mon Valley to Interstate 79 in the area south of Pittsburgh. Preliminary studies and public and agency input have indicated that the project needs cannot be met by Transportation System Management (TSM) activities, upgrading existing roadways or mass transit improvements. Several new tolled expressway alternatives are under consideration. The No Build Alternative is also under consideration. Descriptions of these alternatives, the results of the engineering, traffic, and environmental studies, and the environmental impacts of the alternatives will be presented in the Draft Environmental Impact Statement.

A scoping meeting was held on this project on August 18 and 19, 1993 in Washington, Pennsylvania. Federal, state, regional, county, and municipal agency representatives attended and participated in this scoping meeting. In addition, an active public participation program was implemented on this project, including Special Agency Coordination Meetings, special purpose meetings with locally elected officials, Executive Committee Meetings, maintenance of a project website, and implementation of a toll-free phone number. A series of public meetings have also been held to ensure public input and participation. The Draft EIS will be available for public and agency review and comment prior to a public hearing. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Corps at the address provided above.

Scott A. Hans,

Acting Chief, Regulatory Branch, Pittsburgh District, U.S. Army Corps of Engineers.

[FR Doc. E7–20812 Filed 10–22–07; 8:45 am]

BILLING CODE 3710–85–P

DEPARTMENT OF ENERGY

Contractor Employee Pension and Medical Benefits

AGENCY: Office of Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Office of Management is announcing the availability of a summary of the public comments it received in response to a request for public comments on the challenge the Department of Energy (Department) confronts with respect to the costs and liabilities associated with contractor employee pension and medical benefits. The Department's request for comments was published in the **Federal Register** on March 27, 2007.

ADDRESSES: The summary of public comments is available on the Internet at *http://management.energy.gov/*.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Weakley, Office of Procurement and Assistance Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, 202–287–1645.

SUPPLEMENTARY INFORMATION:

I. Background

On April 26, 2006, the Department issued Department of Energy Notice 351.1, Contractor Employee Pension and Medical Benefits Policy, which updated and revised the Department's policy concerning reimbursement of Management and Operating (M&O) and other site management contractor pension and medical benefit costs. On June 19, 2006, the Secretary of Energy suspended implementation of the revised policy to permit consultation with stakeholders about the purpose of the Notice.

On March 27, 2007, the Department published a **Federal Register** notice (72 FR 14266) seeking public comments and/or recommendations on how the Department should address the challenge it faces due to the increasing costs and financial liabilities associated with the reimbursement of contractor employee pension and medical benefit costs. The Office of Management established a Web site for the public to submit their comments and/or recommendations on how the Department should address this financial challenge.

The Office of Management received approximately 475 comments in response to the March 27, 2007, request for public comments. The overwhelming majority of comments were from current and retired Department employees who did not support the new policy in the suspended DOE Notice 351.1. The remainder of the comments were submitted by private citizens, labor unions, and actuarial firms. As a result of its stakeholder outreach and consideration of public comments, the Department decided not to reissue DOE N 351.1 after it expired by its terms on April 27, 2007. The Department is not contemplating further action with regard to contractor employee pension and medical benefits at this time.

Issued in Washington, DC, on October 15, 2007.

Ingrid Kolb,

Director of Management, U.S. Department of Energy.

[FR Doc. E7–20801 Filed 10–22–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Safe Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice extending comment period.

SUMMARY: On Monday, July 23, 2007, the Department of Energy (DOE) published a notice of revised proposed policy (72 FR 140) setting forth its revised plans for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982 (the NWPA).

The notice requested comments on the provision of technical assistance and financial assistance for training of public safety officials to States and Indian Tribes through whose jurisdictions the DOE plans to transport spent nuclear fuel or high-level radioactive waste to a facility authorized under Subtitle A or C of the NWPA. The training is to cover safe, routine transport procedures and emergency response procedures as directed in the NWPA. The comment period for this notice of revised proposed policy was scheduled to close on October 22, 2007.

Today's notice announces a 90-day extension of the comment period on the revised proposed policy. The Department is taking this action in order to allow additional time for all interested parties to comment on the revised proposed policy.

DATES: Written comments should be mailed and electronic comments submitted to the Department and must

be received on or before January 22, 2008.

ADDRESSES: Written comments should be directed to Ms. Corinne Macaluso, U.S. Department of Energy, c/o Patricia Temple, Bechtel SAIC Company, LLC, 955 N. L'Enfant Plaza, SW., Suite 8000, Washington, DC 20024. The revised proposed policy and electronic comments forms are also available at *http://www.ocrwm.doe.gov*. Fill out the form and click ''submit'' to send your comments in through the website. Persons submitting comments should include their name and address. Receipt of written comments in response to this notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed. Electronic comments will receive an electronic notice of receipt.

FOR FURTHER INFORMATION CONTACT: For further information on the transportation of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act, please contact: Ms. Corinne Macaluso, Office of Logistics Management, Office of Civilian Radioactive Waste Management (RW–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–2837.

General program information is available on the Office of Civilian Radioactive Waste Management Web site located at *http://www.ocrwm.doe.gov*.

Copies of comments received will be posted on the OCRWM Web site. Please allow up to two weeks after DOE receives comments to view them on the Web site.

DOE will consider all comments submitted by the closing date. Comments received after that date will be considered to the extent practicable. DOE requests that commenters pay particular attention to the questions at the end of the revised proposed policy.

Issued in Washington, DC, October 17, 2007.

Christopher A. Kouts,

Acting Principal Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. E7–20822 Filed 10–22–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 16, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–4–000.

Applicants: FPL Energy Oliver Wind II, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of FPL Energy Oliver Wind II, LLC.

Filed Date: 10/15/2007.

Accession Number: 20071015–5021.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: EG08–5–000.

Applicants: Marble River, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Marble River, LLC.

Filed Date: 10/15/2007.

Accession Number: 20071015–5075.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2268–023; ER99–4124–020; ER99–4122–024; ER07–428–002.

Applicants: Pinnacle West Capital Corporation; Arizona Public Service Company; APS Energy Services Company, Inc.; Pinnacle West Marketing & Trading Company.

Description: Pinnacle West Capital Corp *et al.* submit a compliance filing pursuant to the Commission order issued 8/13/07.

Filed Date: 10/12/2007.

Accession Number: 20071015–0294.

Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER01–1526–007; ER02–2080–006; ER02–2546–007; ER97–705–017; ER99–1213–007; ER99–2251–006; ER99–2252–007; ER99–3248–009.

Applicants: Newington Energy, LLC.; Ocean Peaking Power, LLC; CED Rock Springs, Inc.; Promark Energy Inc.; Lakewood Cogeneration LP; Consolidated Edison Company of New York; Orange & Rockland Utilities, Inc.; ConEdison Energy Massachusetts, Inc.

Description: Consolidated Edison Energy, Inc, *et al.*, submits a notice of non-material change in status in compliance with the reporting requirements.

Filed Date: 10/10/2007.

Accession Number: 20071012–0112.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: ER02–999–006; ER05–320–004; ER97–2460–009; ER97–2463–006.

Applicants: Unitil Power Corporation; Unitil Energy Systems, Inc.; Unitil Power Corporation; Fitchburg Gas & Electric Light Company.

Description: Unitil Energy Systems, Inc., *et al.*, submit a request for exemption from filing requirements applicable to Category 2 Sellers pursuant to Order 697.

Filed Date: 10/10/2007.

Accession Number: 20071012–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: ER06–1014–004.

Applicants: New York Independent System Operator, Inc.

Description: Compliance Filing of the New York Independent System Operator, Inc.

Filed Date: 10/15/2007.

Accession Number: 20071015–5077.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Docket Numbers: ER07–1236–002.

Applicants: Yuma Cogeneration Associates.

Description: Yuma Cogeneration Associates submits revisions to its proposed market-based rate tariff.

Filed Date: 10/12/2007.

Accession Number: 20071015–0037.

Comment Date: 5 p.m. Eastern Time on Friday, October 26, 2007.

Docket Numbers: ER07–1332–001.

Applicants: Smoky Hills Wind Farm, LLC.

Description: Smoky Hills Wind Farm, LLC submits amendment to its application for order accepting market-based rate tariff, granting waivers and blanket authority.

Filed Date: 10/12/2007.

Accession Number: 20071015–0036.

Comment Date: 5 p.m. Eastern Time on Monday, October 22, 2007.

Docket Numbers: ER08–38–000.

Applicants: Northern Renewable Energy (USA), Ltd.

Description: Northern Renewable Energy submits an Application for Market-Based Rate Authorization and Request for Waivers and Blanket Authorizations.

Filed Date: 10/10/2007.

Accession Number: 20071012–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: ER08–39–000.

Applicants: CL Power Sales Two, LLC.

Description: CL Power Sales Two, LLC submits a Notice of Cancellation of its FERC Electric Tariffs.

Filed Date: 10/11/2007.
Accession Number: 20071012–0109.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: ER08–40–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC. submits an executed interconnection service agreement with Conectiv Delmarva Generation.
Filed Date: 10/11/2007.
Accession Number: 20071015–0027.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: ER08–41–000.
Applicants: ISO New England Inc. and New England Power Pool Participants Committee.
Description: ISO New England Inc and New England Power Pool Participants Committee submits materials which identify the installed capacity requirement, Hydro Quebec Interconnection Capability Credits.
Filed Date: 10/11/2007.
Accession Number: 20071015–0028.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: ER08–42–000.
Applicants: CL Power Sales Seven, LLC.
Description: CL Power Sales Seven, LLC. submits notice of cancellation of its FERC Electric Tariffs.
Filed Date: 10/12/2007.
Accession Number: 20071015–0019.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–43–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corp on behalf of Appalachian Power Company submits notice of cancellation for a letter agreement dated 2/9/04 filed as Original Service Agreement 610.
Filed Date: 10/12/2007.
Accession Number: 20071015–0020.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–44–000.
Applicants: Midwest Independent Power Suppliers.
Description: Midwest Independent Transmission System Operator, Inc submits amended and restated small generation interconnection agreement among Cisco Wind Energy, LLC.
Filed Date: 10/12/2007.
Accession Number: 20071015–0021.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–45–000.
Applicants: Consolidated Edison Co. of New York, Inc.
Description: Consolidated Edison Company of New York Inc's request for limited one-time waiver of tariff provision and expedited treatment.
Filed Date: 10/12/2007.
Accession Number: 20071015–0022.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–46–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc. as agent for Southern Companies submits a notice of cancellation.
Filed Date: 10/12/2007.
Accession Number: 20071015–0023.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–47–000.
Applicants: Mississippi Power Company.
Description: Southern Company Services, Inc. as agent for Mississippi Power Company and Gulf Power Company submits transmission facilities agreement.
Filed Date: 10/12/2007.
Accession Number: 20071015–0024.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ER08–48–000.
Applicants: Progress Energy Florida, Inc.
Description: Florida Power Corporation dba Progress Energy Florida, Inc's CD containing its standard large generator interconnection agreement with Vandolah Power Company for the generating facility that Vandolah operates in Hardee County, FL.
Filed Date: 10/12/2007.
Accession Number: 20071012–4010.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES07–35–001.
Applicants: Entergy Gulf States Louisiana, LLC.
Description: Form 523—Supplemental to application concerning request for permission to issue securities of Entergy Gulf States, Inc.
Filed Date: 10/12/2007.
Accession Number: 20071012–5049.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ES07–36–001.
Applicants: Entergy Texas, Inc.
Description: Supplement to application Concerning Request for Permission to Issue Securities of Entergy Gulf States, Inc.
Filed Date: 10/12/2007.
Accession Number: 20071012–5050.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: ES07–67–001.
Applicants: National Grid USA.
Description: Amendment to and Notice of Partial Withdrawal of Application for Authorization to Issue Securities Under Section 204 of the Federal Power Act, and Motion for Waiver of 15-Day Waiting Period Under Commission Rule 216 of National Grid USA.
Filed Date: 10/15/2007.
Accession Number: 20071015–5140.
Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Take notice that the Commission received the following open access transmission tariff filings:
Docket Numbers: OA08–12–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits this filing to comply with the non-transmission planning requirements of Order 890.
Filed Date: 10/11/2007.
Accession Number: 20071015–0029.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: OA08–13–000.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc's revisions to their Open Access Transmission Tariff to bring it into conformance with Order 890's requirements.
Filed Date: 10/12/2007.
Accession Number: 20071015–0030.
Comment Date: 5 p.m. Eastern Time on Friday, November 2, 2007.

Docket Numbers: OA08–14–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc's compliance filing revising the non-rate terms and conditions of its OATT and Energy Markets Tariff pur to FERC's 2/16/07 Final Rule, Order 890.
Filed Date: 10/11/2007.
Accession Number: 20071015–0031.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: OA08–15–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Order No. 890 OATT of Oklahoma Gas and Electric Company.
Filed Date: 10/11/2007.
Accession Number: 20071011–5102.
Comment Date: 5 p.m. Eastern Time on Thursday, November 1, 2007.

Docket Numbers: OA07–27–001.
Applicants: E ON U.S., LLC.
Description: Louisville Gas and Electric Co *et al.* submits a compliance

filing re-proposed modifications to Schedules 4 and 9 of the OATT.

Filed Date: 10/10/2007.

Accession Number: 20071012–0100.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: OA07–70–001.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits a compliance filing re proposed modifications to Schedule 11 of the OATT in compliance with FERC's 9/10/07 Order and submit an errata to this filing on 10/15/07.

Filed Date: 10/10/2007; 10/15/2007.

Accession Number: 20071012–0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–2–000.

Applicants: Southwestern Energy Co.

Description: FERC Form 65 A Exemption Notification of Southwestern Energy Company.

Filed Date: 10/15/2007.

Accession Number: 20071015–5049.

Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR08–1–000.

Applicants: North American Electric Reliability Corp.

Description: North American Electric Reliability Corp requests FERC's approval of Section 1600 of be added to the NERC Rules of Procedure.

Filed Date: 10/12/2007.

Accession Number: 20071015–0025.

Comment Date: 5 p.m. Eastern Time on Thursday, November 15, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–20791 Filed 10–22–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

October 18, 2007.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 25, 2007. 10 a.m.

PLACE: Room 2C, Commission Meeting Room, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries, Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

Chairman Kelliher and Commissioners Kelly, Spitzer, Moeller, and Wellinghoff voted to hold a closed meeting on October 25, 2007. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–20869 Filed 10–22–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0380; FRL–8485–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Air Stationary Source Compliance and Enforcement Information; EPA ICR No. 0107.09, OMB Control No. 2096–0096

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 24, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2007–0380, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: metcalf.betsy@epa.gov.*
- *Fax:* (202) 564–0032.
- *Mail:* Air Stationary Source Compliance and Enforcement

Information, Environmental Protection Agency, Mailcode: 2222A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2007–0380. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Betsy Metcalf, Enforcement Targeting & Data Division, Office of Compliance, (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5962; fax number: (202) 564–0032; e-mail address: *metcalf.betsy@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2007–0380, which is available for online viewing at www.regulations.gov, or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) 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 ECDIC is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are State, District, Local, and Commonwealth governments.

Title: Air Stationary Source Compliance and Enforcement Information.

ICR numbers: EPA ICR No. 0107.09, OMB Control No. 2060–0096.

ICR status: This ICR is currently scheduled to expire on June 30, 2008. 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 collection of air compliance monitoring and enforcement information in the Air Facility System (AFS) provides EPA with the ability to assess progress toward meeting emission requirements developed under the authority of the Clean Air Act (CAA) to protect and maintain the atmospheric environment and public health. Agencies receive authorization of their CAA programs through regulated grant authorities, and

report compliance/enforcement activities undertaken at stationary sources using the Minimum Data Requirements (MDRs) as outlined in the renewal of this ICR. This renewal requires the continuation of reporting of previously established MDRs with no additional new burden. The provision of Section 114(a)(1) of the Clean Air Act, 42 U.S.C. 7414(a)(1) provide the broad authority for the reporting of compliance monitoring and enforcement information, along with Subpart Q—Reports in 40 CFR part 51: §§ 51.324(a) and (b), and 51.327.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information was estimated to average 509 hours per year for a small State/local agency (150 major sources or less), 1,463 hours per year for a medium state/local agency (151–499 major sources) or 2,572 hours per year for large State/local agencies (greater or equal to 500 major sources per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate. The estimates from the previous ICR are briefly summarized here:

Estimated total number of potential respondents: 99.

Frequency of response: Six times per year (every 60 days).

Estimated total average number of responses for each respondent: A minimum of six responses from each respondent.

Estimated total annual burden hours: 98,183 hours.

Estimated total annual costs: $3,277,935 annually.

Are There Changes in the Estimates From the Last Approval?

EPA acknowledges that the estimated operational and maintenance costs will increase due to inflationary pressures that increase hourly resource costs for management, professional, and related occupational groups. The labor rates used in the ICR estimates will be taken from the Department of Labor Employment Compensation and Costs (ECEC) Web site. These changes will be reflected in the final supporting statement for this ICR. Additionally, the number of respondents will be corrected to reflect 99 respondents, an increase from 93 in the previous ICR resulting in an overall increase in hours and resources for reporting.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will be submitted by EPA to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB, and a second opportunity to submit additional comments to OMB. If you have any questions about this ICR, or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 15, 2007.

Michael M. Stahl,

Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. E7–20833 Filed 10–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0563; FRL–8485–5]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products (Renewal); EPA ICR No. 1764.04; OMB Control No. 2060–0348

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 may be submitted on or before November 23, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0563, to (1) EPA online using www.regulations.gov (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 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: Mr. Bruce Moore, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5460; fax number: (919) 541–3470; e-mail address: *moore.bruce@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 August 2, 2007 (72 FR 42409), 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–OAR–2007–0563 which is available for online viewing at www.regulations.gov, or in person viewing at the Air and Radiation 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 Air and Radiation Docket is 202–566–1742.

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*.

Title: National Volatile Organic Compound Emission Standards for Consumer Products (Renewal).

ICR numbers: EPA ICR No. 1764.04, OMB Control No. 2060–0348.

ICR Status: This ICR is scheduled to expire on October 31, 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 information collection includes initial reports and periodic recordkeeping necessary for EPA to ensure compliance with Federal standards for volatile organic compounds in consumer products. Respondents are manufacturers, distributors, and importers of consumer products. Responses to the collection are mandatory under 40 CFR part 59, subpart C, National Volatile Organic Compound Emission Standards for Consumer Products. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B, Confidentiality of Business Information.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40 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: Manufacturers and importers of consumer products.

Estimated Number of Respondents: 732.

Frequency of Response: On occasion.

Estimated Total Annual Hours Burden: 29,613 hours.

Estimated Total Annual Costs: $1,187,537. This includes labor costs of $1,187,537 and no capital or O&M costs.

Changes in Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved Burdens. However, the estimated total annual costs are increased by $83,480 due to increased costs of employment compensation since the previous approval.

Dated: October 16, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20834 Filed 10–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2006–0835; FRL–8485–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request: Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics (Renewal); EPA ICR No. 2248.03, OMB Control No. 2030–0045

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 may be submitted on or before November 23, 2007.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2006–0835 to (1) EPA online using *www.regulations.gov*., 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: Rosyletta Simms, Office of Human Resources, Mail Code 3600A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–7897; fax number: 202–564–4613; e-mail address: *simms.rosyletta@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 11, 2007 (72 *FR* 37760) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. 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–OARM–2006–0835, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Environmental Information (OEI) Docket and Information Center at 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 Office of Environmental Information Docket is 202–566–1752.

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, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics (Renewal).

ICR numbers: EPA ICR No. 2248.03, OMB Control No. 2030–0045.

ICR Status: This ICR is scheduled to expire on November 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, and 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 purpose of this information collection request is to seek approval to use the Environmental Protection Agency's EZhire, vacancy announcement and job application system, to collect gender, race, national origin, and disability information from employees within the agency and outside job applicants. All job applicants, whether internal or external, are asked to complete, on a voluntary basis, an ''*Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics.*'' This data is required for compliance with the Equal Employment Opportunities Commission's (EEOC) MD 715 and 29 CFR 1614.601. Agencies are required to: (1) Maintain a system that collects and maintains accurate information on the race, national origin, gender and disability of agency employees; (2) maintain a system that tracks applicant flow data, which identifies applicants by race, national origin, sex, and disability status and disposition of all applications; and (3) maintain a tracking system of recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity. MD 715 requires agencies to ''conduct an internal review and analysis of the effects of all current and proposed policies, practices, procedures and conditions that are directly or indirectly, related to the employment of individuals with disabilities.'' EPA must collect and analyze information and data necessary to make an informed assessment about the extent to which the agency is meeting its responsibility to provide employment opportunities for qualified applicants and employees with disabilities, especially those with targeted disabilities. The data supplied by job applicants is strictly confidential and encrypted within the software. The data is reported in the aggregate for affirmative employment analyses, planning and reporting required by the EEOC and the Office of Personnel Management.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average of 28 minutes or .46 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: all applicants applying for jobs at EPA.

Estimated Number of Respondents: 32,590.

Frequency of Response: Once per applicant.

Estimated Total Annual Hour Burden: 15,208.

Estimated Total Annual Cost: $0, includes $0 annualized Capital Startup costs, $0 annualized Operation and Maintenance (O&M) costs, and $0 annualized Labor costs.

Changes in the Estimates: There is no increase/decrease of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: October 16, 2007.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. E7–20835 Filed 10–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1016; FRL–8154–5]

Air Fresheners; TSCA Section 21 Petition; Notice of Receipt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received a petition under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. The petition was received from the Sierra Club, the National Center for Healthy Housing, the Alliance for Healthy Homes, and the Natural Resources Defense Council on September 20, 2007. The petitioners are concerned about risks to human health and the environment from exposure to air fresheners. They are petitioning EPA to assess and reduce these risks by exercising its authority under TSCA sections 8(c), 8(d), 4, and 6(a)(3). EPA must either grant or deny a TSCA section 21 petition within 90 days of receipt of the petition, and will, therefore, respond to this petition by December 18, 2007.

DATES: Comments must be received on or before November 7, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1016, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–1016. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–1016. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any

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

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Robert Jones, Chemical Control Division (7405M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8161; e-mail address: *jones.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by an action in response to this petition if you manufacture, process, import, or distribute in commerce air fresheners or ingredients in air fresheners. Potentially affected entities may include, but are not limited to:

- Chemical manufacturers (including importers) and processors (NAICS code 325), e.g., air and room freshener manufacturers and manufacturers of incense.
- Other miscellaneous manufacturers (including importers) and processors (NAICS code 3399), e.g., manufacturers of candles and potpourri.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may potentially be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the TSCA section 21 petition on air fresheners. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth facts that the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, EPA

must promptly commence an appropriate proceeding. If EPA denies the petition, EPA must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial or expiration of the 90–day period, if no action is taken, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding.

B. What Action is Requested Under this TSCA Section 21 Petition?

On September 20, 2007, the Sierra Club, the National Center for Healthy Housing, the Alliance for Healthy Homes, and the Natural Resources Defense Council petitioned EPA under TSCA section 21. The petitioners are concerned about risks to human health and the environment from exposure to air fresheners. They are petitioning EPA to assess and reduce these risks by exercising its authority under TSCA sections 8(c), 8(d), 4, and 6(a)(3).

C. EPA Seeks Public Comment

Under TSCA section 21, EPA must either grant or deny a petition within 90 days. Because EPA must respond to the petition by December 18, 2007, EPA will allow the public until November 7, 2007 to reply with any additional information relevant to the issues identified in the petition, a copy of which can be obtained from the public docket (see **ADDRESSES**).

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's ''A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information'' (EPA 100B–03/001), referred to as the ''Assessment Factors Document.'' The ''Assessment Factors Document'' was published in the **Federal Register** issue of July 1, 2003 (68 FR 39086) (FRL–7520–2) and is available on-line at *http://www.epa.gov/fedrgstr/EPA–GENERAL/2003/July/Day-01/g16328.htm*. That document is also available on-line at *http://www.epa.gov/osa/spc/assess.htm*.

List of Subjects

Environmental protection, Air fresheners, Phthalates, Volatile Organic Compounds (VOCs).

Dated: October 19, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–20930 Filed 10–22–07; 8:45 am]

BILLING CODE 6560–50–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 November 16, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Community Bank Investors of America, LP, and FA Capital, LLC, both of Midlothian, Virginia; to become bank holding companies by acquiring 34 percent of the voting shares of Bay Bank, Tampa, Florida (upon the conversion of Bay Financial Savings Bank, F.S.B., Tampa, Florida, to a state member bank).

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. BTC Financial Corporation, and its wholly–owned subsidiary, Midamerica Financial Corporation, both of Des Moines, Iowa; to acquire 99.95 percent of the voting shares of Bankers Trust Company, NA, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, October 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–20765 Filed 10–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 6, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Jackson Parks Turner, Dalton, Georgia; to acquire voting shares of Alliance Bancshares, Inc., and thereby indirectly acquire voting shares of Alliance National Bank, both of Dalton, Georgia.

Board of Governors of the Federal Reserve System, October 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–20763 Filed 10–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 7, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Juan C.G. Araneta, Fernando G. Araneta, Maria M.G. Araneta and Margarita A. Holigores, all of Makati City, Philippines, Santiago G. Araneta and Marilou G. Joaquin, both of Pasig City, Philippines, and Hugo N. Bonilla, Newark, California; to retain voting shares of MNB Holdings Corporation, and thereby indirectly retain voting shares of Mission National Bank, both of San Francisco, California.

Board of Governors of the Federal Reserve System, October 18, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–20800 Filed 10–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7–20421) published on pages 58853 and 58854 of the issue for Wednesday, October 17, 2007.

Under the Federal Reserve Bank of Dallas heading, the entry for The Jarrel Morris Jones Family, LLC, Tulsa, Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The Jarrel Morris Jones Family, LLC, to become a bank holding company by acquiring 35.4 percent of the voting shares of Triad Bancshares, Inc., and thereby indirectly acquire voting shares of Triad Bank, National Association, all of Tulsa, Oklahoma.

Comments on this application must be received by November 13, 2007.

Board of Governors of the Federal Reserve System, October 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–20764 Filed 10–22–07; 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 November 19, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. First Citizens Banc Corp., Sandusky, Ohio; to merge with Futura Banc Corp., and and thereby indirectly acquire voting shares of Champaign National Bank, both of Urbana, Ohio.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BOV Holding Company; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Versailles, both in Versailles, Missouri.

Board of Governors of the Federal Reserve System, October 18, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–20798 Filed 10–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. InvestorsBancorp, Inc., Pewaukee, Wisconsin; to continue to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 18, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–20799 Filed 10–22–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–236]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 21st set of toxicological profiles, which consists of one new draft and six updated drafts, prepared by ATSDR for review and comment.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 22, 2008. Comments received after the close of the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies of the draft toxicological profiles should be sent to the attention of Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for printed copies of the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–236. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information or other confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1 (888) 422–8737 or (770) 488–3315.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.) by establishing certain responsibilities for the ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on December 7, 2005 (70 FR 72840). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014) and November 7, 2003 (68 FR 63098). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.] Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2007.

Document	Hazardous substance	CAS No.
1.	Boron (Update)	007440–42–8
2.	Chlorine*	007782–50–5
3.	1,4-Dioxane (Update)	000123–91–1
4.	Ethylbenzene (Update)	000100–41–4
5.	Ethylene glycol (Update)	000107–21–1
6.	Plutonium (Update)	007440–07–5
	Plutonium –238	013981–16–3
	Plutonium –239	015117–48–3
	Plutonium –240	014119–33–6

Document	Hazardous substance	CAS No.
7.	Styrene (Update)	000100–42–5

* Denotes new profile.

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: October 17, 2007.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E7–20819 Filed 10–22–07; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Notice of Availability

Purpose of Notice: Availability of funding opportunity announcement.

Funding Opportunity Title/Program Name: Older Americans Act (OAA), Title VI, Part A—Grants for Native Americans, Part B—Grants for Native Hawaiian Programs and Part C—Grants for the Native American Caregiver Support Program.

Announcement Type: This is the initial announcement for this funding opportunity.

Funding Opportunity Number: Program Announcement No. HHS–2008–AoA–Title VI–0802.

Statutory Authority: The Older Americans Act, Public Law 109–365.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.047, Title VI Parts A and B and 93.052, Title VI Part C.

Dates: The deadline date for the submission of applications is January 22, 2008.

I. Funding Opportunity Description

This announcement seeks proposals for grants to provide nutritional and supportive services to Indian elders and Native Hawaiian elders under Part A and Part B and Family Caregiver support services under Part C. The goal of these programs is to increase home and community based services to older Indians, Alaska Natives and Native Hawaiians, which respond to local needs and are consistent with evidence-based prevention practices. A detailed description of the funding opportunity may be found at *http://www.olderindians.org*.

II. Award Information

1. *Funding Instrument Type:* Grant.

2. *Anticipated Total Priority Area Funding per Budget Period:*

The Administration on Aging (AoA) will accept applications for funding for a three-year project period, April 1, 2008 to March 31, 2011, in FY 2008 under the OAA, Title VI, Part A—Grants for Native Americans, Part B—Grants for Native Hawaiian Programs and Part C—Grants for the Native American Caregiver Support Program. Current annual funding levels for Title VI, Part A and Part B range from $72,850 to $135,500. Current annual funding levels for Title VI, Part C range from $14,720 to $58,230. Distribution of funds among tribal organizations and Native Hawaiian organizations is subject to the availability of appropriations to carry out Title VI. Funding is based on the number of eligible elders over the age of 60 in your proposed service area. Successful applications from new grantees will be funded pending availability of additional funds. For those applying for Title VI, Parts A and B funding you have the option to also apply for Part C. However, to apply for Part C, you must apply for both Part A and Part C or Part B and Part C.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Eligibility for grant awards is limited to all current Title VI, Part A and Part B grantees, current grantees who wish to leave a consortium, and eligible federally recognized Indian tribal organizations that are not now participating in Title VI, and would like to apply as a new grantee. Those Tribes who were a part of a consortium receiving a Title VI grant in 1991 and applying individually will be considered an ''old grantee''. Proof of being a part of a consortium that was funded in FY 1991 must be submitted as part of the application. A tribal organization or Indian tribe must meet the application requirements contained in sections 612(a), 612(b), and 612(c) of the OAA. A public or nonprofit organization serving Native Hawaiians must meet the application requirements contained in sections 622(1), 622(2), and 625 of the OAA. Under the Native American Caregiver Support Program, a tribal or Native Hawaiian organization must meet the requirements as contained in section 631 of the OAA. These sections are described in the application kit.

2. Cost Sharing or Matching

Cost Sharing or matching does not apply to these grants.

3. DUNS Number

All grant applicants must obtain a D-U-N-S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D-U-N-S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/*.

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Washington, DC 20201, by calling 202/357–3537, or online at *http://www.olderindians.org*.

2. Address for Application Submission

Applications must be sent overnight delivery to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, 1 Massachusetts Ave, NW., Room 4604, Washington, DC 20001, attn: Stephen Daniels (HHS–2008–AoA–Title VI–0802). You must submit one original and two copies of the application.

3. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the **DATES** section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time. Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be considered for funding.

VI. Application Review Information

Not Applicable.

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Washington, DC 20201, telephone: (202) 357–3501.

Dated: October 18, 2007.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E7–20837 Filed 10–22–07; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 13, 2007, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diem.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512541 and 3014512536. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committees will evaluate data submitted by Merck & Co., Inc., to support the over-the-counter use of MEVACOR (lovastatin) 20 milligrams (mg) a day to help lower cholesterol which may prevent a first heart attack.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 29, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 15, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 16, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 17, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–20855 Filed 10–22–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held by teleconference on November 14, 2007, from 1 p.m. to approximately 4:30 p.m.

Location: National Institutes of Health, Building 29B, Conference Rooms A/B, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the specified location where

a speaker phone will be provided. Public participation in the meeting is limited to the use of the speaker phone in the conference room. Important information about transportation and directions to the National Institutes of Health (NIH) campus, parking, and security procedures is available on the Internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification, one of which must be a government issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD, 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 14, 2007, the committee will meet in open session to hear updates of the research programs in: (1) The Laboratory of Method Development, Division of Viral Products, Center for Biologics Evaluation and Research, FDA and (2) the Laboratory of Mycobacterial Diseases & Cellular Immunology, Division of Bacterial Parasitic & Allergenic Products, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: On November 14, 2007, from 1 p.m. to approximately 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 7, 2007. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 30, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 31, 2007.

Closed Committee Deliberations: On November 14, 2007, from approximately 3:30 p.m. to 4:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss reports of intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Dated: October 17, 2007.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E7–20854 Filed 10–22–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0401]

Guidance for Industry, Food and Drug Administration, and Foreign Governments; Fiscal Year 2008 Medical Device User Fee Small Business Qualification and Certification; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''FY 2008 Medical Device User Fee Small Business Qualification and Certification.'' This guidance explains how a business headquartered in the United States or headquartered in a foreign nation may respectively qualify as ''small business'' under the medical device user fee provisions of the Federal Food, Drug, and Cosmetic Act (the act). A ''small business'' may pay certain medical device user fees at a substantial discount from the standard (full) fee rates and may obtain a one-time fee waiver for its first premarket application (a premarket approval application (PMA), biologics license application (BLA), product development protocol (PDP), or premarket report (PMR)).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''FY 2008 Medical Device User Fee Small Business Qualification and Certification'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 240–276–3151. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Joseph V. Puleo, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3150, ext. 116, e-mail: *joseph.puleo@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

''FY 2008 Medical Device User Fee Small Business Qualification and Certification'' explains how a business headquartered in the United States or headquartered in a foreign nation may qualify as ''small business'' under the medical device user fee provisions of the act (21 U.S.C. 301). A ''small business'' may pay certain medical device user fees at a substantial discount from the standard (full) fee rates and may obtain a one-time fee waiver for its first premarket application (a PMA, BLA, PDP, or PMR). The following fees apply for fiscal year (FY) 2008:

Application Type	FY 2008	
	Standard Fee	Small Business
Premarket application (PMA, BLA, PDP, or PMR)	$185,000	$46,250
Panel-track PMA supplement	$138,750	$34,688
BLA efficacy supplement	$185,000	$46,250
180-day PMA supplement	$27,750	$6,938
Real-time PMA supplement	$12,950	$3,238
510(k) premarket notification	$3,404	$1,702
30-day notice	$2,960	$1,480
513(g) request	$2,498	$1,249
Periodic reporting on a class III device	$6,475	$1,619
Establishment registration	$1,706	

To qualify as a ''small business,'' the business must have ''gross receipts or sales'' of no more than $100 million in the most-recent tax year, including the ''gross receipts or sales'' of all of the business' affiliates (see sections 738(d)(2)(A) and (e)(2)(A) of the act (21 U.S.C. 379j(d)(2)(A) and (e)(2)(A))). An affiliate is defined by section 737(12) of the act (21 U.S.C. 379i(12)) as a business entity that has a relationship with a second business entity if, directly or indirectly—

''(A) one business entity controls, or has the power to control, the other business entity; or

(B) a third party controls, or has power to control, both of the business entities.''

A business headquartered in the United States must demonstrate that it meets the $100 million threshold by submitting a certified copy of its most-recent Federal (U.S.) income tax return. A business headquartered outside the United States must demonstrate that it meets the $100 million threshold by submitting a National Taxing Authority Certification from the foreign equivalent of the U.S. Internal Revenue Service. Under the guidance, both U.S. and foreign businesses should provide FDA with contact information, identify all of their affiliates, and certify that the information they provide to FDA is complete and accurate.

FDA is making this final guidance document immediately available. Prior public participation is not feasible because it implements statutory requirements that require immediate implementation. This guidance is necessary to help effect such implementation.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on FY 2008 medical device user fee small business qualification and certification. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''FY 2008 Medical Device User Fee Small Business Qualification and Certification,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 240–276–3151 to receive a hard copy. Please use the document number 2008 to identify the guidance you are requesting.

Persons interested in obtaining a copy of the guidance may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0613 (approval expires April 16, 2008).

This guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in Form FDA 3602 have been approved under OMB Control No. 0910–0508 (approval expires January 31, 2010).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 18, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5226 Filed 10–18–07; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 30, 2007.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260. *mockrins@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to administrative errors.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 18, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5252 Filed 10–22–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[NV–912–07–1220PA–006F]

Notice of Public Meeting: Recreation Subcommittee Meeting of the Bureau of Land Management, Nevada, Sierra Front-Northwestern Great Basin, Northeastern Great Basin and Mojave-Southern Great Basin Resource Advisory Councils

AGENCIES: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Recreation Subcommittee Meeting.

SUMMARY: In accordance with the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the Recreation Subcommittee will hold a meeting to finalize draft protocol and guidelines and to discuss membership needs for fiscal year 2008.

DATES: Wednesday, November 14, 2007, from 1 p.m. to 3 p.m. A public comment period will begin at 2:30 p.m.

ADDRESSES: Meeting place will be the Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Doran Sanchez, Chief, Office of Communications, (775) 861–6586, or Barbara Keleher, Outdoor Recreation Planner, (775) 861–6628, at the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (REA; Pub. L. 108–447), enacted on December 8, 2004, directs the Secretaries of the Interior or Agriculture, or both, to establish Recreation Resource Advisory Committees to provide advice and recommendations on recreation fees and fee areas in each State or region for Federal recreational lands and waters managed by the Bureau of Land Management (BLM) or Forest Service. The law allows the agencies to use existing Resource Advisory Councils (RACs) or to establish new Recreation RACs. For Nevada, a recreation subcommittee of three existing RACs has been designated to perform Recreation Resource Advisory Committee responsibilities pertaining to both BLM and Forest Service managed Federal lands and waters per the national interagency agreement between BLM and the Forest Service. This subcommittee will recommend new

amenity fees and fee change proposals to the respective RAC of the appropriate geographic region.

An agenda will be available online at *http://www.blm.gov/nv/.* To receive a copy of the agenda, please call Barbara Keleher. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, please contact Barbara Keleher no later than 10 days prior to the meeting.

Dated: October 16, 2007.

Ron Wenker,

Bureau of Land Management, Nevada State Director.

Dated: October 16, 2007.

Ed Monnig,

Forest Service, Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 07–5223 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–DF; HAG 08–0005]

Southeast Oregon Resource Advisory Council: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council.

Time and Date: 1 p.m. November 8, 2007; 8 a.m. November 9, 2007.

Place: Bureau of Land Management, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738.

Status: Open to the public.

Matters to be Considered: The Resource Advisory Council will consider ecology based ecosystem restoration initiatives, fire rehabilitation grazing criteria and transportation planning efforts for Oregon and Washington Bureau of Land Management (BLM) and U.S. Forest Service administered lands. Council members will also hear updates from Designated Federal Officials, attend a Fremont-Winema National Forests Travel Management Planning presentation, give liaison and subgroup reports, establish meeting priorities, develop agenda items for the next meeting and tour Oregon's Wild Horse Corral Facility. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 4 p.m. on November 9, 2007. Those who verbally address the SEORAC during the public comment period are asked to also provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

Contact Person for More Information: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, Public Affairs Specialist, 1301 S. G Street, Lakeview, OR 97630; (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the BLM Lakeview District at (541) 947–2177 as soon as possible.

Shirley Gammon,

District Manager.

[FR Doc. E7–20770 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–010–1430-ET; MTM 60957]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes to extend the duration of Public Land Order (PLO) No. 6664 for an additional 20-year term. PLO No. 6664 withdrew 840 acres of public lands in Carbon County, Montana, from settlement, sale, location, or entry under the general land laws, including the United States mining laws to protect the Bureau of Land Management (BLM) Petroglyph Canyon and Weatherman Draw archeological sites. This notice also gives an opportunity to comment on the proposed action and to request a public meeting. The lands have been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by January 22, 2008.

ADDRESSES: Comments and meeting requests should be sent to the BLM Billings Field Office Manager, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Tom Carroll, BLM, Billings Field Office, (406) 896–5242, or at the above address, or Sandra Ward, BLM, Montana State Office, (406) 896–5052.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6664 (53 FR 7186–7) will expire March 6, 2008, unless extended. The Assistant Secretary for Land and Minerals Management has approved the BLM petition to file an application to extend PLO No. 6664 for an additional 2-year period. The withdrawal was made to protect the Petroglyph Canyon and Weatherman Draw archeological sites on public lands described as follows:

Principal Meridian, Montana, (Weatherman Draw)

T. 8 S., R. 24 E.,
Sec. 20, S½SE¼ and SE¼SW¼;
Sec. 29, E½ and E½W½.

(Petroglyph Canyon)

T. 9 S., R. 26 E.,
Sec. 35, lots 2, 3, 6, 7, SW¼NE¼ and SE¼NW¼.

The areas described aggregate 840 acres in Carbon County.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6664 for an additional 20-year term to protect the archeological sites at Petroglyph Canyon and Weatherman Draw.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of lands under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the cultural resources in these areas.

There are no suitable alternative sites available. Significant cultural resources are located at the Petroglyph Canyon and Weatherman Draw sites in the above-described public land.

Water will not be needed to fulfill the purpose of the requested withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Billings Field Office at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Billings Field Office at the address noted above during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Billings Field Manager within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. This withdrawal extension proposal will be processed in accordance with the applicable regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1(b)(1))

Dated: October 11, 2007.

Theresa M. Hanley,

Deputy State Director, Division of Resources.

[FR Doc. E7–20779 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–EU; CACA–47028]

Notice of Realty Action: Proposed Direct (Non-Competitive) Sale of Public Lands in Siskiyou County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 0.07 acre parcel of federally owned land in Siskiyou County, located in Yreka, California. The public land has been examined and found suitable for disposal utilizing direct sale procedures. The authority for the sale is established under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719) and the Federal Land Transaction Facilitation Act (FLTFA) of July 25, 2000, (43 U.S.C. 2301).

DATES: Comments regarding the proposed sale must be received by the BLM Redding Field Office on or before December 7, 2007.

ADDRESSES: Written comments concerning the proposed sale must be submitted to: Field Manager, Bureau of Land Management, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002.

FOR FURTHER INFORMATION CONTACT: You may contact the Redding Field Office, (530) 224–2100 from 7:30 a.m to 4:30 p.m., Monday through Friday (except Federal Holidays), and ask to have your call directed to Ilene Emry, Realty Specialist.

SUPPLEMENTARY INFORMATION: The public land is located in Yreka, California and will be offered for sale utilizing non-competitive (direct sale) procedures in Siskiyou County.

Mount Diablo Meridian, California

T. 45 N., R. 7 W.,
Section 22, lot 13.

The area described contains 0.07 acres more or less in Siskiyou County.

This parcel of public land is proposed for sale to Tom and Kris McCullough, the adjacent landowners, at not less than appraised fair market value (FMV) as determined by the authorized officer after appraisal.

As stated, the public land is proposed for sale subject to the applicable provisions of sections 203 and 209 of the FLPMA, as well as regulations at 43 CFR Parts 2710 and 2720. The sale disposal is carried out in accordance with section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000 (FLTFA) (43 U.S.C. 2304), in which the proceeds from the sale of the lands will be deposited into the Federal Land Disposal account.

Consistent with FLPMA section 203, the tract of public land may be sold as a result of approved land use planning if the sale of the tract meets the disposal criteria.

The subject parcel is identified as suitable for disposal in the BLM Redding Resource Management Plan (RMP) approved July 27, 1993. The identified land is not needed for any Federal purpose.

This sale also meets the criteria found in Title 43 CFR 2710.0–3(a)(2) which states ''Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development which cannot be achieved prudently or feasibly on lands other that public lands and which outweigh other public objectives and values, including, but not limited to recreation and scenic values, which would be served by maintaining such tract in Federal ownership.''

The disposal (sale) of lands also meets the criteria found under 43 CFR 2710.0–3(a)(3) where ''such a tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency''.

BLM regulations at 43 CFR 2711.3–3(a) provide: ''Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale''.

The BLM Redding Field Manager has determined that a non-competitive (direct sale) will be in the best interest of the public in facilitating overall administration of public lands. The FLPMA authorized the use of direct sale of public lands to recognize public policies by giving preference to users such as the adjoining landowners. The BLM parcel is a small uneconomic remnant that is surrounded by private land owned by the McCulloughs in a developing subdivision.

The potential buyer of the parcel will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

Conveyance of the available mineral interests pursuant to Section 209 of the FLPMA would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, if issued, will be subject to the following terms, conditions and reservations: A reservation to the United States for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

No representation, warranty or covenant of any kind, express or implied, will be given or made by the United States, its officers or employees, as to access to or from the above described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition or its past, present or potential uses, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable Federal, State, any local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The environmental assessment and approved appraisal report covering the proposed sale are available for review at

the BLM, Redding Field Office, Redding, California.

On December 7, 2007 the above described land will be segregated from appropriations under the public land laws, including the mining laws, except the sale provision of the FLPMA. The segregative effect will terminate upon issuance of a patent, publication in the December 7, 2007 of a termination of the segregation, or October 23, 2009, unless extended by the BLM California State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The public land will not be offered for sale until December 7, 2007 at the appraised fair market value.

Public Comments: Interested parties and the general public may submit written comments to the BLM Redding Field Office at the address above. Comments transmitted via e-mail, facsimile, or telephone comments will not be accepted. Comments, including names and street addresses of respondents, will be available for public review in the BLM Redding Field Office during regular business hours, except holidays. The classification of the land described in this Notice will become effective December 24, 2007.

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 your can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments, including names and street address of respondents, will be available for public review at the BLM Redding Field Office during regular business hours, except holidays.

Any adverse comment regarding the proposed sale will be reviewed by the California State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2741.5)

Dated: October 16, 2007.

Steven W. Anderson,

Redding Field Office, Manager (CA–360).

[FR Doc. E7–20811 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0077]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Recording and Reporting Occupational Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

DATES: Comments must be submitted (postmarked, sent, or received) by December 24, 2007.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0077, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0077). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Rex Tingle at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Rex Tingle at the Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1926 or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651, *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act and requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The OSH Act and 29 CFR part 1904 prescribe that certain employers maintain records of work-related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention

activities to provide employees a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country. The data also provides information to employers and employees on the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace. OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR 1904. That approval will expire on February 29, 2008, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and seeks public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses.

The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 3,306,650 to 3,072,980 hours for a total reduction of 233,670 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176.

Affected Public: Business or other for-profit; farms; not-for-profit institutions; State and local government.

Cite/Reference/Form/etc.: 29 CFR part 1904; OSHA Form 300; OSHA Form 300A; OSHA Form 301.

Number of Respondents: 1,541,900.

Frequency: On occasion; annually.

Average Time per Response: 2 hours to complete forms based on the information required.

Estimated Total Burden Hours: 3,072,980.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0077). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on October 18, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–20805 Filed 10–22–07; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2007–10]

Cable Statutory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of final specialty station list.

SUMMARY: The Copyright Office is publishing a final list of stations listed in affidavits sent to the Copyright Office in which the owner or licensee of the station attests that the station qualifies as a specialty station in accordance with the Federal Communications Commission's (FCC) definition of specialty station in effect on June 24, 1981. The list shall be used to verify the specialty station status of those stations identified as such by cable systems on their semi–annual statements of account.

EFFECTIVE DATE: January 1, 2008

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Under the cable statutory license, section 111 of title 17, United States Code, a cable operator may carry the signal of a television station classified as a specialty station at the base rate rather than at the higher 3.75% rate that is incurred for the carriage of a non–permitted signal. 37 CFR 256.2(c). Specialty station status is determined by reference to the former regulations of the Federal Communications Commission (FCC) which defined a specialty station as ''a commercial television broadcast station that generally carries foreign–language, religious, and/or automated programming in one–third of the hours of an average broadcast week and one–third of the weekly prime–time hours.'' 47 CFR 76.5(kk) (1981). The FCC no longer determines whether a station qualifies as a specialty station; however, the Copyright Office updates the list periodically, because the list remains relevant to the cable statutory license scheme.

The Copyright Office published its first specialty station list in 1990 under a procedure which allowed the owner of the station to file an affidavit with the Office attesting to the fact that the station's programming comports with the 1981 FCC definition, and hence, qualifies it as a specialty station. 55 FR 40021 (October 1, 1990). The Office agreed at that time to periodically update the list.

Accordingly, on February 8, 2007, the Copyright Office published a notice asking the owner, or a valid agent of the owner, to file a sworn affidavit with the Copyright Office stating that the station's programming satisfies the FCC's former requirements for specialty station status. 72 FR 6008 (February 8, 2007).

On June 15, 2007, the Office published a notice listing the sixty–one broadcast stations for which the owner or licensee of the station had filed the requested affidavit. 72 FR 33251 (June 15, 2007). In the notice, the Office also requested that any party objecting to any claim to specialty station status submit comments to the Office stating his or her objections. No comments or objections were filed with the Office.

Since the publication of the initial list, the Office has received one additional affidavit, attesting to the specialty station status of the identified station. Because this station was not listed in the earlier published list, the station has been identified with an asterisk (*) in the final list. Any interested party may file an objection to a newly listed station or to any other late–filed affidavit, and the objection shall be filed together with the corresponding affidavit. All affidavits and related comments or objections shall be kept on file in the Licensing Division of the Copyright Office.

The final list of specialty stations, published herein, shall be effective January 1, 2008, for the accounting period 2008/1 and thereafter. Copyright Office licensing examiners shall refer to the final annotated list in examining a statement of account where a cable system operator claims specialty station status for a particular station. If a cable system operator claims specialty station status for a station not on the published final list, the examiner determines whether the owner of the station has filed an affidavit since publication of the list.

List of Specialty Stations: Call Letter and Cities of License

KBLN, Grants Pass, OR
KAKW, Kileen, TX
KTFO–CA, Austin, TX
KDTV(TV), San Francisco, CA
KDTV–CA, Santa Rosa, CA
KFTV(TV), Hanford, CA
KMEX–TV, Los Angeles, CA
KNIC–TV, Blanco, TX
KTVW–TV, Phoenix, AZ
KTVW–CA, Flagstaff, AZ
KUTH(TV), Provo, UT
KUVE–TV, Green Valley, AZ
KUVE–CA, Tuscon, AZ
KUVN–TV, Garland, TX
KUVN–CA, Fort Worth, TX
KUVS–TV, Modesto, CA
KWEX–TV, San Antonio, TX
KXLN–TV, Rosenberg, TX
WGBO–TV, Joliet, IL
WFDC–TV, Arlington, VA
WLTV(TV), Miami, FL
WHQS–TV, Cleveland, OH
WUVG–TV, Athens, GA
WTNC–LP, Durham, NC
WUVC–TV, Fayetteville, NC
WUVP–TV, Vineland, NJ
WXTV(TV), Paterson, NJ
K48GX, Tuscon, AZ
KABE–LP, Bakersfield, CA
KFPH–TV, Flagstaff, AZ
KFPH–CA, Phoenix, AZ
KFSF–TV, Vallejo, CA
KFTH–TV, Alvin, TX
KFTR–TV, Ontatio, CA
KFTU–TV, Douglas, AZ
KFTU–CA, Tuscon, AZ
KSTR–TV, Irving, TX
KTFD–TV, Boulder, CO
KTFF–TV, Portersville, CA
KTFF–LP, Fresno, CA
KTFK–TV, Stockton, CA
KTFQ–TV, Albuquerque, NM
WAMI–TV, Hollywood, FL
WFTT–TV, Tampa, FL
WFTY–TV, Smithtown, NY
WFUT–TV, Newark, NJ
WOTF–TV, Melbourne, FL
WUTF–TV, Marlborough, MA
WXFT–TV, Aurora, IL
WLII(TV), Caguas, Puerto Rico
WSUR–TV Ponce, Puerto Rico
KBTF–CA, Bakersfield, CA
KFTO–CA, San Antonio, TX
KNIC–CA, San Antonio, TX
KTFB–CA, Bakersfield, CA
WFPA–CA, Philadelphia, PA
K21GC, Safford, AZ
K45DX, Floresville, TX
KZOL–LP, Safford, AZ
K16FB, Globe, AZ
KDOS–LP, Globe, AZ
KTSF, San Francisco, California*

Dated: October 16, 2007.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E7–20829 Filed 10–22–07; 8:45 am]

BILLING CODE 1410–30–S

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 23, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as

directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Permit Application No.:* 2008–023.

Applicant: Gary Hochman, NET Television (PBS), 1800 N. 33rd Street, Lincoln, NE 68503.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter Arrival Heights (ASPA #122), Discovery Hut, Hut Point (ASPA #158), Cape Royds (ASPA 157), Cape Evans (ASPA #155) and Cape Crozier (ASPA 124) for the purpose of videotaping a variety of International Polar Year (IPY) scientific research, landscapes, aerials, and scenery for a broadcast on the PBS science series, NOVA.

Location

Arrival Heights (ASPA #122), Discovery Hut, Hut Point (ASPA #158), Cape Royds (ASPA 157), Cape Evans (ASPA #155) and Cape Crozier (ASPA 124).

Dates: November 10, 2007 to January 20, 2008.

2. *Permit Application No.:* 2008–024.

Applicant: Geoff Haines-Stiles Productions, Inc., POLAR-PALOOZA, 27 Washington Valley Road, Morristown, NJ 07960.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant plans to enter New College Valley, Cape Bird (ASPA #116), Cape Royds (ASPA #121), Backdoor Bay, Cape Royds (ASPA #157), Hut Point (ASPA #158), Cape Crozier (ASPA #124), Tramway Ridge, Mount Erebus (ASPA #130), Canada Glacier, Lake Fryxell, Taylor Valley (ASPA #131), and, Cape Evans (ASPA #155) to videotape scientific research conducted at these sites. The footage will be used in a series of pod casts and web video materials on the International Polar Year (IPY).

Location

New College Valley, Cape Bird (ASPA #116), Cape Royds (ASPA #121), Backdoor Bay, Cape Royds (ASPA #157), Hut Point (ASPA #158), Cape Crozier (ASPA #124), Tramway Ridge, Mount Erebus (ASPA #130), Canada Glacier, Lake Fryxell, Taylor Valley (ASPA #131), Cape Evans (ASPA #155), Dry Valley ASMA 2 and South Pole Station.

Dates: November 12, 2007 to April 20, 2008.

3. *Permit Application No.:* 2008–025.

Applicant: Rennie S. Holt, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Activity for Which Permit Is Requested

Take, enter an Antarctic Specially Protected Area, and import into the U.S.A. The applicant plans to capture up to 35 adult female Southern Elephant seals annually in order to tag, dye mark, take blood samples, weigh, take whisker, muscle and blubber samples, and instrument the animals with SRDL and VHF recorders and transmitters. The information and samples collected will be used to study the foraging behavior and habitat utilization of the Southern Elephant seals.

Location

Cape Shirreff and San Telmo Island, Livingston Island (ASPA #149).

Dates: November 15, 2007 to April 30, 2011.

4. *Permit Application No.:* 2008–027.

Applicant: David Caron, Department of Biological Sciences, University of Southern California, 3616 Trousdale Parkway, Los Angeles, CA 90089–0371.

Activity for Which Permit Is Requested

Take and export from the U.S.A. The applicant wishes to bring *Gemingera sp.* (a cryptophpyta micro alga), originally collected in Antarctica, back to Antarctica for use in experiments to quantify grazing on this cryptophyte. The applicant plans to use this alga in case the naturally occurring alga is not in high abundance in the Ross Sea. Experiments will be conducted onboard the Nathaniel B. Palmer during the Ross Sea cruise.

Location

Ross Sea.

Dates: December 15, 2007 to March 15, 2008.

5. *Permit Application No.:* 2008–028.

Applicant: Craig Tweedie, University of Texas at El Paso, 500 West University Avenue, 226 Biology Bldg., El Paso, TX 79968.

Activity for Which Permit Is Requested

Take and import into the U.S.A. The applicant plans to collect small samples of lichens, moss, algae and vascular planats (*Deschampsia sp.* and *Collobanthus sp.*) to meet the goals of an NSF funded International Polar Year (IPY) education grant. The applicant will provide a unique Antarctic field based education experience to minority majority undergraduate and graduate students and teachers. Students will be instructed in detail how to make collections in a manner that does not affect the aesthetics of the site, does not impact the experience of other tourists visiting Antarctica, and is performed in such a way to minimize the ecological footprint of the collection process.

Location

Various locations in the Antarctic Peninsula as selected by the Expedition Leader onboard the cruise ship.

Dates: November 1, 2007 to December 31, 2007.

6. *Permit Application No.:* 2008–029.

Applicant: David L. Barbeau, Jr., Department of Geological Sciences, University of South Carolina, 701 Sumter St., EWS 617, Columbia, SC 29208.

Activity for Which Permit Is Requested

Enter and Antarctic Specially Protected Area. The applicant plans to enter the Mount Flora region (ASPA #148) to collect bedrock (sandstone and mud rock) to constrain the age of opening of the Drake Passage in order to assess the influence of plate kinematics and ocean gateway development on Antarctic glaciations.

Location

Mount Flora (ASPA #148), Antarctic Peninsula.

Dates: November 1, 2007 to December 31, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–20802 Filed 10–22–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of October 22, 29; November 5, 12, 19, 26, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 22, 2007

Wednesday, October 24, 2007

9:25 a.m.

Affirmation Session (Public Meeting) (Tentative).

a. Final Rule—Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RIN 3150–AH49) (Tentative).

b. Pa'ina Hawaii, LLC (Material License Application) (Tentative).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

9:30 a.m.

Periodic Briefing on New Reactor Issues, Part 1 (Public Meeting) (Contact: Roger Rihm, 301–415–7807).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

1:30 p.m.

Periodic Briefing on New Reactor Issues, Part 2 (Public Meeting) (Contact: Roger Rihm, 301–415–7807).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Week of October 29, 2007—Tentative

There are no meetings scheduled for the Week of October 29, 2007.

Week of November 5, 2007—Tentative

There are no meetings scheduled for the Week of November 5, 2007.

Week of November 12, 2007—Tentative

Wednesday, November 14, 2007

9:30 a.m.

Meeting with Advisory Committee on Nuclear Waste and Materials (ACNW&M) (Public Meeting) (Contact: Antonio Dias, 301–415–6805).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

Week of November 19, 2007—Tentative

There are no meetings scheduled for the Week of November 19, 2007.

Week of November 26, 2007—Tentative

Tuesday, November 27, 2007

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 1 & 3).

1:30 p.m.

Briefing on Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Sandra Talley, 301–415–8059).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov*.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 18, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–5243 Filed 10–19–07; 10:38 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 27, 2007, to October 10, 2007. The last biweekly notice was published on October 9, 2007 (72 FR 57352).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination,

any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact

the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of amendment request: September 24, 2007.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add a reference to Dominion Topical Report DOM–NAF–5, ''Application of Dominion Nuclear Core Design and Safety Analysis Methods to the Kewaunee Power Station (KPS),'' to the list of approved analytical methods. The proposed changes would permit the application of the Dominion nuclear core design and safety analysis methods, including the methodology to perform core thermal-hydraulic analysis to predict critical heat flux and departure from nucleate boiling ratio for the Westinghouse 422 V+ fuel design. The proposed amendment would also: (1) Accommodate the use of the methodologies proposed in DOM–NAF–5, (2) delete one approved analytical method that will no longer be used, and (3) delete date and revision numbers from the current TS list of approved analytical methods, consistent with TS Task Force (TSTF) Change Traveler TSTF–363–A, Revision 0, ''Revise Topical Report References in ITS [improved TSs] 5.6.5, COLR [Core Operating Limits Report],'' dated August 4, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The analysis methods of DOM–NAF–5 do not make any contribution to the potential accident initiators and thus do not increase the probability of any accident previously evaluated. The use of the approved Dominion analysis methodologies will not increase the probability of an accident because plant systems, structures, and components (SSC) will not be affected or operated in a different manner, and system interfaces will not change.

Since the applicable safety analysis and nuclear core design acceptance criteria will be satisfied when the Dominion analysis methods are applied to KPS, the use of the approved Dominion analysis methods does not increase the potential consequences of any accident previously evaluated. The use of the approved Dominion methods will not result in a significant impact on normal operating plant releases, and will not increase the predicted radiological consequences of postulated accidents described in the USAR [updated safety analysis report].

Therefore, the proposed amendment does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The use of Dominion analysis methods and the Dominion statistical design limit (SDL) for fuel departure from nucleate boiling ratio (DNBR) and fuel critical heat flux (CHF) does not impact any of the applicable core design criteria. All pertinent licensing basis limits and acceptance criteria will continue to be met. Demonstrated adherence to these limits and acceptance criteria precludes new challenges to SSCs that might introduce a new type of accident. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the Dominion methods does not involve any alteration to plant equipment or procedures that might introduce any new or unique operational modes or accident precursors.

Therefore, the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Nuclear core design and safety analysis acceptance criteria will continue to be satisfied with the application of Dominion methods. Meeting the analysis acceptance criteria and limits ensures that the margin of safety is not significantly reduced. Nuclear core design and safety analysis acceptance criteria will continue to be satisfied with the application of Dominion methods. In particular, use of VIPRE-D with the proposed SDL provides at least a 95% probability at a 95% confidence level that DNBR will not occur (the 95/95 DNBR criterion). The required DNBR margin of safety for KPS, which is the margin between the 95/95 DNBR criterion and clad failure, is therefore not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Acting Branch Chief: Travis L. Tate.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 28, 2007.

Brief description of amendments: Revision to the Operating License and Technical Specification (TS) 1.0, ''Use and Application, and TS 3.7.17'', ''Spent Fuel Assembly Storage,'' to Revise Rated Thermal Power from 3458 megawatts thermal (MWt) to 3612 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The impacts of the proposed Stretch Power Uprate (SPU) on plant systems, structures, and components (SSCs) were reviewed with respect to SSC design capability, and it was determined that following completion of plant changes to support the SPU, no system, structure, or component would exceed its design conditions or limits. Evaluations supporting those conclusions were performed consistent with proposed Technical Specification changes. Consequently, equipment reliability and structural integrity will not be adversely affected. Control system studies demonstrated that plant response to operational transients under SPU conditions will not significantly increase reactor trip frequency, so there will be no significant increase in the frequency of SSC challenges caused by reactor trip.

New systems are not needed to implement the SPU, and new interactions among SSCs are not created. The SPU does not create new failure modes for existing SSCs. Modified components do not introduce new failure modes relative to those of the components in their pre-modified condition. Consequently, new initiators of previously analyzed accidents are not created.

The fission product barriers—fuel cladding, reactor coolant pressure boundary, and the containment building—remain unchanged. The spectrum of previously analyzed postulated accidents and transients was evaluated, and effects on the fuel, the reactor coolant pressure boundary, and the containment were determined. These analyses were performed consistent with the proposed Technical Specification changes. The results demonstrate that existing reactor coolant pressure boundary and containment limits are met and that effects on the fuel are such that dose consequences meet existing criteria at SPU conditions.

There is no increase in the probability of an accident concerning the potential insertion of a fuel assembly in an incorrect location in the Spent Fuel Pool Region I/

Region II racks as a result of the specified storage patterns. Luminant Power [Luminant Generation Company LLC] has used administrative controls to move fuel assemblies from location to location since the initial receipt of fuel on site. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and in accordance with the Technical Specification for spent fuel rack storage configuration limitations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

New systems are not required to implement the SPU, and new interactions among SSCs are not created. The SPU does not create new failure modes for existing SSCs. Modified components do not introduce failures different from those of the components in their pre-modified condition. Consequently, no new or different accident sequences arise from SSC interactions or failures.

Training will be provided to address SPU effects, and the plant's simulator will be updated consistent with SPU conditions. Operating procedure changes are minor and do not result in any significant changes in operating philosophy. For these reasons, the SPU does not introduce human performance issues that could create new accidents or different accident sequences.

The increase in power level does not create new fission product release paths. The fission product barriers (fuel cladding, reactor coolant pressure boundary, and the containment building) remain unchanged.

The potential for criticality in the spent fuel pool is not a new or different type of accident. The potential criticality accidents have been reanalyzed to demonstrate that the pool remains subcritical.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Structural evaluations performed at SPU conditions demonstrated that calculated loads on affected SSCs remain within their design for all design basis event categories. American Society of Mechanical Engineers (ASME) Code fatigue limits continue to be met.

Fuel performance evaluations were performed using parameter values appropriate for a reload core operating at SPU conditions. Those evaluations demonstrate that fuel performance acceptance criteria continue to be met. Loss of Coolant Accident (LOCA) and non-LOCA safety analyses were performed assuming SPU conditions and consistent with the proposed Technical Specification change. Emergency core cooling system performance was shown to meet the criteria of 10 CFR 50.46. The non-LOCA events identified in the Final Safety Analysis Report (FSAR) Chapter 15 were shown to meet existing acceptance criteria.

The containment building response to mass and energy releases was evaluated assuming SPU conditions. The evaluations showed that temperature and pressure limits were met.

No plant changes associated with the SPU reduce the degree of component or system redundancy. Existing Technical Specification operability and surveillance requirements are not reduced by the proposed changes.

The proposed fuel storage requirements in Technical Specification 3.7.17 will provide adequate margin to assure that the fuel storage array (Region I and Region II) will always remain subcritical by the 5% margin recommended by the Nuclear Regulatory Commission (NRC).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Thomas G. Hiltz.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: August 16, 2007.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) requirements related to control room envelope habitability in TS 3.7.9, ''Control Room Emergency Air Treatment System (CREATS),'' and TS section 5.5, ''Programs and Manuals.'' The changes are consistent with the Nuclear Regulatory Commission approved Industry/Technical Specification Task Force (TSTF)–448, Revision 3. The availability of this TS improvement was published in the **Federal Register** on January 17, 2007, as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without

compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Branch Chief: Mark G. Kowal.

Southern California Edison Company, et al., Docket Nos. 50–362, San Onofre Nuclear Generating Station, Unit 3, San Diego County, California

Date of amendment requests: September 24, 2007.

Description of amendment requests: Approval of the revision to the San Onofre Nuclear Generating Station Unit 3 Technical Specification 5.5.2.15, ''Containment Leakage Rate Testing Program.'' The request is for a one-time extension from the currently approved 15-year interval since the last Integrated Leak Rate Test (ILRT) to a 16-year interval since the last ILRT.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10 CFR 50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 15 years, based on past performance, would be extended on a one time basis to 16 years from the last Type A test. The proposed extension to Type A testing does not involve a significant increase in the probability or consequences of an accident since research documented in NUREG–1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, has found that, generically, very few potential containment leakage paths are not identified by Type B and C tests. The NUREG concluded that reducing the Type A testing frequency to once per twenty years was found to lead to an imperceptible increase in risk. A high degree of assurance is provided through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The most recent Type A test at Unit 3 shows leakage to be below acceptance criteria, indicating a leak tight containment. Inspections required by the American Society of Mechanical Engineers (ASME) Code Section Xl (Subsections IWE and IWL) and maintenance rule monitoring (10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants) are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by Technical Specifications will identify any containment opening such as valves that would otherwise be detected by the Type A tests. These factors show that a Type A test extension will not represent a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10 CFR 50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 16 years, based on past performance, would be extended on a one time basis to 16 years from the last Type A test. The proposed extension to Type A testing cannot create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing (10 CFR 50, Appendix J, Option B, Integrated Leak Rate Testing). The current test interval of 15 years, based on past performance, would be extended on a one time basis to 16 years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG 1493, ''Performance-Based Containment System Leakage Testing Requirements,'' September 1995, generic study of the effects of extending containment leakage testing found that a 20 year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG 1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal [e]ffect on this risk since 95% of the potential leakage paths are detected by Type C testing. Regular inspections required by the American Society of Mechanical Engineers (ASME) Code Section Xl (Subsections IWE and IWL) and maintenance rule monitoring (10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants['']) will further reduce the risk of a containment leakage path going undetected.

Therefore[,] the proposed change does not involve a significant reduction in a margin of safety.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Thomas G. Hiltz.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: September 19, 2007.

Description of amendment request: The proposed amendments would revise various Technical Specification (TS) setting limits and the overtemperature ΔT/overpower ΔT time constants in TS 2.3 and TS 3.7. The methodology for determining the revised setting limits and time constants is in agreement with methods 1 and 2 in ISA–RP67.04, Part II.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises [Limited Safety System Settings] LSSSs and setting limits to ensure that safety limits are not exceeded as a result of normal and expected instrument drift between calibration intervals. The new allowable values (LSSSs and setting limits) were derived to meet the intent of RIS 2006–17, ''NRC Staff Position on the Requirements of 10 CFR 50.36, 'Technical Specifications,' Regarding Limiting Safety System Settings During Periodic Testing and Calibration of Instrument Channels,'' dated August 24, 2006.

The proposed TS change does not change any of the previously evaluated accidents in the Updated Final Safety Analysis Report (UFSAR). Rather, the proposed change ensures that reactor trip system and engineered safety function actuation system actuations occur as designed and within safety limits. In addition, it increases the probability that a malfunctioning instrument channel will be identified.

This change is not considered to represent a significant increase in the probability or

consequences of an accident, since it will decrease the probability of the malfunction of a system, structure or component (SSC), thereby decreasing the probability or consequences of an accident previously evaluated. Specifically, the change is conservative in nature since it will increase the likelihood that a malfunctioning instrument channel will be identified prior to that channel exceeding its safety limit.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises LSSSs and setting limits to ensure that safety limits are not exceeded as a result of normal and expected instrument drift between calibration intervals.

The change is conservative and is intended to ensure the safety analysis is maintained. Specifically, the proposed change is intended to identify a malfunctioning channel prior to its exceeding the safety limit sooner than the current instrument setting methodology. Therefore the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change revises LSSSs and setting limits to ensure that safety limits are not exceeded as a result of normal and expected instrument drift between calibration intervals. The new allowable values (LSSS and setting limits) were derived to meet the intent of RIS 2006–17, ''NRC Staff Position on the Requirements of 10 CFR 50.36, 'Technical Specifications,' Regarding Limiting Safety System Settings During Periodic Testing and Calibration of Instrument Channels,'' dated August 24, 2006.

Channel statistical allowance (CSA) calculations have been performed on channels with an associated safety analysis limit to determine the instrument channel uncertainty. Channel operational test (COT) errors are associated with those portions of the instrument channel tested to verify channel operability. These COT errors were extracted from the CSA to derive an allowable value for the channel. The allowable value is set at a distance from the actual (nominal) trip setpoint equal to the COT errors (with some minimal additional margin on some channels). The overall result is a reduction in the distance between the allowable value and the nominal trip setpoint. Consequently, for a malfunctioning channel, the allowable value will be exceeded with less drift and, therefore, corrective action will be initiated sooner after implementation of the proposed change. This will increase the likelihood that the safety analysis limit for the channel is not exceeded.

The distance between the safety analysis limit and the nominal trip setpoint has not been decreased; therefore, the safety margin has [not been] reduced. The likelihood that a malfunctioning channel is identified prior to exceeding its safety analysis limit has increased. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Evangelos C. Marinos.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 29, 2007.

Brief description of amendment request: The proposed amendments would revise the Catawba Nuclear Station, Units 1 and 2, Technical Specification section 3.5.2.8, and the associated Bases and authorize changes to the Updated Final Safety Analysis Report concerning modifications to the emergency core cooling system sumps.

Date of publication of individual notice in ***Federal Register:*** August 13, 2007, (72 FR 45274).

Expiration date of individual notice: October 15, 2007.

Duke Power Company LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 30, 2007.

Brief description of amendment request: The proposed amendments would revise the Catawba Nuclear Station, Unit 2, Technical Specification Section 5.5.9 concerning modifications to the steam generator tube repair criteria.

Date of publication of individual notice in ***Federal Register:*** August 13, 2007, (72 FR 45272).

Expiration date of individual notice: October 15, 2007.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/*

reading-rm/adams.html. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: May 15, 2006, as supplemented by letters dated October 6, 2006, December 12, 2006, May 31, 2007, July 25, 2007, and September 4, 2007.

Brief description of amendment: The amendment consists of changes to various technical specifications (TSs) regarding steam generator tube integrity. It is based on Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, ''Steam Generator Tube Integrity,'' and is adapted for the custom TSs used at TMI–1.

Date of issuance: September 27, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 261.

Facility Operating License No. DPR–50: Amendment revised the license and the technical specifications.

Date of initial notice in ***Federal Register:*** July 18, 2006 (71 FR 40744). The supplements dated October 6, 2006, December 12, 2006, May 31, 2007, July 25, 2007, and September 4, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2007.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: May 2, 2007.

Brief description of amendments: Consistent with the Nuclear Regulatory Commission approved Technical Specification Task Force-427, Revision 2, the amendments add a new limiting condition for operation (LCO) 3.0.9, to the TS. LCO 3.0.9 will allow the licensee to delay declaring an LCO not met for equipment supported by barriers unable to perform their associated support function for up to 30 days provided that risk is assessed and managed.

Date of issuance: September 27, 2007.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 282 and 259.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 19, 2007 (72 FR 33781). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 27, 2007.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 28, 2006, as supplemented by letter dated September 20, 2007.

Brief Description of amendments: The amendments changed Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil,'' to allow the main fuel oil storage tank to be taken out of service for 14 days for inspection, maintenance, and associated repairs on a one-time basis.

Date of issuance: September 27, 2007.

Effective date: Date of issuance to be implemented within 60 days.

Amendment Nos.: 242 and 270.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: Amendments changed the TSs.

Date of initial notice in ***Federal Register:*** January 3, 2007 (72 FR 148). The supplement dated September 20, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 18, 2007.

Brief description of amendment: The amendment revises the expiration time limit of the reactor coolant system Pressure/Temperature limit graphs in Technical Specifications (TS); revises the adjusted reference temperature for the reactor vessel; and revises the Low Temperature Overpressure Protection (LTOP) arming temperature value specified in TSs. It also makes editorial changes in the use of inequality signs in TSs associated with the LTOP arming temperature in order to make them consistent.

Date of issuance: October 4, 2007.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 235.

Facility Operating License No. DPR–64: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 10, 2007 (72 FR 17946). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: September 25, 2006, as supplemented by letters dated June 15, September 7, September 20, and September 21, 2007.

Brief description of amendment: The amendment provides the Technical Specification (TS) changes and evaluations of the radiological consequences of design-basis accidents for implementation of a full-scope alternative source term methodology.

Date of issuance: September 28, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 226.

Renewed Facility Operating License No. DPR–20. Amendment revised the TSs and the Operating License.

Date of initial notice in ***Federal Register:*** February 27, 2007 (72 FR 8804). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: June 29, 2007, as supplemented by letter dated August 20, 2007.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.5.5, ''Trisodium Phosphate,'' and the associated surveillance requirements by replacing the containment sump buffering agent, trisodium phosphate, with sodium tetraborate decahydrate (STB). In particular, the amendment revises the TS Limiting Condition for Operation (LCO) 3.5.5, with a new weight requirement for STB. The title of the TS section is also changed from ''Trisodium Phosphate'' to ''Containment Sump Buffering Agent and Weight Requirements.''

Date of issuance: October 2, 2007.

Effective date: As of the date of issuance and shall be implemented during the 2007 refueling outage, prior to Mode 3 entry following refueling.

Amendment No.: 227.

Renewed Facility Operating License No. DPR–20. Amendment revised the TS and License.

Date of initial notice in ***Federal Register:*** July 10, 2007 (72 FR 37544). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2007.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of application for amendment: April 18, 2007, as supplemented by letters dated July 16 and September 20, 2007.

Brief description of amendment: The amendment changes Technical Specification (TS) Surveillance Requirement (SR) 3.5.2.9, to make the surveillance consistent with the plant design following planned modifications to the containment sump. Entergy Nuclear Operations' (ENO) modification removes the existing emergency core cooling system (ECCS) suction inlet screens. In lieu of the ECCS suction inlet screens, ENO is installing passive strainer assemblies on the 590 foot elevation of containment. The SR change was necessary to reflect the change in equipment.

Date of issuance: October 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 228.

Renewed Facility Operating License No. DPR–20. Amendment revised the TS and License.

Date of initial notice in ***Federal Register:*** June 19, 2007 (72 FR 33782). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2007.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2 (ANO–2), Pope County, Arkansas

Date of application for amendment: March 30, 2007, as supplemented on June 13, 2007.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.9.12, ''Fuel Storage,'' and its associated tables, figures, and surveillance requirements, TS 5.3, ''Fuel Storage,'' and adds TS 6.5.17, ''Metamic Coupon Sampling Program.'' The ANO–2 TS 3.9.12 is changed to: (1) Support higher fuel assembly uranium-235 (U–235) enrichment; (2) apply the appropriate loading restrictions; and (3) delete the dry cask loading restrictions. ANO–2 TS 5.3.1 b is changed to reflect a different spent fuel pool boron concentration that is needed to assure K-effective remains less than or equal to 0.95. ANO–2 TS 5.3.2a is modified to reflect a higher fuel assembly U–235 enrichment. A new coupon sampling program is added as TS 6.5.17, and TS 4.9.12.d is added to direct performance of the coupon sampling program.

Date of issuance: September 28, 2007.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 273.

Renewed Facility Operating License No. NPF–6: Amendment revised the Renewed Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** May 8, 2007 (72 FR 26175). The supplement dated June 13, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of application for amendment: September 26, 2006, as supplemented by letter dated August 8, 2007.

Brief description of amendment: The amendment revised the technical specifications to allow the AREVA NP Inc. Advanced Mark–BW(A) fuel assemblies to be loaded into the Braidwood Station, Unit 1 core for operating Cycles 15, 16, and 17.

Date of issuance: October 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 145/145.

Facility Operating License Nos. NPF–72 and NPF–77: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** (72 FR 152; January 3, 2007). The August 8, 2007, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2007.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 18, 2006, as supplemented by letter dated, March 26, 2007.

Brief description of amendments: The amendments would modify the technical specifications (TS) to risk-inform requirements regarding selected required action end states consistent with the Nuclear Regulatory Commission (NRC)-approved industry and TS task force (TSTF–423), Revision 0, ''Technical Specifications End States, NEDC–32988–A.'' This TSTF was published in the **Federal Register** on March 23, 2006, as part of the consolidated line item improvement.

Date of issuance: September 27, 2007.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 184/171.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** May 8, 2007 (72 FR 26177).

The March 26, 2007, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2007.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: February 9, 2007, as supplemented by letters dated August 8, August 23, and September 13, 2007.

Brief description of amendment: The amendment will address Generic Safety Issue 191 ''Assessment of Debris Accumulation on PWR Sump Performance,'' by implementing Technical Specification (TS) changes that reflect the use of a new recirculation spray system pump start signal due to a modification to the containment sump screens and replace the use of LOCTIC with the Modular Accident Analysis Program-Design Basis Accident calculation methodology to calculate containment pressure, temperature, and condensation rates for input to the SWNAUA code, which ultimately changes the aerosol removal coefficients used in dose consequence analysis.

Date of issuance: October 5, 2007.

Effective date: As of the date of issuance, and shall be implemented prior to the first entry into Mode 4 coming out of 1R18, which begins September 2007.

Amendment No: 280.

Facility Operating License No. DPR–66: The amendment revised the License and TS.

Date of initial notice in ***Federal Register:*** April 24, 2007 (72 FR 20383). The supplements dated August 8, August 23, and September 13, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2007.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: January 26, 2007, as supplemented by letter dated July 11, 2007.

Brief description of amendments: The amendment conforms the license to reflect the direct transfer of Wisconsin Electric Power Company's ownership interest and the Nuclear Management Company's operating authority for the renewed Facility Operating License, Nos. DPR–24 and DPR–27 for Point Beach Nuclear Plant, Units 1 and 2 (Point Beach) to FPL Energy Point Beach, LLC, as approved by order of the Commission order dated July 31, 2007. Transfer of the licenses will also authorize FPL Energy Point Beach, LLC, pursuant to the general license requirements in 10 CFR 72.210, to store spent fuel in the Independent Spent Fuel Storage Installation at Point Beach.

Date of issuance: September 28, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 228, 233.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** February 28, 2007 (72 FR 9035). The July 11, 2007, supplement contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 2007.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 12, 2006.

Brief description of amendment: The amendment revises the number of fuel assemblies that are allowed to be stored in the spent fuel pool (SFP) from 1879 to 1321 in Technical Specification (TS) 4.3.3 and removes the reference to Type 4 SFP storage racks in TS limiting condition for operation 3.7.13.

Date of issuance: October 1, 2007.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 103.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 7, 2006 (71 FR 65145). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 2007.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: April 28, 2006, and as supplemented by letters dated November 13 and December 22, 2006, May 7, June 15, July 27, and September 11, 2007.

Brief description of amendments: The change increased the minimum allowed boron concentration of the spent fuel pool and allowed credit for soluble boron, guide tube inserts made from borated stainless steel, and fuel storage patterns in place of Boraflex.

Date of issuance: September 27, 2007.

Effective date: As of the date of issuance, and shall be implemented within 180 days of issuance.

Amendment Nos.: Unit 2–213; Unit 3–205.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 6, 2006 (71 FR 32606). The supplemental letters dated November 13 and December 22, 2006, May 7, June 15, July 27, and September 11, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2007.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 13, 2007.

Brief description of amendments: The amendments revised the Technical Specifications for refueling interlocks.

Date of issuance: October 4, 2007.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 253, 197.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** March 27, 2007 (72 FR 14308). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2007.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 12, 2006, as supplemented on December 7, 2006, January 26, 2007, May 8, 2007, August 14, 2007, and August 22, 2007.

Brief description of amendments: The amendments revise the technical specifications to establish 674 feet as the minimum water level of the ultimate heat sink and 87 °F as the maximum supply header temperature of the emergency raw water cooling system.

Date of issuance: September 28, 2007

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 317 and 307.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

*Date of initial notice in **Federal Register:*** August 15, 2006 (71 FR 46939). The supplements dated December 7, 2006, January 26, 2007, May 8, 2007, August 14, 2007, and August 22, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a safety evaluation dated September 28, 2007.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 18, 2007, as supplemented by letters dated July 20, and October 2, 2007.

Brief description of amendments: Amendments revise the licenses to reflect changes in legal name of TXU Generation Company LP to Luminant Generation Company LLC.

Date of issuance: October 9, 2007.

Effective date: As of the date of issuance and shall be implemented within 7 days from the date of issuance.

Amendment Nos.: Unit 1–139; Unit 2–139.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses.

*Date of initial notice in **Federal Register:*** June 13, 2007 (72 FR 32685). The supplemental letters dated July 20 and October 2, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2007.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of October, 2007.

For the Nuclear Regulatory Commission.

John P. Boska,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–20679 Filed 10–22–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: New System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add a new system of records to its inventory of records systems subject the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The new system will be effective without further notice on December 3, 2007, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, *Attn:* Sydney Smith-Heimbrock, Deputy Associate Director, Center for Human Capital Implementation and Assessment, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, 202–606–2430.

SUPPLEMENTARY INFORMATION: The Federal Competency Assessment Tool is a web-based instrument for assessing current proficiency levels for mission critical occupations such as leadership and human resource management. It allows individuals to conduct a competency self assessment and supervisors to assess the competencies of their employees and of the position to determine competency strengths and areas for improvement.

The tool advances agencies' human capital management efforts in accordance with the Human Capital Assessment and Accountability Framework. The tool supports efforts in succession management, competency gap closure, competency development, and recruitment and retention. The tool contains competency models, a proficiency scale, a self and supervisor assessment, suggested proficiency levels for determining gaps, and agency-level access to reports and data.

The U.S. Office of Personnel Management (OPM) intends that the tool will have minimal effect on the privacy of individuals. Individual data from the tool is only available to agency designated points of contact for the tools. Additionally, oversight entities (e.g., Government Accountability Office) may request to review such data. The major reports of the tool provide aggregate data, not individual data. If requested, OPM may disclose aggregate level data from the tool via a governmentwide report. The tool was developed with minimizing the risk of unauthorized access to the system of records as an objective. To ensure the risk is minimized, the tool is hosted on a secure server and offers agency-designated access passwords.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Office of Personnel Management (OPM)/CENTRAL-X

SYSTEM NAME:

Federal Competency Assessment Tool.

SYSTEM LOCATION:

Associate Director, Division for Human Capital Leadership and Merit System Accountability, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001. Records pertaining to voluntary

assessments of designated occupations such as leadership and human resources management are located on a contractor server. Records pertaining to pre-determined competencies (e.g., leadership, human resources management, or performance management) may be forwarded to designated agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal employees who have voluntarily registered and completed the Federal Competency Assessment Tool.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises voluntary self-assessments of competencies against a proficiency scale. The assessments are tied to user accounts, that contain (a) registration information that includes demographic data to help determine participation; (b) self assessment information; and (c) an assessment by the supervisor.

The registration information includes the following mandatory information:

a. Registered users' e-mail address.
b. User determined password.
c. First name.
d. Last name.
e. Department/Agency to which the participant belongs.
f. Pay plan.
g. Grade.
h. Occupational group/family.
i. Occupational Specialty, if applicable.
j. Work role, if applicable (e.g., executive, manager, supervisor, team lead).

The registration information also includes the following optional information:

(a) Work address.
(b) City.
(c) State.
(d) Zip code.
(e) Country.
(f) Work telephone.
(g) Education level.
(h) Estimated years until retirement.
(i) Time in occupation.

Self assessment information includes the employee's determination of his/her proficiency level against a set of competencies using a proficiency scale. The assessment by the supervisor includes the supervisor's determination of a requesting employee's proficiency level and the desired proficiency level of the position using the same set of competencies and proficiency scale.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. 1103, 1402, and 4117.

Executive Orders 9830 and 13197.

PURPOSE:

The Federal Competency Assessment Tool is a web-based instrument for assessing the proficiency levels of Federal employees in key competencies. The tools allow an individual to conduct a competency self assessment and supervisors to assess the competencies of their employees to determine competency strengths and areas for improvement. Agencies can use the results of the assessments to support their competency gap analyses, succession management, and development efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when OPM becomes aware of an indication of a violation or potential violation of a civil or criminal law or regulation.

2. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. To disclose information to another Federal agency or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding, and such information is deemed by OPM to be arguable, relevant and necessary to the litigation.

4. By the National Archives and Records Administration in records management and inspections.

5. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling description statistics, and making analytical studies to support the function for which the records were collected and maintained.

6. By OPM, in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

7. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

a. OPM, or any component thereof; or
b. Any employee of OPM in his or her official capacity; or
c. Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or
d. The United States, when OPM determines that litigation is likely to affect OPM or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be arguable relevant and necessary to the litigation.

8. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

9. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission.

10. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices of matters before the Federal Service Impasses Panel.

11. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB circular No. A–19.

12. To provide an official of another Federal agency information needed in the performance of official duties related to succession planning, workforce analysis, gap closure, competency development, recruitment and retention.

13. To disclose to a requesting Federal agency, information in connection with the hiring, retention, separation, or retirement of an employee; the issuance

of a security clearance; the reporting of an investigation of an employee; the letting of a contract; the classification of a job; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that OPM determines that the information is relevant and necessary to the requesting party's decision on the matter.

14. To provide individual users the ability to view self entered data on individual competency proficiency levels.

15. To provide reports to agencies on aggregate level data of proficiency levels in identified competencies across the Government.

16. To provide agency specific raw data reports to agencies on individual level data related to proficiency levels in identified competencies.

17. To disclose aggregate level data from the Federal Competency Assessment Tools via a governmentwide report.

18. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a relational database management system hosted on a contractor's Internet server, accessed via a password-restricted system. Duplicate records also exist on magnetic tape back ups.

RETRIEVABILITY:

Designated points of contact from the U.S. Office of Personnel Management and participating agencies can retrieve reports that aggregate the results of individual and supervisor assessments, without specifically identifying individuals. Agencies can request raw data reports that will contain the identity of individuals. An employee can retrieve individual reports (which contain a record of how the individuals assessed themselves, along with how the supervisor assessed the position). All reports are accessed via the Internet through a password-restricted system.

SAFEGUARDS:

These electronic records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Completed verifications are archived to a storage disk nightly and retained on a server for five years. When records are purged from the server, the records are transferred to a CD or other electronic media. Records in electronic media are electronically erased. CD or other electronic media are maintained for five years.

SYSTEM MANAGER AND ADDRESS:

Deputy Associate Director, Center for Human Capital Implementation and Assessment, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager or designee. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact their agency point of contact or the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Name and address of office in which currently and/or formerly employed in the Federal service.

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the agency point of contact or system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Name and address of office in which currently and/or formerly employed in the Federal service.

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. The supervisor of the individual to whom the information pertains, upon that individual's request.

[FR Doc. E7–20797 Filed 10–22–07; 8:45 am]

BILLING CODE 6325–43–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding the following Information Collection Requests (ICR's) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR's describe the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the particular ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and Purpose of Information Collection Request;* Railroad Service and Compensation Reports/System Access Application/Report Certification; OMB 3220–0008.

Under section 9 of the Railroad Retirement Act (RRA) and section 6 of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board (RRB) maintains for each railroad employee, a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the

compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in section 9 of the RRA and section 6 of the RUIA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. Railroad Employers' Reports and Responsibilities are prescribed in 20 CFR 209. The RRB currently utilizes Form BA–3a, *Annual Report of Compensation* and Form BA–4, *Report of Creditable Compensation Adjustments*, to secure required information from railroad employers. Form BA–3a provides the RRB with information regarding annual creditable service and compensation for each individual who worked for a railroad employer covered by the RRA and RUIA in a given year. Form BA–4 provides for the adjustment of any previously submitted reports and also the opportunity to provide any service and compensation that had been previously omitted. Requirements specific to Forms BA–3a and BA–4 are prescribed in 20 CFR 209.8 and 209.9.

Employers currently have the option of submitting the reports on the aforementioned forms, electronically via the Internet utilizing the RRB's Employer Reporting System (ERS) (for Form BA–4 (Internet)), or in like format on magnetic tape cartridges, CD–ROM's and PC diskettes.

The RRB proposes major changes to the information collection. They are intended to streamline the employer reporting process, ensuring more accurate and timely reporting, while eliminating or reducing the employer reporting burden associated with several other RRB information collections.

Form BA–3a will be significantly revised and renamed Form BA–3, Annual Report of Compensation. Revisions to proposed Form BA–3 include the expansion of existing data fields to allow for: The reporting of amounts for Tier I and Tier II compensation greater than $99,999.99 (the annual creditable maximum for Tier I will exceed that amount within the next two years), RUIA daily pay rate amounts of more than $99.99, 4-digit year fields and expansion of the employee's name field. New Items requesting information regarding sick pay and miscellaneous compensation, the employee's current address, maximum benefit RUIA compensation, and employment relationship status for months not worked will be added.

Data fields for proposed Form BA–4 and BA–4 (Internet) will be revised to allow for: The reporting of Tier I and Tier II compensation greater than $99,999.99 (the annual creditable maximum for Tier I will exceed that amount within the next two years), RUIA daily pay rate amounts of more than $99.99, 4-digit year fields and expansion of the employee's name field. New Items providing for the reporting of adjustments to the originally reported Tier I and Tier II amounts, sick pay, miscellaneous compensation, RUIA maximum benefit amounts, and an employee's daily pay rate will be added.

The RRB also proposes the implementation of two additional electronic equivalent methods of submission for Form BA–3 and Form BA–4 information: File Transfer Protocol (FTP) and secure e-mail.

The information collection includes RRB Form BA–12, Application for Employer Reporting Internet Access. Form BA–12 is completed by railroad employers to obtain system access to the RRB's Employer Reporting System (ERS). Once access is obtained, authorized employees may submit reporting forms to the RRB via the Internet. The form determines what degree of access (view/only, data entry/modification or approval/submission) is appropriate for that employee. It is also used to terminate an employee's access to ERS. No changes are being proposed to Form BA–12.

Lastly, the RRB proposes the addition of new Form G–440, Report Specifications Sheet, to the collection. Form G–440 will act as a certification document for various RRB employer reporting forms (Forms BA–3, BA–4, Form BA–6a, BA–6, Address Report (OMB 3220–0005), BA–9, Report of Separation Allowance or Severance Pay (OMB 3220–0173) and BA–11, Report of Gross Earnings (OMB 3220–0132)). It will also be used to record the type of medium the report was submitted on, and as a summary recapitulation sheet for reports filed on paper.

The estimated completion times for Form(s) BA–3, BA–4 and G–440 vary, depending on circumstances and the method of submission. The completion time for Form BA–3 is estimated at 46 hours and 15 minutes per response for electronic submissions to 116 hours and 51 minutes for manual responses. The completion time for Form BA–4 is estimated at 20 minutes for an ERS Internet-based response (BA–4 (Internet)), 60 minutes for an electronic submission (magnetic tape cartridge, CD–ROM, diskette, secure E-mail, FTP) and 75 minutes for a manual response. The completion time for form BA–12 is estimated at 10 minutes when used to terminate system access and 20 minutes when used to obtain system access. The completion time for proposed Form G–440 is estimated at 15 minutes when submitted with a paper form and/or used to file a ''zero'' or ''no employees'' certification, 30 minutes when used as an electronic medium reporting/certification form, and 1 hour and 15 minutes when used as a certification and recapitulation form. Submission of Form BA–3, BA–4, BA–4 (Internet) and G–440 is mandatory. Completion of Form BA–12 is voluntary. It is completed only if an employer wants to submit reports via the Internet. One response is requested of each respondent for all of the forms in the collection. Depending on circumstances and method of submission chosen, multiple responses may be received from a respondent for Form BA–4 and G–440. The annual respondent burden for the information collection is estimated at 7,348 responses and 43,756 hours.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 46251–46253 on August 17, 2007) required by 44 U.S.C. 3506(c)(2). The RRB received comments from the Department of Commerce's, Bureau of Economic Analysis (BEA), strongly supporting the RRB's continued collection of the data on Forms BA–3(a) and BA–4 stating ''these forms are our main data source for key components of BEA's economic statistics''. No other comments were received.

Information Collection Request (ICR)

Title: Railroad Service and Compensation Reports/System Access Application/Report Certification.

OMB Control Number: 3220–0008.

Form(s) submitted: BA–3, BA–4, BA–4(Internet), BA–12, G–440.

Type of request: Revision of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, employers are required to report service and compensation for each employee to update Railroad Retirement Board records for payments of benefits. The collection obtains service and compensation information, information needed to ensure secure system access from employers who voluntarily opt to use the RRB's Internet-based Employer Reporting system to submit reporting forms, and information needed to certify employer reporting transactions.

The burden estimate for the ICR is as follows:

Estimated Annual Number of Respondents: 579.

Total Annual Responses: 7,348.

Total Annual Reporting Hours: 43,756.

2. *Title and Purpose of Information Collection;* Employer Reporting, 3220–0005.

Under section 9 of the Railroad Retirement Act (RRA), and section 6 of the Railroad Unemployment Insurance Act (RUIA), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA and RUIA. To pay benefits due on a deceased employee's earnings records or determine entitlement to, and amount of annuity applied for, it is necessary at times to obtain from railroad employers current (lag) service and compensation not yet reported to the RRB through the annual reporting process. The reporting requirements are specified in 20 CFR 209.6 and 209.7.

The RRB currently utilizes Form G–88a.1, Notice of Retirement and Verification of Date Last Worked, Form G–88a.2, Notice of Retirement and Request for Service Needed for Eligibility, and Form AA–12, Notice of Death and Compensation, to obtain the required lag service and related information from railroad employers. Form G–88a.1 is a computer-generated listing sent by the RRB to railroad employers and used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by an employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information. Form G–88a.2 is used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility. Form AA–12 obtains a report of lag service and compensation from the last railroad employer of a deceased employee. This report covers the lag period between the date of the latest record of employment processed by the RRB and the date an employee last worked, the date of death or the date the employee may have been entitled to benefits under the Social Security Act. The information is used by the RRB to determine benefits due on the deceased employee's earnings record. The RRB proposes no changes to Form AA–12, Form G–88a.1 and Form G–88a.2.

In addition, 20 CFR 209.12(b) requires all railroad employers to furnish the RRB with the home addresses of all employees hired within the last year (new-hires). Form BA–6a, Form BA–6 Address Report, is used by the RRB to obtain home address information of employees from railroad employers that do not have the home address information computerized and who submit the information in a paper format. The form also serves as an instruction sheet to railroad employers who can also submit the information electronically by magnetic tape cartridge, CD–ROM, PC diskette, secure E-mail, or via the Internet (Form BA–6a (Internet)) utilizing the RRB's Employer Reporting System (ERS).

The RRB proposes changes to Form BA–6a and BA–6a (Internet). The employee's name field will be expanded. A new item will be added to indicate the date an employee reported the address to his employer. The RRB also proposes the implementation of an additional electronic equivalent method of submission for BA–6a information: File Transfer Protocol (FTP).

Completion of the forms is mandatory. One response is requested of each respondent. The completion time for Form G–88a.1 is estimated at 5 to 20 minutes. Form G–88a.2 is estimated at 5 minutes per response. The completion time for Form AA–12 is estimated at 5 minutes per response. The completion time for Form BA–6a varies, depending on circumstances and the method of submission. An Internet-based BA–6a (Internet) response utilizing the RRB's ERS system is estimated at 12 to 17 minutes. Electronic BA–6a responses submitted via magnetic tape, diskette, CD–ROM, secure E-mail and FTP are estimated at 15 minutes. BA–6a's responses submitted on manual form BA–6a are estimated at 32 minutes. The annual respondent burden for the information collection is estimated at 1,928 responses and 434 hours.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 46251–46253 on August 17, 2007) required by 44 U.S.C. 3506(c)(2). The RRB received comments from the Department of Commerce's, Bureau of Economic Analysis (BEA), strongly supporting the RRB's continued use of Form BA–6a information as data from it (and RRB Form(s) BA–3a and BA–4) is used to prepare BEA estimates of the wages and salaries, employer contributions for employee pension and insurance funds, and personal contributions for government social insurance components of State, and county personal income. No other comments were received.

Information Collection Request (ICR)

Title: Employer Reporting.

OMB Control Number: 3220–0005.

Form(s) submitted: AA–12, G–88a.1, G–88a.2, BA–6a, BA–6a (Internet), BA–6a (E-mail).

Type of request: Revision of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and the amounts of benefits paid.

The burden estimate for the ICR is as follows:

Estimated Annual Number of Respondents: 579.

Total Annual Responses: 1,928.

Total Annual Reporting Hours: 434.

3. *Title and Purpose of Information Collection;* Railroad Separation Allowance or Severance Pay Report; OMB 3220–0173.

Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivors equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The lump-sum is not payable until retirement benefits begin to accrue or the employee dies. Also, section 4 (a–1)(iii) of the Railroad Unemployment Insurance Act provides that a railroad employee who is paid a separation allowance is disqualified for unemployment and sickness benefits for the period of time the employee would have to work to earn the amount of the allowance. The reporting requirements are specified in 20 CFR 209.14.

In order to calculate and provide payments, the Railroad Retirement Board (RRB) must collect and maintain records of separation allowances and severance payments which were subject to Tier II taxation from railroad employers. The RRB uses Form BA–9 to obtain information from railroad employers concerning the separation allowances and severance payments made to railroad employees and/or the survivors of railroad employees. Employers currently have the option of submitting a paper BA–9, or in equivalent format utilizing a magnetic tape cartridge, CD–ROM or PC diskette. Completion is mandatory. One response is required of each respondent.

The RRB proposes changes to Form BA–9. Form BA–9 will be revised to allow for expansion of the employee's name field, 4-digit year fields, and expanded yearly compensation fields for Tier II taxed and Tier II credited amounts. The RRB also proposes the

implementation of two additional electronic equivalent methods of submission for BA–9 information: File Transfer Protocol (FTP) and secure e-mail.

The completion time for Form BA–9 and all electronic equivalent methods of submission is estimated at 76 minutes. The annual respondent burden for the information collection is estimated at 360 responses and 457 burden hours.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 46251–46253 on August 17, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Separation Allowance or Severance Report.

OMB Control Number: 3220–0173.

Form(s) submitted: BA–9.

Type of request: Revision of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: Section 6 of the Railroad Retirement Act provides for a lump-sum payment to an employee or the employee's survivor equal to the Tier II taxes paid by the employee on a separation allowance or severance payment for which the employee did not receive credits toward retirement. The collection obtains information concerning the separation allowances and severance payments paid from railroad employers.

The burden estimate for the ICR is as follows:

Estimated Annual Number of Respondents: 20.

Total Annual Responses: 360.

Total Annual Reporting Hours: 457.

4. *Title and Purpose of Information Collection;* Gross Earnings Report; OMB 3220–0132.

In order to carry out the financial interchange provisions of section 7(c)(2) of the Railroad Retirement Act (RRA), the RRB obtains annually from railroad employer's the gross earnings for their employees on a one-percent basis, i.e., 1% of each employer's railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits ''30.'' The gross earnings are used to compute payroll taxes under the financial interchange.

The gross earnings information is essential in determining the tax amounts involved in the financial interchange with the Social Security Administration and Centers for Medicare and Medicaid Services. Besides being necessary for current financial interchange calculations, the gross earnings file tabulations are also an integral part of the data needed to estimate future tax income and corresponding financial interchange amounts. These estimates are made for internal use and to satisfy requests from other government agencies and interested groups. In addition, cash flow projections of the social security equivalent benefit account, railroad retirement account and cost estimates made for proposed amendments to laws administered by the RRB are dependent on input developed from the information collection.

The RRB utilizes Form BA–11 or its electronic equivalent(s) to obtain gross earnings information from railroad employers. Employers currently have the option of preparing and submitting BA–11 reports on paper, or in like format on magnetic tape cartridges and PC diskettes. Completion is mandatory. One response is requested of each respondent.

The RRB proposes changes to Form BA–11 to allow for 4-digit year fields, to add an additional item for an employer's name and to expand the employee's name field. The RRB also proposes the implementation of two additional electronic equivalent methods of submission for BA–11 information: File Transfer Protocol (FTP) and secure e-mail.

The completion time for Form BA–11 responses submitted via magnetic tape and FTP is estimated at 5 hours. The completion time for BA–11 responses received by paper, diskette, CD–ROM, and secure E-mail is estimated at 30 minutes.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 46251–46253 on August 17, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Gross Earnings Report.

OMB Control Number: 3220–0132.

Form(s) submitted: BA–11.

Type of request: Revision of a currently approved collection.

Affected public: Business or other for-profit.

Abstract: Section 7(c)(2) of the Railroad Retirement Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information is used in determining the amount which would place the OASDHI funds trust in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

The burden estimate for the ICR is as follows:

Estimated Annual Number of Respondents: 168.

Total Annual Responses: 168.

Total Annual Reporting Hours: 107.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collections should be sent to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@RRB.GOV,* and to the Office of Management Budget at *Attn:* Desk Officer for RRB, Fax: (202) 395–6974 or via E-mail to *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–20809 Filed 10–22–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 6–K, OMB Control No. 3235–0116, SEC File No. 270–107.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 6–K (17 CFR 249.306) elicits material information from foreign private issuers of publicly traded securities promptly after the occurrence of specified or other important corporate events so that investors have current information upon which to base investment decisions. The purpose of Form 6–K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6–K takes approximately 8.7 hours

per response and is filed by approximately 12,022 issuers annually. We estimate that 75% of the 8.7 hours per response (6.525 hours) is prepared by the issuer for a total annual reporting burden of 78,444 hours (6.525 hours per response × 12,022 responses).

Written comments are invited on: (a) Whether this 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 12, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20792 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–2, Form ADV–NR, SEC File No. 270–214, OMB Control No. 3235–0240.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The titles for the collections of information are ''Rule 0–2'' (17 CFR 275.0–2) and ''Form ADV–NR'' (17 CFR 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or non-resident managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1.0 hours for an adviser. Based on our experience with these filings, we estimate that we will receive 18 Form ADV–NR filings annually. Based on the 1.0 hours per respondent estimate, the Commission staff estimates a total annual burden of 18 hours for this collection of information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 15, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20793 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17f–1(g) (17 CFR 240.17f–1(g)) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)) (''Act'') Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(g), under the Act, requires that all reporting institutions (i.e., every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies or all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee; (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with

Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are 25,628 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (33 minutes or .55 hours). The total estimated annual burden is 14,095.4 hours (25,628 × .55 hours = 14,095.4). Assuming an average hourly cost for clerical work of $22.00, the average total yearly record retention cost for each respondent would be $12.10. Based on these estimates, the total annual cost for the estimated 25,628 reporting institutions would be approximately $310,099.

Rule 17f–1(g) does not require periodic collection, but does require retention of records generated as a result of compliance with Rule 17f–1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f–1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0–4 of the Act deems such information to be confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: October 17, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20794 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 22, 2007:

A Closed Meeting will be held on Thursday, October 25, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 25, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Resolution of litigation claims; and

Other matters related to enforcement actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: October 18, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20830 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56666; File No. SR–NYSEArca–2007–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Sessions on NYSE Arca Marketplace

October 17, 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 October 11, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has filed the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act [3] and Rule 19b 4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), proposes to delete paragraph (a)(3)(B) from NYSE Arca Equities Rule 7.34, which includes a list of securities eligible to trade in one or more, but not all three, of the Exchange's trading sessions. The Exchange also proposes to amend the language in paragraph (a)(3)(C) to remove the corresponding requirement to post the list of securities on its Web site since the list is obsolete. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 7.34 provides that the NYSE Arca Marketplace shall have three trading sessions each day: An Opening Session (4 a.m. to 9:30 a.m. Eastern Time (''ET'')), a Core Trading Session (9:30 a.m. to 4 p.m. ET), and a Late Trading Session (4 p.m. to 8 p.m. ET). The Core Trading Session for securities described in Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 concludes at 4:15 p.m. ET.[5]

The Exchange has expanded the trading hours for the shares of certain exchange-traded funds (''ETFs'') that trade on the NYSE Arca Marketplace to include all three trading sessions.[6] Accordingly, the Exchange proposes to delete paragraph (a)(3)(B) from NYSE Arca Equities Rule 7.34 since the list of those securities which are eligible to trade in one or more, but not all three, of the Exchange's trading sessions is now obsolete. In addition, the Exchange maintains on its Web site (*http://www.nyse.com*) a list that identifies all securities traded on the NYSE Arca Marketplace that do not trade for the duration of each of the three sessions specified in NYSE Arca Equities Rule 7.34. Therefore, the Exchange proposes to amend the language in paragraph (a)(3)(C) of NYSE Arca Equities Rule 7.34 to remove the corresponding requirement to post such list on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act[9] and Rule 19b–4(f)(1) thereunder,[10] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSEArca–2007–107 and should be submitted on or before November 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20806 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

[5] NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.300, and 8.400 relate to Unit Investment Trusts, Investment Company Units, Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Partnership Units, and Paired Trust Shares, respectively. *See* Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77) (approving amendments to NYSE Arca Equities Rule 7.34 including provisions relating to trading sessions of securities on the NYSE Arca Marketplace).

[6] *See* Securities Exchange Act Release No. 56627 (October 5, 2007) (SR–NYSEArca–2007–75) (expanding the trading sessions of certain ETFs); Securities Exchange Act Release No. 56625 (October 5, 2007) (SR–NYSEArca–2007–73) (amending generic listing standards for investment company units and portfolio depositary receipts to allow for trading of ETFs in all three of the Exchange's trading sessions).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56663; File No. SR–Phlx–2007–74]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Series of U.S. Dollar-Settled Foreign Currency Options Open for Trading

October 16, 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 October 4, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1012, Series of Options Open for Trading, in order to increase the number of permissible cycle month series of U.S. dollar-settled foreign currency options (''FCOs'') that may be opened for trading from three to four.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, 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. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list an additional series of cycle month U.S. dollar-settled FCOs.[5] Currently, Rule 1012(a)(iii)(B) provides that, with respect to any particular class of U.S. dollar-settled FCO, series of options expiring in up to three of the four cycle months designated by the Exchange for that class may be opened for trading simultaneously. Thus, for example, in October the Exchange may have open for trading series of options expiring in the December, March and June cycle months.[6]

As amended, Rule 1012(a)(iii)(B) would permit four cycle months to be open for trading simultaneously. Thus, in the example just used, in October the Exchange would be able to have open for trading series of options expiring in the December, March, June, and September contract months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest, by providing investors another contract month for U.S. dollar-settled FCOs with which they can hedge their foreign currency risks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] As required under Rule 19b–4(f)(6)(iii) under the Act,[11] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 1012(a)(iii)(B) provides that the Exchange may designate one expiration cycle for each class of U.S. dollar-settled FCO. An expiration cycle consists of four calendar months (''cycle months'') occurring at three-month intervals. The Exchange has designated the March, June, September, and December cycle as the expiration cycle for U.S. dollar-settled FCOs.

[6] In addition to the three cycle month expirations, the Exchange currently has open two consecutive month expirations. Thus, at any given time the Exchange has open expirations at one, two, three, six, and nine months. The open series are on three of the months from the March, June, September, December cycle, plus two additional near term months (five months at all times). No change is being proposed to the consecutive month expiration series.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2007–74 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–SR–Phlx–2007–74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–74 and should be submitted on or before November 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–20769 Filed 10–22–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5973]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On October 11, 2007, notice was published on page 57987 of the **Federal Register** (volume 72, number 196) of determinations made by the Department of State pertaining to the exhibition ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani.'' The referenced notice is corrected as to the description of two objects covered, and five additional objects to be included in the the exhibition. 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 corrected and additional objects to be included in the exhibition ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The corrected and additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the corrected and additional exhibit objects at the Arthur M. Sackler Gallery, Washington, DC, from on or about December 1, 2007, until on or about February 24, 2008, at the Institute for the Study of the Ancient World, New York, NY, from on or about March 10, 2008 until on or about June 1, 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: October 16, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–20832 Filed 10–22–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. FHWA–2007–0006]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection

AGENCY: Office of the Secretary (OST).

ACTION: Notice and request for comments.

SUMMARY: The OST invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of a previously approved information collection that 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 December 24, 2007.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2007–0006 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Walterscheid, 720–963–3073, Office of Real Estate Services, Federal Highway Administration, 12300 West Dakota Ave., Room 175, Lakewood, CO 80228, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

OMB Control #: 2105–0508.

Background: This program implements 42 U.S.C. 4602, concerning acquisition of real property and relocation assistance for displaced persons for Federal and federally-assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally in the United States (with certain exceptions). The information collected consists of a certification of residency status from affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will require each person who is to be displaced by a Federal or federally-assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify that he or she is lawfully present in the United States.

Respondents: Federal agencies, State highway agencies, local government highway agencies, and airport sponsors receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons.

Estimated Number of Respondents: 1,460 for file maintenance and 52 state highway agencies for statistical reports.

Estimated Average Burden per Response: The average burden per response is 16.5 hours.

Estimated Total Annual Burden Hours: 25,000 hours.

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: October 17, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–20839 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Second Meeting, Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of a second meeting of RTCA Special Committee 215, Aeronautical Mobile Satellite (Route) Services, Next Generation Satellite Services and Equipment.

DATES: The meeting will be held November 6–7, 2007 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions.

Note: Dress is Business Casual.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 215 meeting. The agenda will include:

- November 6–7:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Review and Approval of Agenda for Second Plenary).
- Review and Approval of Third Meeting Summary (215–026; RTCA Paper No. 245–07/SC215–009).
- Review of Action List and Outstanding Actions.
- FAA Issue Table—Outstanding Actions (215–005).
- NSF–Radio Astronomy Issue (FAA/Iridium).
- DO–262–Reports from Drafting Groups; Review of Drafts.
- Review Outline of DO–262 Normative Appendix.
- Overview/Introductory Sections (M. Meza, Iridium).
- Avionics Subsystem Definitions/Overall Requirements; Avionics Design and Performance (J. Becker, Wingspeed/A. Jabs, ICG).
- Antenna (K. Bomgren, Dayton-Granger).
- Transceiver (M. Meza, Iridium).
- Avionics Equipment Performance Verification (B. Pemberton, ARINC).
- Aircraft Installation Design Requirements (S. Niessner, Aircell).
- Requirements Mapping (M. Meza, Iridium).
- DO–270.
- Discussion of Requirements for Normative Appendix (D. Pitoniak, Continental).
- Closing Plenary Session (Other Business, Schedule Next Plenary Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 2, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–5214 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourteenth Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held November 16, 2007 from 9:30 a.m.–4 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) 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 (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

- November 16:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of Meeting Summary.
- Review of Workgroup Leaders Meetings.
- Workgroup Reports.
- Workgroup 2: Introduction.
- Workgroup 3: Local Identity Management System.
- Workgroup 4: Physical Access Control.
- Workgroup 5: Intrusion Detection Systems.
- Workgroup 6: Video Systems.
- Workgroup 7: Security Operating Center.
- Workgroup 8: Communications Infrastructure.
- Workgroup 9: General Considerations.
- Workgroup 10: Appendices.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Following Meetings).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 15, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–5215 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Desk Reference for Airport Actions

ACTION: Notice of availability.

SUMMARY: On May 18, 2006, the Federal Aviation Administration's Office of Airports (ARP) published a notice in the **Federal Register**. That Notice told interested parties about the availability of the Preamble for FAA Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions (71 FR 29014). In that Preamble, ARP stated that it would prepare a desk reference to provide its staff and interested parties with information on integrating and complying with Federal environmental laws, regulations, and Executive Orders other than NEPA (71 FR 29015).

Today's Notice alerts interested parties that ARP has prepared the desk reference, entitled ''Environmental Desk Reference for Airport Actions.'' Interested parties may review a copy of the document at the following Web site: *http://www.faa.gov/airports_airtraffic/airports/environmental/environmental_desk_ref/.*

ARP will publish changes to the Desk Reference that may be needed to respond to changes in the laws, regulations, or Executive Orders the Desk Reference discusses.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Melisky, Federal Aviation Administration, Office of Airports, Airport Planning and Environmental Division, 800 Independence Ave., SW., Washington, DC 209591; telephone: 202–267–5869. His e-mail is *edward.meliksy@faa.gov.*

Dated: October 12, 2007.

Benito DeLeon,

Director, Office of Airport Planning and Programming. APP–1.

[FR Doc. 07–5224 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–0005]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for changes to a currently approved information collection that 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 (please insert date 60 days from published date).

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2007–0005, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Jensen, 202–366–2048, Office of Planning, Environment & Realty, HEP–2, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Scenic Byway Program.

OMB Control #: 2125–0611.

Form #: FHWA–1569, FHWA–1570, FHWA–1577.

Background: The National Scenic Byways Program was established under the Intermodal Surface Transportation Efficiency Act of 1991, and reauthorized in 1998 under the Transportation Equity Act for the 21st Century. Under the program, the U.S. Secretary of Transportation recognizes certain roads as National Scenic Byways or All-American Roads based on their archaeological, cultural, historic, natural, recreational, and scenic qualities. There are 126 such designated Byways in 44 states, which the FHWA promotes as the America's Byways. It is a voluntary, grassroots program that recognizes and supports outstanding roads while providing resources to help manage the intrinsic qualities within the broader Byway corridor to be treasured and shared. The vision of the FHWA's National Scenic Byways Program is ''to create a distinctive collection of American roads, their stories and treasured places.'' The program's mission is to provide resources to the byway community in creating a unique travel experience and enhanced local quality of life through efforts to preserve, protect, interpret, and promote the intrinsic qualities of designated byways. Title 23, Section 162 of the United States Code describes the creation of the National Scenic Byways Program. This legislation was most recently amended in 2005 upon passage of the Public Law 109–59 Safe, Accountable, Flexible, and Efficient

Transportation Equity Act—A Legacy for Users (SAFETEA–LU). The legislation includes provisions for review and dissemination of grant monies by the U.S. Secretary of Transportation. Grant applications are solicited on an annual basis. Eligible projects are on State designated byways, National Scenic Byways, All-American Roads, or Indian tribe scenic byways. Applications are completed by Federal, State, or local governmental agencies; Tribal governments; and non-profit organizations. The application information is collected electronically via the online Grant system and is used to determine project eligibility. The legislation also includes information about the nomination of scenic byways to become one of America's Byways, a collection of distinct and diverse roads designated by the U.S. Secretary of Transportation. America's Byways include the National Scenic Byways and All-American Roads. Additional information on the National Scenic Byways Program, its grant program, and the nomination process is available at *http://www.bywaysonline.org.*

Grants Respondents: In a typical grants cycle, it is estimated that 400 applications will be received. These applications will be submitted online and reviewed for eligibility through a process involving State Byway or Indian Tribe Scenic Byway Coordinators and FHWA Division Offices before being submitted to FHWA Headquarters for funding consideration. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department), Federal Land Management Agencies, State and local governments, non-profit agencies, and Tribal Governments.

Frequency: Annual.

Estimated Average Burden per Response: 16 hours.

Nominations Respondents: Based on previous nomination cycles, it is estimated that a total of 75 nominations will be received, originating from any local government, including Indian tribal governments, or any private group or individual. Nominations may also originate from the U.S. Forest Service, the National Park Service, the Bureau of Land Management, or the Bureau of Indian Affairs; but such nominations must come through the State Scenic Byways Agency, with the State's concurrence. Roads determined to be appropriate for nomination by the State, an Indian tribe, or a Federal land management agency based on its intrinsic qualities must first be designated as a State scenic byway, an Indian tribe scenic byway, or, in the case of a road on Federal land, as a Federal land management agency byway.

Frequency: Biennial.

Estimated Average Burden per Response: 200 hours.

Estimated Total Annual Burden Hours: 11,400 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 17, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–20838 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Docket Number FRA–2007–28952]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain requirements of 49 CFR Part 232, *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices*, and Part 215, *Railroad Freight Car Safety Standards*. Specifically, UP seeks relief to permit trains received at the United States-Mexican border at Eagle Pass, TX, from the Ferrocarriles Nacionales de Mexico, to move from the interchange point without performing the regulatory tests and inspections specified in Part 215 and section 232.205(a)(1), at that location. UP proposes moving the trains from the border at Milepost 32.5 on the Eagle Pass Subdivision, to the UP yard at Clarks Park, TX, a distance of 4.8 miles, where required FRA inspections will be performed. UP claims that granting of the waiver would expedite train movements and avoid blockages of crossings in Eagle Pass.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–28952) and must be submitted in triplicate to the Docket Clerk, DOT Docket Management Facility, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

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

Issued in Washington, DC, on October 17, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–20831 Filed 10–22–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice: Publication of U.S./EU Exchange of Letters and Terrorist Finance Tracking Program Representations of the United States Department of the Treasury

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department administers the Terrorist Finance Tracking Program (TFTP) as a targeted tool to help track terrorists and their networks. The TFTP utilizes certain financial transaction information provided by the Society for Worldwide Interbank Financial Telecommunication (SWIFT), a Belgium-based cooperative, under compulsion of administrative subpoenas. Discussions among U.S. and European authorities on the operation of the TFTP in the context of their respective counterterrorism efforts and data privacy laws culminated on June 28, 2007, in the ''Terrorist Finance Tracking Program Representations of the United States Department of the Treasury'' and a related exchange of letters between the Treasury Department and the EU. Each of these documents is included as an appendix to this notice.

SUPPLEMENTARY INFORMATION: The Treasury Department initiated the TFTP shortly after the September 11, 2001 attacks as part of an effort to employ all available means to track terrorists and their networks. Under the TFTP, the Treasury Department's Office of Foreign Assets Control (OFAC) periodically issues administrative subpoenas for terrorist-related data to the U.S. operations center of the Society for Worldwide Interbank Financial Telecommunication (SWIFT), a Belgium-based cooperative that operates a worldwide messaging system used to transmit financial transaction information. These subpoenas require SWIFT to provide the Treasury Department with specified financial transaction records maintained by SWIFT's U.S. operations center in the ordinary course of its business.

After public media disclosure of the TFTP in June 2006, concerns were raised in the European Union (EU) about the TFTP and, in particular, the possibility that the Treasury Department might have access to EU-originating personal data through the SWIFT transaction records. Specifically, questions were raised on the TFTP's consistency with obligations under the Data Protection Directive (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data), as well as Member State laws implementing that Directive.

Treasury Department officials subsequently engaged in a series of discussions with, among others, European Commission and Member State representatives on the operation of the TFTP and its conformity with EU data privacy laws. That dialogue culminated on June 28, 2007, in the ''Terrorist Finance Tracking Program Representations of the United States Department of the Treasury'' and a related exchange of letters between the Treasury Department and the EU. For the convenience of the user, each of the documents is being included as an appendix to this notice.

The Representations describe, among other things: (1) OFAC's legal authority to obtain and use the SWIFT data; (2) the controls and safeguards that govern the handling, use, and dissemination of the data; (3) the multiple complementary layers of independent oversight of the TFTP; and (4) the U.S. Government's commitment to ongoing counterterrorism cooperation with the EU.

The appended letter from the Treasury Department presents the Representations to the German Finance Minister, whose country then held the rotating EU Presidency, and to the Vice President of the European Commission responsible for Justice, Freedom and Security, whose duties encompass counterterrorism and privacy matters. The European Union's reply letter acknowledges that the Treasury Department has the authority to subpoena SWIFT data, and also states that once SWIFT and the financial institutions making use of its services have completed the necessary arrangements to respect EC law, in particular through the provision of information that personal data will be transferred to the United States and SWIFT's respecting the U.S. Department of Commerce's ''Safe Harbor'' principles, they will be in compliance with their respective legal responsibilities under European data protection law. In July 2007, SWIFT announced that it had improved the transparency of its contractual documentation relating to the processing of financial messaging data in the context of data protection requirements and that it had joined the Safe Harbor program, which establishes a framework developed with the European Commission on how U.S. organizations can provide ''adequate protection'' for personal data from Europe.

(Authority: E.O. 13224, 66 FR 49079, 3 CFR, 2002 Comp., p. 786)

Dated: September 26, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

BILLING CODE 4811–42–P

Appendix 1—Terrorist Finance Tracking Program Representations of the U.S. Department of the Treasury

Appendix 2—Letter from U.S. Department of the Treasury Regarding the Terrorist Finance Tracking Program

Appendix 3—Reply from European Union to U.S. Department of the Treasury Regarding the Terrorist Finance Tracking Program

Appendix 1

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Terrorist Finance Tracking Program Representations of the United States Department of the Treasury

These representations describe the U.S. Department of the Treasury's Terrorist Finance Tracking Program (TFTP) and, in particular, the rigorous controls and safeguards governing the handling, use, and dissemination of data received from SWIFT under compulsion of administrative subpoenas. These controls and safeguards apply to all persons having access to the SWIFT data, unless otherwise noted in specific examples such as those describing the sharing of lead information derived from the SWIFT data with foreign governments.

The TFTP is grounded in law, carefully targeted, powerful and successful, and bounded by privacy safeguards. It represents exactly what citizens expect and hope their governments are doing to protect them from terrorist threats.

The Treasury Department's Terrorist Finance Tracking Program

Shortly after the September 11, 2001 attacks, as part of an effort to employ all available means to track terrorists and their networks, the Treasury Department initiated the TFTP. Under the TFTP, the Treasury Department has issued administrative subpoenas for terrorist-related data to the U.S. operations center of the Society for Worldwide Interbank Financial Telecommunication (SWIFT), a Belgium-based cooperative that operates a worldwide messaging system used to transmit financial transaction information. These subpoenas require SWIFT to provide the Treasury Department with certain financial transaction records - which are maintained by SWIFT's U.S. operations center in the ordinary course of its business - to be used exclusively for counterterrorism purposes as specified in the following sections.

Fundamental Principles Underlying the TFTP

From its inception, the TFTP has been designed and implemented to meet applicable U.S. legal requirements, to contribute meaningfully to combating global terrorism, and to respect and protect the potential commercial sensitivity of and privacy interests in the SWIFT data held in the United States. The TFTP takes into consideration the potential commercial sensitivity and individual privacy interests in the information it encompasses, and the safeguards detailed in these representations apply irrespective of the nationality or place of residence of the individuals involved. The program contains multiple, overlapping layers of governmental and independent controls to ensure that the data, which are limited in nature, are searched only for counterterrorism purposes and that all data are maintained in a secure environment and properly handled.

All actions by the Treasury Department to obtain specified information from SWIFT's U.S. operations center and to use that information exclusively for investigating, detecting, preventing, and/or prosecuting terrorism or its financing or related follow-on investigations and prosecutions are in accordance with U.S. law. Moreover, the data submitted by SWIFT are not searched to collect evidence or detect activity that is not related to terrorism or its financing, even though such activity in itself may be unlawful. The Treasury Department does not perform searches on SWIFT data, nor can the information be used, in connection with general investigations of tax evasion, money laundering, economic espionage, narcotics trafficking or other criminal activity, unless in a particular instance such activity has been connected to terrorism or its financing.

The data received from SWIFT under compulsion of subpoenas consist of copies of completed financial transaction messages, *i.e*, electronic copies of business records maintained at SWIFT's U.S. operations center in the ordinary course of business. Though this data may undergo some processing in the sense of the very restricted counterterrorism search-and-retrieval capacity described herein, there is no alteration, manipulation, addition or deletion of data within individual transaction messages within the searchable database.

The TFTP has proven to be a powerful investigative tool that has contributed significantly to protecting U.S. citizens and other persons around the world and to safeguarding America's and other countries' national security. The program has been instrumental in identifying and capturing terrorists and their financiers, and it has generated many leads that have been disseminated to counterterrorism experts in intelligence and law enforcement agencies around the world.

Concerns Raised Within the European Union

After the public media disclosure of the TFTP in June 2006, concerns were raised in the EU about the TFTP program and, in particular, the possibility that the Treasury Department might have access to personal data relating to an identified or identifiable natural person contained in financial transactions processed by SWIFT. In particular, questions were raised on the TFTP's consistency with obligations under the Data Protection Directive (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data), as well as Member State laws implementing that Directive.

Nature of SWIFT Data

The financial transaction records provided by SWIFT under compulsion of subpoena may include identifying information about the originator and/or recipient of the transaction, including name, account number, address, national identification number, and other personal data. It would be highly unusual for SWIFT financial records to include "sensitive" data as referred to in Article 8 of Directive 95/46/EC (*i.e.*, personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of the individual).

International Counterterrorist Financing Principles

The SWIFT financial data used in the TFTP is extraordinarily valuable in combating global terrorism and its financing, and in carrying out the government's responsibility to defend the public and safeguard national security and to detect, prevent, investigate and prosecute terrorist crimes.

The international community and national authorities recognize that money is the lifeblood of terrorism. This is reflected in the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism and numerous United Nations resolutions relating to the prevention and suppression of the financing of terrorists acts, particularly United Nations Security Council Resolution 1373. In the United States, the Treasury Department and the Congress established the Office of Terrorism and Financial Intelligence in 2004 to marshal the Department's enforcement and intelligence functions with the twin aims of safeguarding the financial system against illicit use and combating, among others, terrorists and other national security threats. The office's various components gather and analyze information from the law enforcement, intelligence, and financial communities as to how terrorists (and other criminals) earn, move, and store money. These activities enable the office to freeze terrorists' assets, to

combat terrorism generally, and to develop and promote counterterrorist financing standards in the United States and abroad.

These and other initiatives reflect the everyday reality that terrorists depend on a regular cash flow to pay operatives, arrange for travel, train new members, forge documents, pay bribes, acquire weapons, and stage attacks. In order to send money through the banking system, they often provide information that yields the kinds of concrete leads that can advance a terrorism investigation. This is why counterterrorism officials place a high premium on financial intelligence, including that derived from programs such as the TFTP, which has proved to be of inestimable value in combating global terrorism.

This is also why the financial industry is subject to extensive recordkeeping and reporting requirements that are designed to support governmental counterterrorism efforts. Countries throughout the world have mandated this by law, consistent with the recommendations of the Financial Action Task Force. For example, in the United States, the primary statutory authority is the Bank Secrecy Act. In Europe, similar provisions have been implemented into national law consistent with the Third Money Laundering Directive and, most recently, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

Legal Authority to Obtain and Use SWIFT Data

The subpoenas served on SWIFT are based on longstanding statutory authorities and a related Executive order for combating terrorism and its financing. The International Emergency Economic Powers Act of 1977 (IEEPA) authorizes the President of the United States, during a declared national emergency, to investigate bank transfers and other transactions in which a foreign person has any interest. Similarly, the United Nations Participation Act of 1945 (UNPA) authorizes the President, when implementing United Nations Security Council Resolutions, to investigate economic relations or means of communication between any foreign person and the United States.

On September 23, 2001, the President, relying in part on IEEPA and UNPA and citing United Nations Security Council Resolutions targeting the Taliban and Al Qaida, issued Executive Order 13224. In that Order, the President declared a national emergency to deal with the 9/11 terrorist attacks and the continuing and immediate threat of further attacks, and blocked the property of, and prohibited transactions with, persons who commit, threaten to commit, or support terrorism.

For the purposes of Executive Order 13224, section 3 contains the following definition:

> the term "terrorism" means an activity that—
> (i) involves a violent act or an act dangerous to human life, property, or infrastructure; and (ii) appears to be intended—
> (A) to intimidate or coerce a civilian population;
> (B) to influence the policy of a government by intimidation or coercion; or
> (C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking.

In section 7 of the Order, the President authorized the Secretary of the Treasury Department to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of the Order. He also authorized the Secretary of the Treasury to redelegate any

of these functions to other officers and agencies of the U.S. Government, and directed all agencies of the U.S. Government to take all appropriate measures within their authority to carry out the provisions of the Order. IEEPA and the Order, as implemented through the Global Terrorism Sanctions Regulations, authorize the Director of the Treasury Department's Office of Foreign Assets Control (OFAC) to require any person to furnish financial transaction or other data in connection with an economic sanctions-related investigation. These are the legal authorities under which OFAC issues subpoenas to SWIFT for financial data that are related to terrorism investigations.

Access Control and Computer System Security

The data obtained from SWIFT, consistent with U.S. Government procedures for the handling of information related to the investigation of terrorism and its financing more generally, are subject to strict technical and organizational measures to protect the information against accidental or unlawful destruction, loss, alteration or access. All of the following security measures are subject to independent audit.

The SWIFT data are maintained in a secure physical environment, stored separately from any other data, and the computer systems have high-level intrusion controls and other protections to limit access to the data solely as described herein. No copies of SWIFT data are made, other than for disaster recovery back-up purposes. Access to the data and the computer equipment are limited to persons with appropriate security clearances. Even among such persons, access to the SWIFT data is on a read-only basis and is limited through the TFTP on a strict need-to-know basis to analysts dedicated to the investigation of terrorism and to persons involved in the technical support, management, and oversight of the TFTP.

Extraction and Usage Limited to the Investigation of Terrorism

The TFTP does not involve data mining or any other type of algorithmic or automated profiling or computer-filtering. Multiple layers of strict controls have been built into the TFTP to limit the information collected, to ensure that information is extracted and used only for counterterrorism purposes, and to protect the privacy interests of individuals not connected with terrorism or its financing. These overlapping safeguards continuously narrow and significantly restrict access to and use of the financial data handled by SWIFT in its day-to-day operations

As a threshold matter, the subpoenas served upon SWIFT are carefully and narrowly tailored to limit the amount of data furnished to the Treasury Department. SWIFT is required to provide only data the Treasury Department believes will be necessary in combating terrorist financing, on the basis of past analyses focusing on message types and geography, as well as perceived threats and vulnerabilities. Additionally, searches are narrowly tailored to minimize the extraction of messages that are not relevant to a terrorism investigation. The data provided by SWIFT are searched to extract only information that is related to an identified, preexisting terrorism investigation. This means that every search that is conducted must specifically cite to and record documented evidence supporting the belief that the target is connected with terrorism or its financing. Each and every search of the SWIFT data under the TFTP is also logged contemporaneously, including such affirmative terrorism nexus required to initiate the search.

As a result of the foregoing safeguards, only a minute fraction (*i.e.*, substantially less than one percent) of the subset of the SWIFT messages furnished to the Treasury Department has been actually accessed, and only because those messages have been directly responsive to a targeted, terrorism-related search.

Independent Oversight

In addition to the Treasury Department's ongoing exercise of the controls described herein, the TFTP includes multiple complementary layers of independent oversight: by representatives of SWIFT itself, an independent auditing firm, and other independent U.S. government authorities, including the U.S. Congress.

SWIFT and outside auditors it has retained exercise their independent oversight of the TFTP in several mutually complementary ways. First, certain SWIFT representatives have been granted appropriate security clearances to have 24-hour access to the equipment and data and the ability to monitor, in real time and retrospectively, the use of the data to ensure that they are accessed only for counterterrorism purposes. Additionally, these SWIFT representatives may stop any specific search immediately, and even have the ability to shut down the entire system, if they have any concerns.

With respect to the independent, outside auditors, the maintenance, access to, and use of the SWIFT data are subject to continued, periodic independent audit pursuant to carefully delineated protocols consistent with international auditing standards. These audits cover the access control and computer system security safeguards, as well as the limitation of data usage for the investigation of terrorism, as described above. The independent auditors report their conclusions to the audit and finance committee of SWIFT's Board of Directors.

In addition, consistent with U.S. law, various congressional committees have been repeatedly briefed on the TFTP and its operation, and they continue to be briefed on a regular basis. The TFTP has also been the subject of congressional hearings.

Finally, the Privacy and Civil Liberties Oversight Board, which was established pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004, exercises oversight of the TFTP. The Board's mission is to ensure that concerns with respect to privacy and civil liberties are appropriately considered in the implementation of all U.S. laws, regulations, and executive branch policies related to efforts to protect the United States against terrorism. The Board also is responsible for reviewing the terrorism information-sharing practices of executive branch departments and agencies to determine whether guidelines designed to appropriately protect privacy and civil liberties are being followed.

As described below, this extensive, independent oversight works in tandem with restrictive dissemination controls that operate to further restrict access to information derived from the SWIFT financial records and to further protect privacy interests.

Dissemination and Information Sharing

The international community has recognized the critical importance of sharing terrorism information. For example, UNSCR 1373 calls upon all States to find ways to intensify and accelerate the exchange of operational terrorism information and to exchange information to prevent the commission of terrorist acts. Similarly, section 6 of Executive Order 13224 requires the Secretary of the Treasury (and other officials) to make all relevant efforts to cooperate and coordinate with other countries to achieve the objectives of the Order, including preventing and suppressing acts of terrorism, denying financing and financial services to terrorists, and sharing intelligence about funding activities in support of terrorism. It is against this backdrop that information derived from the SWIFT data is appropriately shared with domestic and international partners. As is true with all other facets of the TFTP, this information-sharing is in accordance with U.S. law and subject to a series of safeguards that are designed to protect the

SWIFT data and the privacy interests of the persons to whom it may pertain.

The counterterrorism analysts conducting TFTP searches verify the relevance of any information produced in response to a search before that information is prepared for dissemination through secure channels. The Treasury Department also exercises originator control on any subsequent dissemination of the information, meaning that no recipient is permitted to further disseminate the information without the Treasury Department's express approval. In that regard, as with any unauthorized access to the SWIFT data, any unauthorized disclosure of TFTP-derived information may result in strict disciplinary action or the imposition of civil or criminal penalties.

Information derived from the SWIFT data is shared under strict controls with other U.S. agencies in the intelligence and law enforcement communities to be used exclusively for the purpose of investigating, detecting, preventing, and/or prosecuting terrorism or its financing or related follow-on investigations and prosecutions. This sharing is mandated by the National Security Act, the Intelligence Reform and Terrorism Prevention Act of 2004, and a series of Memoranda of Understanding and related Executive orders. The recipient agencies have the same obligations under U.S. law as the Treasury Department to protect TFTP-derived information. It is also important to note that TFTP-derived information is shared with other U.S. agencies for lead purposes only, which limits its use as affirmative evidence in legal proceedings. Recipient agencies use their own, existing legal authorities to pursue their investigations, including to obtain documentation from other sources that could later be used as evidence in legal proceedings.

These other government agencies also share lead information derived from the SWIFT data with their foreign counterparts for the same purposes, with case-by-case approval from the Treasury Department when justified by national security and law enforcement interests. Many TFTP-derived leads have been shared with foreign authorities, as a general matter without revealing the TFTP as the source.

As for possible public dissemination of SWIFT data, the Treasury Department treats the data as classified, law enforcement sensitive, business confidential information. Accordingly, the Treasury Department does not and would not make the data publicly available unless required to do so by law. In that regard, the Treasury Department will take the position in connection with any administrative or judicial proceeding arising out of a Freedom of Information Act (FOIA) request from third parties for TFTP data, that such records are exempt from disclosure under FOIA.

Redress

The confined nature of the data in an individual SWIFT transaction message, the restricted manner in which certain SWIFT data can be accessed through the TFTP as part of a preexisting investigation of terrorism, and the limits on dissemination as lead information significantly reduce the pertinence of a redress mechanism as part of the TFTP itself. That notwithstanding, appropriate redress for possible misuse by governmental authorities is available under U.S. law.

With regard to an interest of a specific natural person about the use of data and the ability to seek redress for possible misuse, a distinction must be made between the searchable data submitted by SWIFT and messages extracted as part of a targeted terrorism investigation that may serve as the basis for an administrative decision or other governmental action. The data received from SWIFT under compulsion of OFAC subpoenas consist of copies of completed financial transaction messages, *i.e.*, electronic copies of business records maintained at SWIFT's U.S.

facility in the ordinary course of business. Though this data may undergo some processing in the sense of the very restricted counterterrorism search-and-retrieval capacity described herein, there is no alteration, manipulation, addition or deletion of data within individual transaction messages within the searchable database.

Additionally, it is again important to emphasize that the vast majority of the transaction messages provided by SWIFT will never be viewed even by counterterrorism analysts, and thus are not known. Consequently, responding to a privacy-related inquiry from a natural person as to whether information about that individual is included in the database would require, in almost all instances, accessing data that would never be accessed in the normal operation of the TFTP. Such access would be inconsistent with the TFTP requirement that every search have a preexisting nexus to terrorism. Finally, because there is no alteration, manipulation, deletion or addition of the data within the searchable database, there exists no basis to "rectify" any information. Moreover, this would serve to alter the completed business records sought by the OFAC subpoena.

Further processing of the data in an individual transaction message will only occur with respect to the relatively few individual transaction messages directly responsive to a targeted terrorism search that are extracted from the search database. Once extracted and subject to the multiple controls limiting dissemination for counterterrorism purposes, redress for alleged misuse could properly be sought following the appropriate administrative and judicial procedures with respect to the government's acting upon that disseminated information.

The opportunity for redress can be illustrated as follows with respect to an administrative action taken by OFAC to block property under the Global Terrorism Sanctions Regulations that implement Executive Order 13224. A person may seek administrative reconsideration by OFAC of his or her designation as a specially designated global terrorist, whereby that person is given the opportunity to demonstrate that "the circumstances resulting in the designation no longer apply" and to "submit arguments or evidence that the person believes establishes that an insufficient basis exists for the designation." A specially designated global terrorist also may seek judicial review of an agency's decision under relevant provisions of the Administrative Procedure Act. These administrative and judicial avenues to seek redress would apply to any person that is the object of the government decision, regardless of nationality.

Retention Period

The period of time for retention of counterterrorism (and any other) information is a function of numerous, well-established factors, including investigative requirements, applicable statutes of limitation, and regulatory limits for claims or prosecution. The applicability and operation of these and other factors vary from agency to agency, depending on the nature of the agency's specific duties and missions. Accordingly, the retention periods for certain types of terrorism-related information compiled by various agencies depend on the nature of the information and the investigation to which it relates.

Within the U.S. Government, retention and disposition schedules for agency records are approved by the National Archives and Records Administration (NARA) pursuant to various statutes and regulations. All records not deemed to have permanent value must be scheduled for destruction after a specified period of time based on explained administrative, fiscal, and legal values. Factors considered by NARA in approving an agency's record retention periods include applicable statutes of limitation; regulatory limits for claims or prosecution; the potential for fraud; litigation risks and substantive rights; and statutes or regulations granting or limiting a

specific legal right.

With regard to a period of time for retention of TFTP-related information, a distinction again must be made between the data subpoenaed from SWIFT and the extracted data that serve as the basis for an administrative decision or other governmental action.

The Treasury Department will endeavour on an ongoing and at least annual basis to identify and delete all non-extracted data that are not necessary for the execution of purposes referred to in these Representations. Subject to the results of the above-mentioned necessity-based analysis, all non-extracted data received by the Treasury Department from SWIFT after the date of publication of these Representations will be deleted by the Treasury Department not later than five years after receipt by the Treasury Department. Subject to the results of the above-mentioned necessity-based analysis, all other non-extracted data will be deleted not later than five years after the date of publication of these Representations.

Extracted data directly responsive to a targeted terrorism search that have been subjected to the multiple dissemination controls described above for counterterrorism purposes, shall be subject to the retention period applicable to the particular government authority with respect to its particular investigative records.

For example, SWIFT data extracted through the TFTP could be used in the investigation of an individual for possible designation under OFAC's Global Terrorism Sanctions Regulations. Under OFAC's NARA-approved record retention schedule, if a final administrative decision is made to designate an individual (which decision would be made public), the information on which the decision was made will be retained permanently as a written record of the evidence supporting the agency's action. The evidentiary file is retained for possible administrative or judicial review in the event a designation is challenged, and also to support further terrorism investigations. Alternatively, if an investigation is closed without a designation, the investigatory files are subject to on-site destruction no later than one year after the investigation is completed.

Finally, consistent with the above-described U.S. legal framework, the retention period for lead information derived from the TFTP that has been disseminated is governed by the regulations and schedules of the recipient agency or government. For example, any derived information that is used in a Justice Department prosecution will be subject to applicable Justice Department retention periods.

Ongoing Counterterrorism Cooperation

The TFTP has been of great value in fighting terrorism globally, including in Europe. The U.S. Government will continue to judiciously assess whether any information obtained through the TFTP may contribute to the investigation, prevention, combating or prosecution of terrorism or its financing in one or more European Union Member States and, in all appropriate cases, will make that information available to the proper authorities in the most expedient manner.

As a sign of our commitment and partnership in combating global terrorism, an eminent European person will be appointed to confirm that the program is implemented consistent with these Representations for the purpose of verifying the protection of EU-originating personal data. In particular, the eminent person will monitor that processes for deletion of non-extracted data have been carried out.

The eminent person will have appropriate experience and security clearances, and will be appointed for a renewable period of two years by the European Commission in consultation

with the Treasury Department. The eminent person shall act in complete independence in the performance of his or her duties. The eminent person shall, in the performance of his or her duties, neither seek nor take instructions from anybody. The eminent person shall refrain from any action incompatible with his or her duties under this appointment.

The eminent person will report his or her findings and conclusions annually in writing to the Commission. The Commission in turn will report to the European Parliament and the Council as appropriate.

The Treasury Department will give the eminent person access, information and data necessary for the discharge of his or her duties. The eminent person will at all times act in compliance with secrecy and confidentiality requirements imposed by law. Practical details will be agreed with the Treasury Department.

The Treasury Department also will advise the European Union of any material changes to the safeguards set forth in these representations and of the passage of any U.S. legislation that materially affects the statements made in the Representations.

The Treasury Department will endeavor to have these Representations published in the Federal Register and consents to their publication in the Official Journal of the European Union.

Appendix 2

UNDER SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

June 28, 2007

Mr. Peer Steinbrück
Federal Minister of Finance
Federal Republic of Germany

Mr. Franco Frattini
Vice President of the European Commission

Dear Minister Steinbrück and Vice President Frattini:

The United States Department of the Treasury is pleased to transmit to the Council Presidency of the European Union and to the European Commission a set of representations that describe the controls and safeguards governing the handling, use and dissemination of data under the Treasury Department's Terrorist Finance Tracking Program (TFTP).

The TFTP contains multiple, overlapping layers of governmental and independent controls to ensure that the data, which are limited in nature, are used strictly for counterterrorism purposes, that data are retained only for as long as necessary for counterterrorism purposes, and that all data are maintained in a secure environment and properly handled.

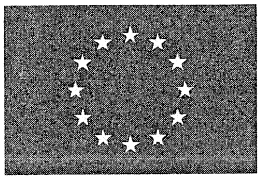
As a sign of our commitment and partnership in combating global terrorism and its financing, we have included in the representations provision for the sharing of further information about the TFTP with an eminent European to be appointed in consultation with the Treasury Department. The task of this person will be to confirm that the program is implemented consistent with the representations for the purpose of verifying the protection of EU-originating personal data. Further practical details for the performance of these oversight responsibilities will be agreed.

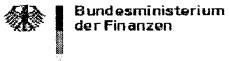
The Treasury Department will endeavor to publish these representations in the Federal Register and consents to their publication in the Official Journal of the European Union.

Sincerely,

Stuart A. Levey

Appendix 3





EU 2007 DE

The European Union acknowledges receipt of your letter of 28th June containing representations regarding the processing and protection of personal data subpoenaed from SWIFT within the United States under the Terrorist Finance Tracking Programme.

We welcome these unilateral representations and the opportunity your Department has given the European Union to have its views and concerns duly reflected in the representations.

Once SWIFT and the financial institutions making use of its services have completed the necessary arrangements to respect EC law, in particular through the provision of information that personal data will be transferred for commercial purposes to the United States and, as regards SWIFT, the respect of the "Safe Harbour" principles, subject to lawful access by the US Treasury Department, SWIFT and the said financial institutions will be in compliance with their respective legal responsibilities under European data protection law.

The representations provide for oversight by an eminent European to be appointed in consultation with the Treasury Department. We will now begin the process of identifying appropriate candidates so that this work can begin in the first semester of 2008. The Commission will make contact with your staff to agree practical details concerning this oversight work.

We thank you for your cooperation in this matter, which shows the strength of our shared commitment to civil liberties, the fight against terrorism and the smooth functioning of the international financial system.

Yours sincerely,

For the Commission

For the Council of the European Union

[FR Doc. 07–5212 Filed 10–22–07; 8:45 am]
BILLING CODE 4811–42–C

Federal Register

Tuesday,
October 23, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Guajón (Eleutherodactylus cooki); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU46

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Guajón (Eleutherodactylus cooki)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat (CH) for the guajón (*Eleutherodactylus cooki*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 260.6 acres (ac) (105.6 hectares (ha)) fall within the boundaries of the CH designation. The critical habitat is located within the municipalities of Humacao, Juncos, Las Piedras, Maunabo, Patillas, San Lorenzo, and Yabucoa, Puerto Rico.

DATES: This rule becomes effective on November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Jorge Saliva, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (telephone 787–851–7297, ext. 224 or facsimile 787–851–7440). Persons who use a telecommunications device for the deaf (TDD) may 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 rule. For additional information on the guajón, please refer to the proposed rule to designate critical habitat published in the **Federal Register** on October 5, 2006 (71 FR 58953) and the final listing determination published on June 11, 1997 (62 FR 31757).

Previous Federal Actions

For more information on previous Federal actions concerning the guajón, refer to the proposed rule to designate critical habitat published on October 5, 2006 (71 FR 58953). On June 19, 2007, we announced the availability of our draft economic analysis (DEA), reopened the public comment period on the proposed rule, and proposed five additional units for designation as critical habitat (72 FR 33715). The public comment period ended on July 19, 2007.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the guajón in the proposed rule published on October 5, 2006 (71 FR 58953) and in our June 19, 2007, notice (72 FR 33715). We also contacted appropriate Federal, Commonwealth, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

During the comment period that opened on October 5, 2006, and closed on December 4, 2006, we received four letters commenting on the proposed critical habitat designation; three from peer reviewers and one from an organization. During the comment period that opened on June 19, 2007, and closed on July 19, 2007, we did not receive any comments directly addressing the initial proposed critical habitat designation, the DEA, or the additional proposed critical habitat units. Comments received from peer reviewers and the organization are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eight knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, or conservation biology principles, and two formal requests for peer review to the Puerto Rico Department of Natural and Environmental Resources and the U.S. Forest Service. We received responses from three peer reviewers.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for guajón and addressed them in the following summary.

Peer Reviewer Comments

1. *Comment:* One peer reviewer questioned why the proposed critical habitat designation did not include some sites that were occupied by the guajón at the time of listing.

Our Response: The proposed rule did not include nine sites where the guajón was reported to be present at the time the species was listed as threatened in 1997 (62 FR 31757). Currently, guajón are not found at these sites and the sites no longer contain the physical and biological features essential to the conservation of the species.

2. *Comment:* One peer reviewer indicated that the drainages that are proposed for designation as critical habitat may be impacted by erosion and sedimentation from nearby agricultural activities.

Our Response: Consistent with the primary constituent elements (PCEs) we have identified for this species and to afford protection to its foraging habitat, we have included within the critical habitat designation a foraging area of 99 feet (ft) (30 meters (m)) extending laterally from each bank of creeks and drainages. We believe that this vegetated foraging ''corridor'' will also act as a buffer zone between the edge of the streambeds of the proposed critical habitat units and the potential farming activities.

3. *Comment:* One peer reviewer stated that the buffer zone should be larger than 99 ft (30 m) (several publications state 164 ft (50 m) as a minimum for amphibians) and that protection should be extended beyond the river basin.

Our Response: Rather than using a general amphibian buffer of 164 ft (50 m), we have included a foraging area along creeks and drainages as a result of the personal observations of Vega-Castillo that the foraging habitat of the guajón, specifically, may extend outside the streambed in vegetated areas as far as 99 ft (30 m) from the water source (Vega-Castillo, pers. obs., 2001).

We have designated habitat sufficient for the conservation of the species. We recognize that this critical habitat designation does not include all of the areas that are occupied by the guajón throughout the species' range. This is consistent with the Act's provision that except in circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the listed species. However, critical habitat designations do not imply that habitat outside the designation is unimportant.

Comments Related to Habitat

4. *Comment:* One commenter stated the following concern: The Service asserts that the total habitat occupied by the guajón covers 69,000 acres (ac) (27,923 hectares (ha)), but then claims only 217 ac (88 ha) are necessary for the guajón's conservation. The commenter wanted to know where and how the Service obtained the figure of 69,000 ac (27,923 ha), and what the figure actually means. The commenter also wanted to know how much land the guajón actually occupies according to Service estimates, the best available science, and how much land consists of suitable,

unoccupied habitat. The commenter states that the proposed rule did not explain why unoccupied areas or areas for dispersal were omitted from critical habitat designation.

Our Response: We originally estimated the species' range to be 69,000 ac (27,923 ha) based on tributaries or water bodies within the range of the guajón that may be occupied by the species. However, to be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must contain features that are essential to the conservation of the species, *i.e.*, the PCEs that are identified in the discussion below. Although 69,000 ac (27,923 ha) constitute the potential range of the species, habitat for the guajón that meets the criterion of containing the PCEs is substantially less. Currently, we do not know how much of this range the guajón occupies or how much of its range is suitable habitat; there have been no comprehensive surveys to determine all areas where the species is found or all areas where suitable habitat occurs. Based on the best scientific information available, we believe we have designated habitat sufficient for the conservation of this species. See also our response to Comment 3.

5. *Comment:* One commenter stated that it is imperative that all recently occupied sites are included in the critical habitat designation and suggested six sites to be added into the critical habitat designation.

Our Response: Each of the six sites recommended for designation by this commenter was visited by Service staff to verify the presence of the guajón and the PCEs. Of the six sites recommended, four sites contained at least one PCE and guajón were present. These sites were known to have been occupied by guajón prior to listing (Drewry 1986; Moreno 1991; Joglar 1992; Joglar *et al.* 1996) and were added as proposed critical habitat units (Unit 13, Unit 14, Unit 15, and Unit 17—see Critical Habitat section) in our June 2007 notice. One site was not included because it did not contain any PCEs and the species was not present at that site, and therefore did not satisfy the statutory definition of occupied critical habitat. The remaining site was determined to be the same as the Emajagua Unit which was already included in the proposed rule as Unit 4. Units 13–17 are included in this final designation.

Comment Related to Corridors

6. *Comment:* One commenter stated that corridors may help reduce or moderate some of the adverse effects of habitat fragmentation by facilitating dispersal of individuals between substantive patches of remaining habitat.

Our Response: The literature suggests that corridors and connectivity between habitat areas are important for movement and dispersal of the species. However, we have no information that this species actually uses corridors, and without information on corridor use and habitat characteristics of corridors we cannot determine that these areas have the features that are essential to the conservation of the species. We believe we have designated habitat sufficient for the conservation of this species. However, this critical habitat designation does not imply that habitat outside the designation is unimportant.

Comment Related to Economics

7. *Comment:* One commenter indicated that the general statement in the proposed rule that critical habitat has significant costs ignores the economic and social benefits of critical habitat designation; these benefits must be considered in any economic analysis of the critical habitat designation, and should be weighed in any determination to exclude specific areas from the critical habitat designation.

Our Response: The published economics literature has documented that social welfare benefits can result from the conservation and recovery of endangered and threatened species. In its guidance for implementing Executive Order 12866, the Office of Management and Budget (OMB) acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the designation of critical habitat in a section 4(b)(2) exclusion analysis.

General Comments

8. *Comment:* One commenter stated that, although it does not impact the guajón proposed rule, the Service continues to make the conclusion that even occupied areas are not critical habitat if ''existing management [of the area] is sufficient to conserve the species.'' If occupied or unoccupied land contains features ''essential to the conservation of the species,'' then it is critical habitat regardless of any ''existing management.''

Our Response: 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. Therefore, if special management considerations or protection of the PCEs is not needed, the area does not meet the definitional requirements for habitat occupied at the time of listing. Unoccupied habitat must be found to be essential for the conservation of the species. The Act does not apply a special management standard for unoccupied habitat. Unless such unoccupied habitat is determined to be essential for the conservation of the species, those areas do not meet the definition of critical habitat.

9. *Comment:* One commenter stated that it would make more sense for the Service to promote the designation of critical habitat instead of actively criticizing and avoiding it. The commenter provides information from Taylor *et al.* (2005), who state that species with critical habitat designated two or more years are less likely to be declining and twice as likely to be recovering that species without it.

Our Response: We agree that the designation of critical habitat can serve positive purposes for the conservation of listed species. However, we also believe it is only one tool for managing and conserving listed species and their habitat. In addition to the designation of critical habitat, we have found in some cases that other conservation mechanisms, including the recovery planning process, section 6 funding to States, section 7 consultations, management plans, Safe Harbor agreements, and other on-the-ground strategies, also contribute to species' conservation. We will continue to work with local partner organizations to develop means for voluntary conservation of habitats for listed species. We believe these other conservation measures often provide incentives to, and in many cases they may be more cost-effective, promote positive working relationships and partnerships with landowners and stakeholders who implement active conservation measures that can thereby provide greater conservation benefits than are provided by the designation of critical habitat designation alone. These

are factors that are appropriate for consideration in a section (4)(b)(2) exclusion analysis.

10. *Comment:* One commenter stated that he finds it disingenuous that the Service continues to claim that critical habitat does not provide additional protection or benefits for endangered and threatened species, especially in light of courts ruling that the Service's position on critical habitat violate congressional intent and the plain language of the ESA.

Our Response: The section entitled ''The Role of Critical Habitat in Actual Practice of Administering and Implementing the Act'' in the proposed rule has not been included in this final rule. We recognize that some benefits to species occur as a result of critical habitat designations as stated in the response to the previous comment. Federal activities outside of designated critical habitat areas are subject to review under section 7 of the Act if those activities may adversely affect the listed species or the PCEs contained within the critical habitat designation. The Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*) requires consideration of the recovery of species. Thus, through our implementation of section 7 of the Act with respect to agency actions affecting critical habitat, such designations may provide benefits to the recovery of a species. We have also found that critical habitat designations serve to educate landowners, State and local governments, and the public regarding the potential conservation value of the areas designated.

Comments From the Commonwealth of Puerto Rico

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments were received from the Commonwealth of Puerto Rico Department of Natural and Environmental Resources (DNER).

11. *Comment:* DNER stated that it was important to include corridors between all known localities for the conservation of this species and recommended that the identification of critical habitat include a landscape analysis to identify areas that maintain the connectivity among different subpopulations.

Our Response: Please refer to our response to Comment 6.

12. *Comment:* DNER proposed adding three new localities to the critical habitat designation.

Our Response: Of the three sites recommended by DNER, only one was located and verified. Attempts to identify the actual location of the other two sites were unsuccessful. The one site that could be located is in the municipality of Juncos and within the geographical area generally occupied by the species at the time of listing; however, we were unable to determine whether this specific locality was actually occupied at the time of listing. The site is currently occupied by the species and contains PCEs needed to support life history functions of the species, such as foraging areas; shelter; sites for breeding; and habitats that are protected from disturbance. We have determined that this site is essential to the conservation of the species because of the representation, redundancy, and resiliency provided by the species at this site in relation to the species as a whole. Further, it contains the PCEs needed to support life history functions of the species, such as foraging areas; shelter; sites for breeding; and habitats that are protected from disturbance. This site was proposed as Unit 16 in our June 19, 2007, notice (72 FR 33715), and is included in this final designation as Unit 16.

Summary of Changes From Proposed Rule

In preparing this final critical habitat designation for the guajón, we reviewed and considered all comments from the public on the proposed designation of critical habitat published on October 5, 2006 (71 FR 58953) and our announcement of the availability of the DEA and proposal of five additional units as critical habitat published on June 19, 2007 (72 FR 33715). Based on peer review, public comments, and biological information received during the public comment periods, the final designation includes the five additional units: El Cielito, Verraco, Cueva Marcela, Ceiba Sur, and Playita (Units 13–17). These five units: (1) Are within the historical range of the species and, with the exception of Ceiba Sur, were occupied at the time of listing, (2) provide elements essential for the long-term persistence of guajón populations (e.g., caves or large plutonic, granitic, or sedimentary boulders that form crevices and grottoes, forested streambeds where guajón may forage, and high humidity) or, in the case of Ceiba Sur, the area has been determined to be essential to the conservation of the species, and (3) are currently occupied. These are the same five additional units that were proposed in the June 19, 2007, revision to the proposal (72 FR 33715).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner Under any circumstances. Where the landowner seeks or requests federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of Section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

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

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate unoccupied areas as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the information developed during the listing process 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.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

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

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied at the time of listing to propose as critical habitat, we consider the primary constituent elements (PCEs) to be those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

The distribution of the guajón is associated with the granitic and plutonic rocks found in the Cuchilla de Panduras mountain range in southeastern Puerto Rico. The habitat of the guajón lies within several life zones as described by Ewel and Whitmore (1973, pp. 20–49). The variables used to delineate any given life zone are mean annual precipitation and mean annual temperature. The two predominant life zones found within guajón habitat are Subtropical Moist and Subtropical Wet forests. Trees up to 65.6 ft (20 m) tall, with rounded crowns, characterize the Subtropical Moist Forest life zone. Many of the woody species are deciduous during the dry season. The abundant moisture of the Subtropical Wet Forest life zone is evident in the character of its vegetation. Epiphytic ferns, bromeliads, and orchids are common, the forests are relatively rich in plant species, and the growth rates of successional trees are rapid. This type of forest contains more than 150 species of trees that form a dark, complete canopy at about 65.6 ft (20 m).

The guajón is found at low and intermediate elevations up to 1,312.3 ft (400 m) above sea level (Burrowes 1997, p. 52; Burrowes *et al.* 2004, p. 145; Rivero 1998, p. 13), where it inhabits caves formed by large boulders of granite rock, and in associated streams with patches of rock without cave systems (Burrowes and Joglar 1999, p. 706; Vega-Castillo 2000, p. 35; C. Ruiz-Lebrón, pers. comm., 2006). Caves are dark inside, although some light enters through gaps formed from the union of two or more boulders. Structurally, the caves are complex, having several chambers of irregular shape and size, and may be at different depths between the surface of the ground and stream (Burrowes 2000, p. 376). The ecological conditions of the caves are relatively uniform: Mean temperature and relative humidity are the same at any given month of the year, and they do not have thermal stratification (Rogowitz *et al.* 1999, p. 179; Rogowitz *et al.* 2001, pp. 542, 545; Burrowes 1997, p. 74).

Vega-Castillo (2000, pp. 36, 40) reported that in streams, the guajón has been found only in patches of rock in the streambed. The streams can be perennial, or ephemeral formed during heavy rain, and are surrounded by secondary forest. Rocks in the streambed form crevices and grottoes. Streams provide a wide variety of retreat sites for the species, such as vegetation over rocks (e.g., moss, ferns, and liverworts) that help conserve humidity. Temperature and relative humidity at streams vary with the months of the year. The foraging habitat of the guajón may extend outside the streambed in vegetated areas as far as 66 to 99 ft (20 to 30 m) from the water source (Vega-Castillo, pers. obs., 2001). In rocky, stream habitat, animals exit their retreat site at dusk to forage actively over rocks and vegetation.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species and the requirements to sustain the essential life history functions of the species, we have determined that PCEs for the guajón are:

(1) Subtropical forest (which may include trees such as *Cecropia schreberiana, Dendropanax arboreus, Guarea guidonia, Piper aduncum, Spathodea campanulata, Syzygium jambos*, and *Thespesia populnea*) at

elevations from 118 to 1,183 ft (36 to 361 m) above sea level.

(2) Plutonic, granitic, or sedimentary rocks/boulders that form caves, crevices, and grottoes (interstitial spaces) in a streambed; and that are in proximity, or connected, to a permanent, ephemeral, or subterranean clear-water stream or water source. The interstitial spaces between or underneath rocks provide microenvironments characterized by generally higher humidity and cooler temperatures than outside the rock formations.

(3) Vegetation-covered rocks (the vegetation typically includes moss, ferns, and hepatics such as *Thuidium urceolatum, Taxilejeunea sulphurea*, and *Huokeria acutifolia*) extending laterally to a maximum of 99 ft (30 m) from each bank of the stream; these rocks provide cover and foraging sites and help conserve humidity.

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

Special Management Considerations or Protection

When designating critical habitat, we assess whether the occupied areas contain features that are essential to the conservation of the species and that may require special management considerations or protections. As discussed in more detail in the proposed critical habitat designation (October 5, 2006; 71 FR 58953) and in the unit descriptions below, we find that the units we are designating have features that may require special management considerations or protection due to threats to the primary constituent elements from road construction, agriculture, development, and fishing with chemicals. All the designated units are adjacent to agricultural lands, roads, trails, homes, or other manmade structures. Special management considerations and protection required include protection of the guajón and its habitat from threats posed by deforestation and earth movement near streams for road construction, agricultural, urban, and rural development. These threats may result in changes in the composition and abundance of vegetation in and around guajón habitat, and degradation of water quality from illegal garbage dumping, disposal of untreated sewage, and agricultural practices (e.g., use of herbicides, fertilizers, or insecticides).

Criteria Used To Identify Critical Habitat

As required by section 4(b) of the Act, we used the best scientific data available in identifying the areas that contain the physical and biological features essential to the conservation of the guajón (see Primary Constituent Elements section) and other areas that are essential to the conservation of this species. We have also reviewed available information that pertains to the habitat requirements of this species. This information included peer-reviewed scientific publications; unpublished reports from state and federal resource agencies and universities; field surveys and reports; information and maps from Puerto Rico Department of Natural and Environmental Resources, the Puerto Rico Planning Board, Puerto Rico Conservation Trust (PRCT), and U.S. Geological Survey topographic maps (scale 1:20,000); recent aerial photos; unpublished data and observations collected by Service biologists during recent field surveys; forest management plans from local agencies; the species' recovery plan; information received from local biologists and researchers who have worked with the species and its habitat; and information gathered during site visits to currently occupied sites. All information was used to determine the guajón's currently occupied range and habitat features needed to support the necessary biological functions of the species.

An area was considered for designation if it either (1) possessed one or more of the PCEs and was occupied by the guajón at the time of listing; or (2) is currently occupied by the guajón and has been determined to be essential to the conservation of the species, based on its ability to support life history functions and population level functions for the guajón, as well as the need to protect known/existing populations.

We selected areas of habitat known to be currently occupied by the species, based on field reports from the Puerto Rico DNER and the Conservation Trust of Puerto Rico, field visits from Service personnel, information from species guajón data cited in the scientific literature. Field reconnaissance was done in all areas for verification of presence/absence. Presence of the guajón was documented by listening for the distinctive call of the males. Based on this review and visual inspection of sites where the guajón was found, we identified 12 units that contain one or more of the PCEs.

During the public comment period on the proposal from October 6, 2006 to December 4, 2006, we received two comments recommending that a total of nine additional sites be included as critical habitat. Each of the nine sites was analyzed using the methods previously described. Five of these sites were proposed for designation in the June 19, 2007, revision to the proposal (72 FR 33715), and are included in this critical habitat designation. Of the other four sites, one was not included because it did not contain at least one PCE and the species was not present, one site was determined to be the same as the Emajagua Unit described in the October 5, 2006, proposed rule (71 FR 58953), and two sites could not be found following the directions provided in the comment. Thus, the designation includes 17 units that encompass approximately 260.6 ac (105.6) ha within the municipalities of Humacao, Juncos, Las Piedras, Maunabo, Patillas, San Lorenzo, and Yabucoa.

Boundaries for each unit were determined based on known guajón sightings, topographical features known to be needed by the species, the range of elevations used by the species, and visual inspection of the units. This habitat includes streams with patches of rocks and associated riparian vegetation that provides foraging habitat for the guajón. We have included a foraging area of 99 ft (30 m) extending laterally form each bank of creeks and drainages, as a result of the personal observations of Vega-Castillo that the foraging habitat of the guajón may extend outside the streambed in vegetated areas as far as 99 ft (30 m) from the water source (Vega-Castillo, pers. obs., 2001).

In summary, we are not designating any areas outside the geographical area presently occupied by the species because none were found to be essential to the conservation of the species, however, we are designating three small units that were not known to have been occupied at the time of listing, but are currently occupied. Units 1, 2, 4, 5, 6, 7, 8, 9, and 10, 13, 14, 15, and 17 constitute our best determination of areas that contain the physical and biological features essential for the conservation of the guajón, while Units 3, 11, 12, and 16 provide habitat we have determined is essential to the conservation of the species. A brief discussion of each critical habitat unit is provided below.

When determining critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this rule developed areas such as buildings or houses, paved areas, and other

structures that lack PCEs for the guajón. 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 were excluded in the text of the proposed rule and are excluded in this final rule. Therefore, Federal actions involving these excluded areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the primary constituent elements in the 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 17 units as critical habitat for the guajón. The critical habitat units described below (see Table 1) constitute our best assessment of areas that currently meet the definition of critical habitat for the guajón.

TABLE 1.—GUAJÓN CRITICAL HABITAT UNITS: OCCUPANCY BY TIME PERIOD (AT THE TIME OF LISTING AND CURRENTLY); AREA OF EACH UNIT; AND OWNERSHIP.

Unit	Occupied at time of listing	Occupied currently	Acres (hectares)	Ownership
(1) Mariana	X	X	23.6 (9.6)	Private.
(2) Montones	X	X	31.1 (12.6)	Private.
(3) Tejas		X	5.2 (2.1)	Private.
(4) Emajagua	X	X	33.0 (13.4)	Private.
(5) Jacaboa	X	X	10.3 (4.2)	Private.
(6) Calabazas	X	X	13.8 (5.6)	Private.
(7) Guayanés	X	X	7.9 (3.2)	Private.
(8) Panduras	X	X	28.6 (11.6)	Private.
(9) Talante	X	X	23.5 (9.5)	Private.
(10) Guayabota	X	X	13.1 (5.3)	Private.
(11) Guayabito		X	17.3 (7.0)	Private.
(12) Guayabo		X	9.8 (3.9)	Private.
(13) El Cielito	X	X	7.84 (3.17)	Private.
(14) Verraco	X	X	8.9 (3.6)	Private.
(15) Cueva Marcela	X	X	7.47 (3.02)	Private.
(16) Ceiba Sur		X	13.92 (5.63)	Private.
(17) Playita	X	X	5.27 (2.13)	Private.
Total			260.6 (105.6)	

Below we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for guajón.

Unit 1: Mariana Unit

Unit 1 consists of approximately 23.6 ac (9.6 ha) located south of Road PR–909, west of Road PR–3, and north of Quebrada Catno within Mariana Ward, Humacao. Unit 1 contains 5,412.8 ft (1,649.8 m) of an unnamed, rocky stream with abundant water, a guajón foraging area extending laterally 99 ft (30 m) from each bank of the stream, and secondary forest on all sides of the stream. This unit was occupied at the time of listing (J. Sustache, DNER database, 1996). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 1 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 2: Montones Unit

Unit 2 consists of approximately 31.1 ac (12.6 ha) in Montones Ward, Las Piedras. It contains 6,941.7 ft (2,115.8 m) of the headwaters of the Valenciano River in the vicinity of PR 917 Km 9.7, and a guajón foraging area of 99 ft (30 m) on each side of the river. This unit was occupied at the time of listing (F. Bird-Picó, DNER database, 1996). Although some sections of this unit do not contain PCE 1, all other PCEs are found within this unit (a rocky stream with abundant water surrounded by secondary forest, and a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees). In some areas of the creek, the water disappears underground and reappears at various intervals. The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 2 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCE 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 3: Tejas Unit

Unit 3 consists of approximately 5.2 ac (2.1 ha) located between Road PR–905 to the east, Road PR–908 to the west, Road PR–9921 to the north, and Road PR–9904 to the south within Tejas Ward, Las Piedras. It contains 1,312 ft (400 m) of an unnamed tributary of the Río Humacao, and a guajón foraging area of 99 ft (30 m) on each side of the tributary. Every PCE is found within this unit (the area contains a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees), and this was confirmed by the Service in March 2006. The Service has not determined whether Unit 3 was occupied at the time of listing, but we have determined that it is essential to the conservation of the guajón. The guajón was listed under the Act primarily due to its highly restricted geographical distribution and its specialized habitat requirements (Joglar 1998, p. 73). Thus, protection of all

existing populations of the guajón is important to the conservation of the species. The habitat of this species is naturally fragmented, and the majority of the known populations are found on private land where increased levels of land development in southeastern Puerto Rico are occurring and threaten to further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions, such as roads, makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895). In light of the foregoing and because it is currently occupied by the species and contains sufficient PCEs to support the life functions of the species, we have determined that Unit 3 is essential to the conservation of the species.

Unit 4: Emajagua Unit

Unit 4 consists of approximately 33.0 ac (13.4 ha) between Quebrada Arenas and Quebrada Emajagua, north of Road PR–901 (on the periphery of an underground tunnel under construction), within Emajagua Ward, Maunabo. It contains three connected, unnamed streams/drainages totaling about 7,400 ft (2,256 m), and a guajón foraging area of 99 ft (30 m) on each side of the streams/drainages. This unit was occupied at the time of listing (R. Thomas, DNER database, 1965). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 4 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3) and pollution of streams caused by human refuse (PCE 2).

Unit 5: Jacaboa Unit

Unit 5 consists of approximately 10.3 ac (4.2 ha) northwest of road PR–758 within Rios Ward, Patillas. It contains 2,334.6 ft (711.6 m) of an unnamed rocky drainage to the Jacaboa River, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was occupied at the time of listing (R. Thomas, DNER database, 1965). Every PCE is found within this unit (it contains a rocky creek with small and large sedimentary rocks and boulders, closed forest canopy over the creek, and closed, mature forest along the shores, including some bamboo stands). The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 5 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams caused by human refuse (PCE 2).

Unit 6: Calabazas Unit

Unit 6 consists of approximately 13.8 ac (5.6 ha) located northeast of road PR–900, between Quebrada Guayabo to the south and Río Guayanés to the north, within Calabazas Ward, Yabucoa. The unit contains a 3,198 ft (975 m) stretch of a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was occupied at the time of listing (J. Montero, DNER database, 1988). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 6 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajó habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 7: Guayanés Unit

Unit 7 consists of approximately 7.9 ac (3.2 ha) northeast of Road PR–900 between Quebrada Guayabo to the south and Río Guayanés to the north, and north of Unit 6, within Calabazas Ward, Yabucoa. It contains 4,265 ft (1,300 m) of an unnamed drainage, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was occupied at the time of listing (J. Montero, DNER database, 1988). Every PCE is found within this unit (it contains a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees). The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 7 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 8: Panduras Unit

Unit 8 consists of approximately 28.6 ac (11.6 ha) to the northwest and southeast of Road PR–3 within Calabazas Ward, Yabucoa. It contains 2,314.1 ft (705.6 m) of an unnamed drainage, a guajón foraging area of 99 ft (30 m) on each side of the drainage, and 18.2 ac (7.4 ha) of lands owned by the PRCT near the top of Cerro La Pandura. This unit was occupied at the time of listing (J. Rivero 1998, DNER database, 1978). Every PCE is found within this unit (it contains a rocky area with medium and large granite boulders, a drainage with closed-canopy forest over the drainage, and closed, mature forest along the edges). The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 8 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3) and pollution of streams caused by human refuse (PCE 2). This area does not currently have a management plan (Fernando Silva, pers. comm., 2006).

Unit 9: Talante Unit

Unit 9 consists of approximately 23.5 ac (9.5 ha) east of Road PR–3 within Calabazas Ward and Talante Ward, Yabucoa. It contains the headwaters of the Talante Creek, five unnamed drainages (totaling about 3,500 ft (1,061 m)), and a guajón foraging area of 99 ft (30 m) on each side of the creek and drainages. About 2.8 ac (1.1 ha) of Unit 9 are within Calabazas Ward, and the remaining 21.6 ac (8.7 ha) are within Talante Ward. This unit was occupied at the time of listing (J. Rivero 1998, DNER database, 1978). Every PCE is found within this unit (it contains drainages with medium and large granite boulders that are surrounded by vines, herbaceous vegetation, shrubs, and trees, and that connect to a small rocky creek; some patches contain big rocks that are completely exposed to the sun or covered with vines). The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 9 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and

abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams caused by human refuse (PCE 2).

Unit 10: Guayabota Unit

Unit 10 consists of approximately 13.1 ac (5.3 ha) northeast of intersection of roads PR–181 and PR–182, and south of the municipal boundary with San Lorenzo, within Guayabota Ward, Yabucoa. It contains a small unnamed creek (about 700 ft (212 m)), and a guajón foraging area of 99 ft (30 m) on each side of the creek. This unit was occupied at the time of listing (J. Rivero, DNER database, 1980; Burrowes 1997). Every PCE is found within this unit. The northwest section of the rocky creek (large and medium granite boulders) is surrounded by closed canopy over the creek, with herbaceous vegetation and some trees along the shore. The southeastern section of the rocky creek has large and medium sedimentary boulders and is surrounded by semi-closed canopy over the creek and shores that are primarily exposed to the sun, with some areas covered with grass. The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of this unit to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 11: Guayabito Unit

Unit 11 consists of approximately 17.3 ac (7.0 ha) south of Road PR–900 and north of the Maunabo boundary, within Guayabota Ward, Yabucoa. It contains 1,232.6 ft (4,042 m) of an unnamed drainage and tributary that connects to Quebrada Guayabo, and a guajón foraging area of 99 ft (30 m) on each side of both the drainage and tributary. This unit was not known to be occupied at the time of listing. The unit is split into a rocky drainage to the west (large, clumped, granite boulders), and a rocky creek to the east (large granite boulders). Both are surrounded by closed canopy over the drainage and creek, and closed mature forest along the shores. Thus, every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in April 2006. The Service has not determined whether Unit 11 was occupied at the time of listing, but we have determined that it is essential to the conservation of the guajón for several reasons. The boulders and closed canopy provide the essential habitat for guajón reproduction and foraging. The guajón was listed primarily due to its highly restricted geographical distribution and habitat requirements (Joglar 1998, p. 73). The habitat of this species is naturally fragmented, and the majority of the known populations are on private land, where the increased levels of land development currently occurring in southeastern Puerto Rico threaten to further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions such as roads makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895).

Unit 12: Guayabo Unit

Unit 12 consists of approximately 9.8 ac (3.9 ha) along Quebrada Guayabo, along and south of Road PR–900 in Guayabota Ward, Yabucoa. It contains 2,247.5 ft (685 m) of the southwesternmost section of Quebrada Guayabo, and a guajón foraging area of 99 ft (30 m) on each side of the stream. Every PCE is found within this unit and presence of the species and PCEs at this site was confirmed by the Service in April 2006. The Service has not determined whether Unit 12 was occupied at the time of listing, but we have determined that it is essential to the conservation of the guajón because it contains the PCEs (a rocky stream surrounded by closed canopy over the stream, and closed mature forest along the shores that provide the habitat essential to the guajón for food, shelter, breeding, foraging, and population expansion), and because it is occupied. Due to the species' limited distribution and the specialized habitat it occupies, protection of all existing populations of the guajón is extremely important to conservation of the species.

The habitat of this species is naturally fragmented, and remaining habitat is threatened by land development which can further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions, such as roads, makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895).

Unit 13: El Cielito Unit

Unit 13 consists of approximately 7.84 ac (3.17 ha), between the municipal boundary of Yabucoa to the north, PR–759 to the south and west, and PR–3 to the east, within Talante Ward, Maunabo. It includes 1,778.15 ft (541.98 m) of a drainage that connects with Quebrada Tumbada, and a guajón foraging area extending laterally 99 ft (30 m) from each side of the drainage. This unit was occupied at the time of listing (Joglar, pers. comm., 2007). It consists of a steep, forested drainage with large granite boulders forming large caves, vegetation-covered rocks, and with high humidity. No surface running water is present, but humidity is maintained through percolation from underground water. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 13 being located on a private farm about 1.2 mi (2 km) to the west of PR–3, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams or underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 14: Verraco Unit

Unit 14 consists of approximately 8.9 ac (3.6 ha), between PR–181 to the north and west, Río Grande de Loíza to the east and south, and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo. It includes three drainages that connect with Quebrada Verraco, and a guajón foraging area extending laterally 99 ft (30 m) from each side of each drainage. This unit was occupied at the time of listing (Burrowes 1997). It is heavily forested and humid, and contains very large granite boulder formations covered with vegetation. No surface running water is present, but humidity is maintained through percolation from underground water. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 14 being located in a private farm about 0.9 mi (1.5 km) from Rd 181, include

changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams/underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 15: Cueva Marcela Unit

Unit 15 is referred to as Cuevas Dona Marcela by Burrowes (1997, 2000) and Burrowes and Joglar (1999), and consists of approximately 7.4 ac (3.02 ha) between PR–181 and Quebrada Verraco to the north, PR–181 to the west, and Río Grande de Loíza and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo. It includes two drainages that are not connected and a guajón foraging area extending laterally 99 ft (30 m) from each side of both drainages. The north drainage is approximately 4.28 ac (1.73 ha), and the south drainage is approximately 3.2 ac (1.3 ha). This unit was occupied at the time of listing (Joglar 1996). Both drainages have large, vegetation-covered granite boulders that create caves within patchy secondary forest. There is no surface running water, but humidity is maintained through puddles and intermittent streams formed during rainy events. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 15 being located on a private farm about 1.2 mi (2 km) from Road 181, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams or underground aquifers caused by human and domestic animal refuse (PCE 2).

Unit 16: Ceiba Sur Unit

Unit 16 consists of approximately 13.92 ac (5.63 ha) between Road PR–9934 to the east, and Road PR–919 to the west within Ceiba Sur Ward, Juncos. It includes 3,123 ft (951.91 m) of an intermittent stream that connects with the Río Valenciano, and a guajón foraging area extending laterally 99 ft (30 m) on each side of the drainage. Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in January 2007. The Service has not determined whether Unit 16 was occupied at the time of listing, but we have determined that it is essential to the conservation of the guajón because it contains the PCEs (the area has high humidity and contains densely forested stream banks, large sedimentary rocks, and vegetation-covered rocks) and because it is occupied. The guajón was listed primarily due to its highly restricted geographical distribution and habitat requirements (Joglar 1998, p. 73). The habitat of this species is naturally fragmented and the majority of the known populations are on private land where the increased levels of land development currently occurring in southeastern Puerto Rico where the species occurs, threatens to further reduce and fragment the species habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions such as roads makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895). Protection of existing populations of the guajón is extremely important due to its limited distribution and the specialized habitat it occupies.

Unit 17: Playita Unit

Unit 17 consists of approximately 5.27 ac (2.13 ha), between PR–900 to the north and east and the municipal boundary of Maunabo to the south, within Calabazas Ward, Yabucoa. It includes 1,208.9 ft (368.47 m) of a forested stream that connect with Río Guayabo, and a guajón foraging area extending laterally 99 ft (30 m) on each side of the drainage. This unit was occupied at the time of listing (Joglar, pers. comm., 2007). It is sparsely forested and humid, and it contains very large, vegetation-covered granite boulder formations. All PCEs are found within this unit. The presence of the species and PCEs at this site was confirmed by the Service in February 2007. Threats that may require special management considerations, due to Unit 17 being located adjacent to private homes and close to an ancillary road to PR–900, include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to use of herbicides, fertilizers, or insecticides, and pollution of the stream caused by human and domestic animal refuse (PCE 2).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot 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 PCEs to be functionally established) to serve its intended conservation role for the species.

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, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the guajón or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the ''Adverse Modification'' Standard

The 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 the guajón. Generally, the conservation role of the guajón 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, 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 the guajón include, but are not limited to:

(1) Activities that would significantly alter the vegetation structure in and around creeks, streams, and drainages. Such activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, development of new roads and trails, and construction of new homes and commercial establishments. The elimination or alteration of vegetation structure could result in habitat fragmentation that may interrupt the connection between populations, alter guajón foraging activities and the availability of foraging resources, reduce the quality of breeding microhabitat (e.g., change in temperature and humidity levels within breeding crevices and caves), and result in direct mortality of individuals through trampling or crushing, or desiccation from sun exposure.

(2) Activities that may alter the natural flow of water. Such activities could include, but are not limited to, stream modifications related to the expansion or maintenance of roads, development of new roads and trails, and construction of new homes and commercial establishments. Alteration of water flow may result in drowning of adults and loss of egg clutches through erosion and increase flash flooding, abandonment of suitable habitat and establishment into less-favorable areas, and reduction of breeding activities (e.g., insufficient or excessive humidity for proper egg development).

(3) Activities that may reduce the quality of water. Such activities could include, but are not limited to, recreational activities within major streams and rivers connecting drainages and tributaries used by the species, agricultural practices (e.g., use of pesticides, herbicides, or fertilizers), and pollution of streams caused by human refuse.

(4) Activities that eliminate or degrade the natural connection between guajón populations. Such activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, development of new roads and trails, and construction of new homes and commercial establishments. These activities may interrupt the connection between existing populations; thus, dispersal and interaction between subpopulations could be affected, restricting gene flow and jeopardizing the integrity of the species' gene pool.

Each of the units designated as critical habitat contains features essential to the conservation of the guajón or is essential to the conservation of the guajón. All units are within the geographic range of the species, thirteen are known to have been occupied by the species at the time of lisitng, and all are likely to be used by the guajón. Federal agencies already consult with us on activities in areas currently occupied by the guajón, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the guajón.

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not

designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the critical habitat designation that have completed an INRMP.

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 based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In this instance, we have determined that the lands within the proposed designation of critical habitat for the guajón are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the guajón, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this proposed critical habitat designation. There are no areas excluded from this final designation based on non-economic impacts.

Economics

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis based on the October 5, 2006, proposed rule (71 FR 58954) plus the five additional units described in our June 19, 2007, notice (72 FR 33715).

The economic analysis considered the potential economic effects of all actions related to the conservation of the guajón, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the guajón in proposed critical habitat areas. The analysis considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also addressed 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 decisionmakers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looked retrospectively at costs that have been incurred since the date this species was listed as threatened (June 11, 1997; 62 FR 31757), and considered those costs that may occur in the 20 years following designation of critical habitat (i.e., 2007–2026).

The final economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the guajón; some of these costs will likely be incurred regardless of whether critical habitat is designated. Over the 20-year period 2007–2026, the draft economic analysis finds that costs associated with conservation activities for the guajón are estimated at $4.34 million in undiscounted dollars, $4.28 million when discounted at 3 percent, and $4.23 when discounted at 7 percent. Annualized future costs are $288,000 using a 3 percent discount rate and $399,000 using a 7 percent discount rate.

Potential future costs are dominated by the expected costs of guajón conservation efforts during road construction, specifically the extension of Puerto Rico Highway 53 between Maunabo and Yabucoa. These costs will be borne by the Commonwealth of Puerto Rico. In 2004, the Puerto Rico Highway and Transportation Authority (PRHTA) began construction of the 5.7-mi (9.1-km) extension, which intersects the Emajagua Unit. The project is slated for completion in the summer of 2008. Anticipated guajón conservation efforts during the highway extension include species monitoring, acquiring land for conservation, constructing an additional bridge to permit stream flow, and installing rocky streambed in box culverts. The PRHTA does not anticipate additional road projects in the future in or near proposed critical habitat.

Because our economic analysis did not identify any disproportionate costs resulting from the designation, we did not consider excluding any areas from this designation of critical habitat for guajón based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **FOR FURTHER INFORMATION CONTACT**) or for downloading from the Internet at *http:// www.fws.gov/ southeast.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (E.O.) 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for the guajón, costs related to conservation activities for the guajón

pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $4.34 million in undiscounted dollars. Discounted future costs are estimated to be $4.28 million ($288,000 annually) at a 3 percent discount rate, or $4.23 million ($399,000 annually) at a 7 percent discount rate. Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for the guajón would not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small 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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed guajón critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the guajón and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of guajón conservation efforts in four categories: (a) Deforestation and earth movement near streams for road construction; (b) agricultural practices (e.g., use of herbicides, fertilizers, or insecticides); (c) urban and rural development; and (d) degradation of water quality from illegal garbage dumping, untreated sewage, and fishing with chemicals. We determined from our analysis that in the economic impacts of the designation are expected to be borne primarily by the Puerto Rico Highway and Transportation Authority, an agency of the Commonwealth of Puerto Rico, during construction of PR Highway 53. However, the government of the Commonwealth does not meet the SBA criteria for a small entity. Consequently, we certify that the designation of critical habitat for the guajón will not result in a significant economic impact on a substantial number of small business entities. Please see the ''Economic Analysis'' section above and the draft economic analysis itself for a more detailed discussion of potential economic impacts.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for guajón is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the draft economic analysis, energy-related impacts associated with guajón conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the guajón, the impacts on nonprofits and small governments are expected to be negligible. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the guajón within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for this species will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating 260.6 ac (105.6 ha) of lands in the municipalities of Humacao, Juncos, Las Piedras, Maunabo, Patillas, San Lorenzo, and Yabucoa, Puerto Rico as critical habitat for the guajón. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for this species does not pose significant takings implications.

Federalism (E.O. 13132)

In accordance with E.O. 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 Commonwealth resource agencies in Puerto Rico. The designation of critical habitat in areas currently occupied by guajón may impose some additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on Commonwealth and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the guajón.

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 Commonwealth or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir.

Ore. 1995), cert. denied 516 S. Ct. 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 Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation and no Tribal lands that are unoccupied areas that are essential for the conservation of the guajón. Therefore, designation of critical habitat for the guajón has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from Jorge Saliva, Boquerón Field Office (see **ADDRESSES**).

Author(s)

The primary author of this package is the Boquerón 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 § 17.11(h), revise the entry for ''guajón'' under ''AMPHIBIANS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Guajón	*Eleutherodactylus cooki.*	U.S.A. (PR)	Entire	T	617	17.95(d)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (d) by adding an entry for ''Guajón (*Eleutherodactylus cooki*)'' in the same order that the species appears in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Guajón (*Eleutherodactylus cooki*)

(1) Critical habitat units are depicted for Humacao, Las Piedras, Maunabo, Patillas, and Yabucoa, Puerto Rico, on the maps below.

(2) The primary constituent elements of critical habitat for the guajón are the habitat components that provide:

(i) Subtropical forest (which may include trees such as *Cecropia schreberiana*, *Dendropanax arboreus*, *Guarea guidonia*, *Piper aduncum*, *Spathodea campanulata*, *Syzygium jambos*, and *Thespesia populnea*) at elevations from 118 to 1,183 ft (36 to 361 m) above sea level;

(ii) Plutonic, granitic, or sedimentary rocks/boulders that form caves, crevices, and grottoes (interstitial spaces) in a streambed, and that are in proximity, or connected, to a permanent, ephemeral, or subterranean clear-water stream or water source. The interstitial spaces between or underneath rocks provide microenvironments characterized by generally higher humidity and cooler temperatures than outside the rock formations; and

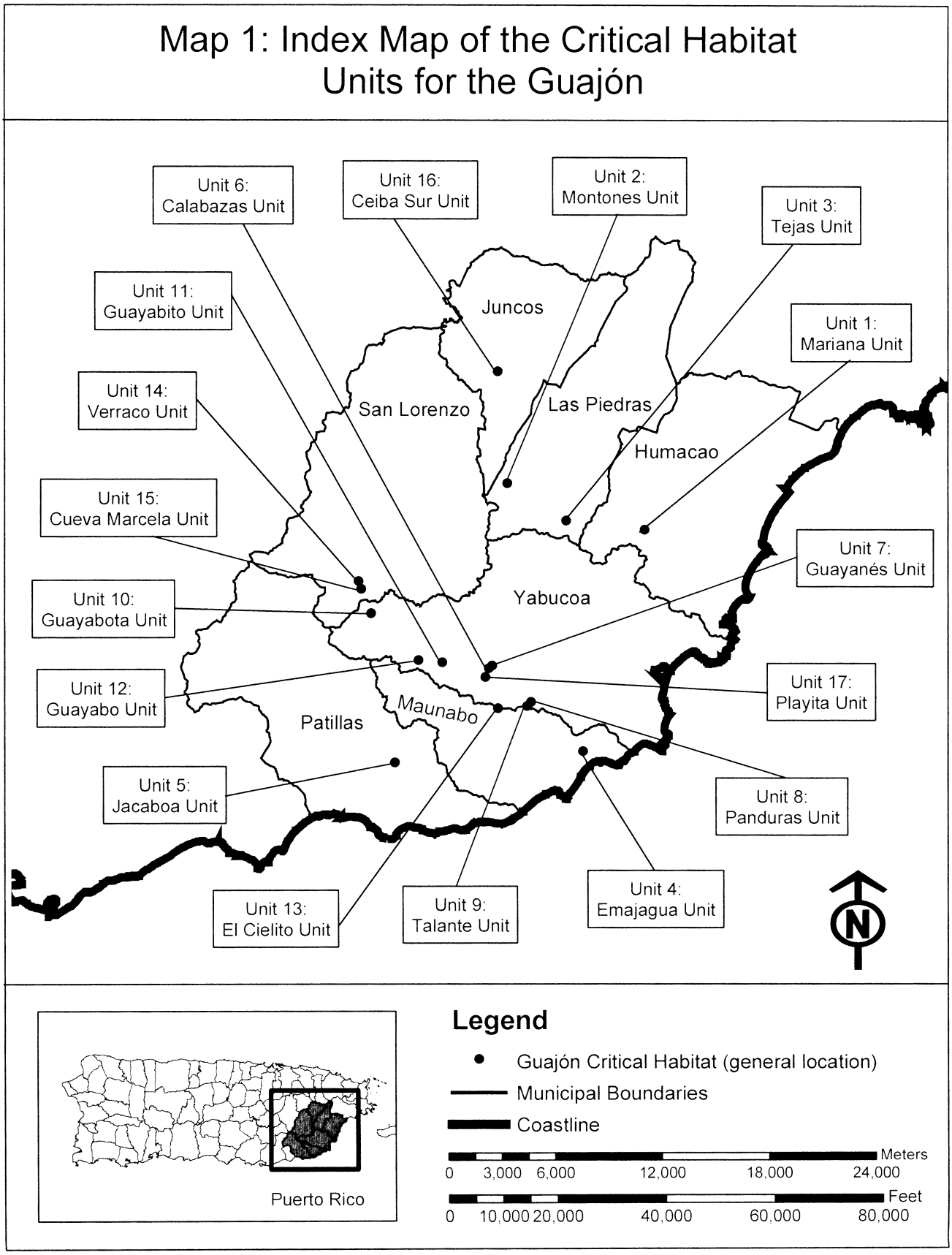
(iii) Vegetation-covered rocks (the vegetation typically includes moss, ferns, and hepatics such as *Thuidium urceolatum*, *Taxilejeunea sulphurea*, and *Huokeria acutifolia*) extending laterally to a maximum of 99 feet (30 meters) on each bank of the stream. These rocks provide cover and foraging sites and help conserve humidity.

(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, driveways, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat maps.* Data layers defining map units were created by delineating habitats that contain at least one or more of the PCEs defined in paragraph (2) of this entry, over United States Geological Survey topographic maps (UTM 19, NAD 83). USGS 1:20,000 quadrangles used in the base map were: Humacao, Punta Guayanés, Juncos, Yabucoa, Punta Tuna, and Patillas.

(5) Note: Index map (Map 1) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Unit 1: Mariana, Humacao, Puerto Rico.

(i) *General Description:* Unit 1 consists of approximately 23.6 acres (ac) (9.6 hectares (ha)) located south of Road PR–909, west of Road PR–3, and north of Quebrada Cataño within Mariana Ward, Humacao.

(ii) *Coordinates:* From Humacao and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 1 bounded by the following UTM 19 NAD 83 coordinates (E, N):

833916.64, 2007339.77; 833916.67, 2007341.73; 833916.83, 2007343.69; 833917.12, 2007345.64; 833917.53, 2007347.56; 833918.07, 2007349.45; 833918.73, 2007351.30; 833919.51, 2007353.10; 833920.41, 2007354.85; 833921.42, 2007356.54; 833922.53, 2007358.15; 833923.65, 2007359.57; 833989.83, 2007438.54; 833989.93, 2007438.66; 833991.25, 2007440.12; 833992.66, 2007441.48; 833994.16, 2007442.76; 833995.73, 2007443.93; 833997.38, 2007444.99; 833999.10, 2007445.95; 834000.88, 2007446.79; 834002.70, 2007447.51; 834004.57, 2007448.12; 834006.48, 2007448.60; 834008.41, 2007448.95; 834010.36, 2007449.18; 834012.33, 2007449.27; 834014.29, 2007449.24; 834016.25, 2007449.08; 834018.19, 2007448.80; 834020.12, 2007448.38; 834022.01, 2007447.85; 834023.86, 2007447.19; 834025.66, 2007446.41; 834027.41, 2007445.51; 834029.10, 2007444.50; 834030.71, 2007443.38; 834032.25, 2007442.16; 834033.71, 2007440.84; 834035.08, 2007439.43; 834036.35, 2007437.94; 834037.52, 2007436.36; 834038.59, 2007434.71; 834039.54, 2007432.99; 834040.38, 2007431.21; 834041.11, 2007429.39; 834041.71, 2007427.52; 834042.19, 2007425.61; 834042.54, 2007423.68; 834042.77, 2007421.73; 834042.87, 2007419.76; 834042.84, 2007417.80; 834042.68, 2007415.84; 834042.39, 2007413.90; 834041.98, 2007411.98; 834041.44, 2007410.09; 834040.78, 2007408.23; 834040.00, 2007406.43; 834039.10, 2007404.68; 834038.09, 2007403.00; 834036.98, 2007401.38; 834035.86, 2007399.96; 833985.64, 2007340.04; 834043.84, 2007268.82; 834044.09, 2007268.50; 834045.27, 2007266.93; 834046.33, 2007265.28; 834047.29, 2007263.56; 834048.13, 2007261.78; 834048.85, 2007259.96; 834049.45, 2007258.09; 834049.93, 2007256.18; 834050.29, 2007254.25; 834050.51, 2007252.30; 834050.61, 2007250.33; 834050.58, 2007248.37; 834050.42, 2007246.41; 834050.14, 2007244.47; 834049.72, 2007242.54; 834049.18, 2007240.65; 834048.52, 2007238.80; 834048.09, 2007237.77; 834014.85, 2007161.84; 834040.05, 2007115.14; 834132.46, 2006989.50; 834205.56, 2006931.14; 834206.23, 2006930.59; 834207.20, 2006929.73; 834258.63, 2006882.21; 834374.13, 2006823.87; 834375.16, 2006823.33; 834376.84, 2006822.32; 834378.46, 2006821.20; 834380.00, 2006819.98; 834381.46, 2006818.67; 834382.83, 2006817.25; 834384.10, 2006815.76; 834385.27, 2006814.18; 834386.34, 2006812.53; 834387.29, 2006810.81; 834387.80, 2006809.77; 834412.77, 2006756.30; 834413.10, 2006755.56; 834413.82, 2006753.74; 834414.42, 2006751.87; 834414.90, 2006749.96; 834415.26, 2006748.03; 834415.48, 2006746.07; 834415.58, 2006744.11; 834415.55, 2006742.15; 834415.39, 2006740.19; 834415.10, 2006738.24; 834414.69, 2006736.32; 834414.15, 2006734.43; 834413.49, 2006732.58; 834412.71, 2006730.78; 834411.82, 2006729.03; 834410.92, 2006727.51; 834369.80, 2006662.68; 834367.07, 2006639.75; 834374.97, 2006627.50; 834375.47, 2006626.69; 834376.43, 2006624.98; 834377.27, 2006623.20; 834377.99, 2006621.37; 834378.59, 2006619.50; 834379.07, 2006617.60; 834379.43, 2006615.66; 834379.65, 2006613.71; 834379.75, 2006611.75; 834379.72, 2006609.78; 834379.56, 2006607.83; 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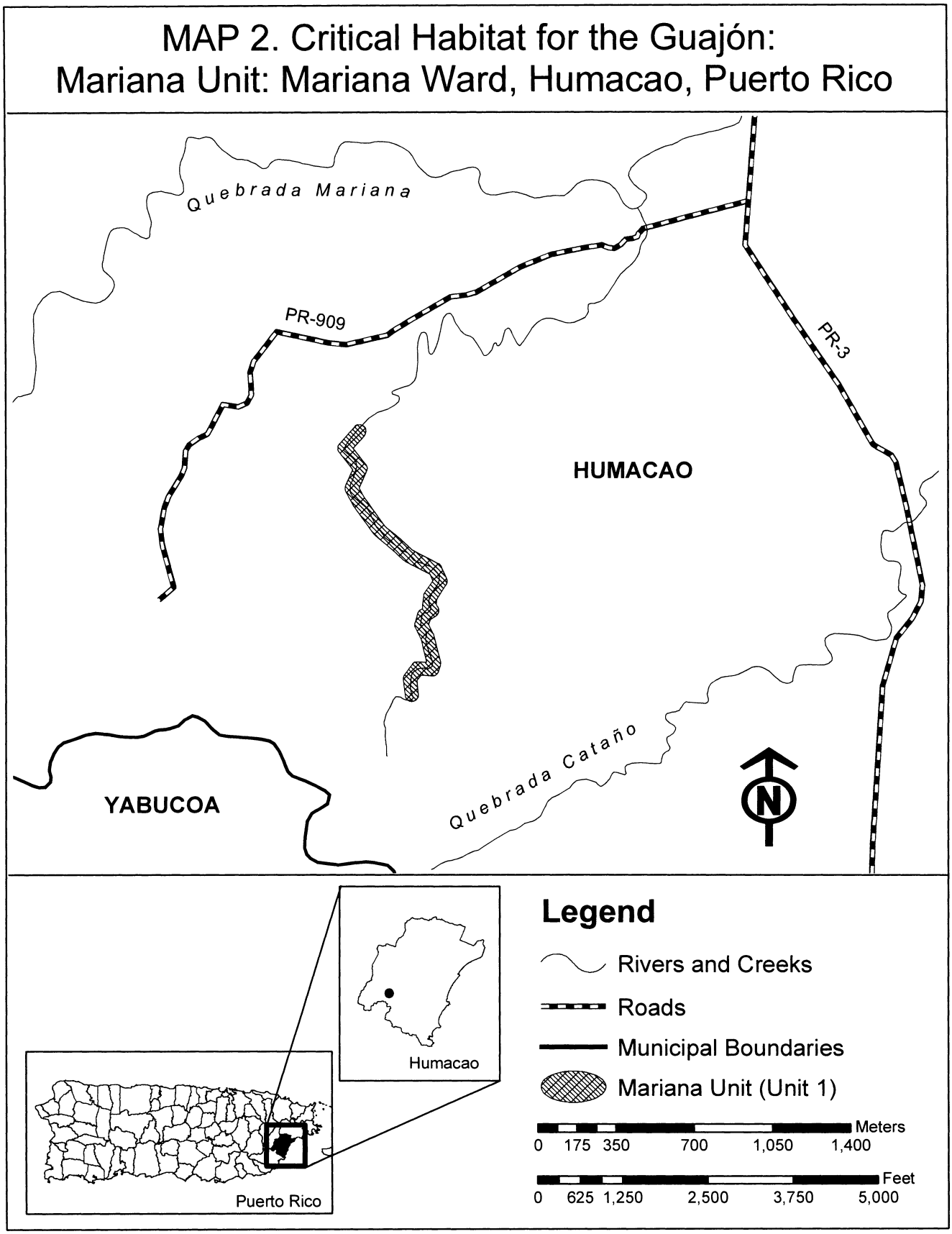
(iii) Note: Map of Unit 1 (Map 2) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 2: Montones, Las Piedras, Puerto Rico.

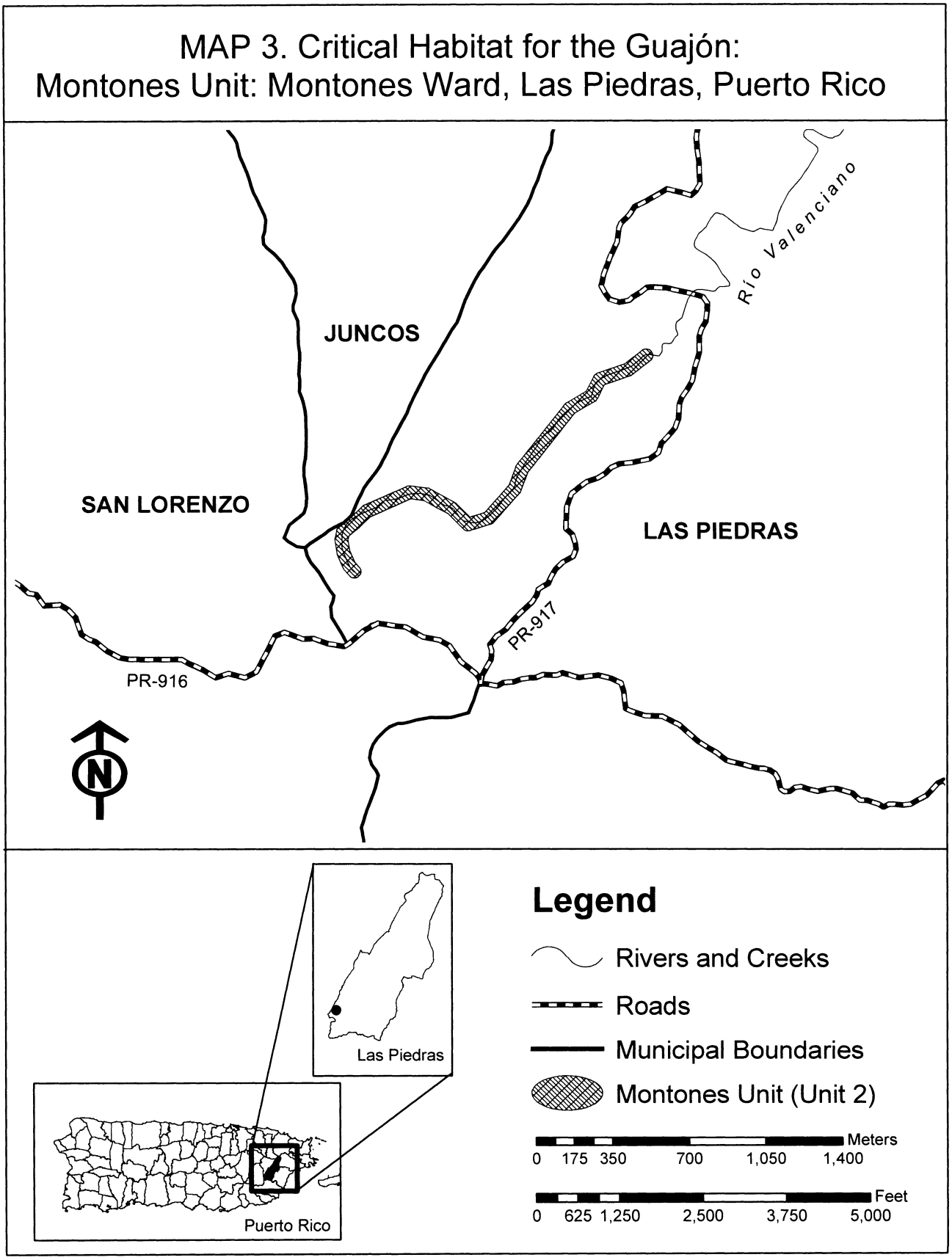
(i) *General Description:* Unit 2 consists of approximately 31.1 ac (12.6 ha) along the headwaters of the Valenciano River at PR 917 Km 9.7, Montones Ward, Las Piedras.

(ii) *Coordinates:* From Juncos USGS 1:20,000 quadrangle map. Unit 2 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825191.05, 2008735.38; 825191.08, 2008737.35; 825191.17, 2008738.56; 825197.07, 2008804.62; 825197.15, 2008805.37; 825197.43, 2008807.31; 825197.85, 2008809.23; 825198.39, 2008811.12; 825199.05, 2008812.97; 825199.83, 2008814.78; 825200.73, 2008816.52; 825201.74, 2008818.21; 825202.09, 2008818.75; 825237.76, 2008871.58; 825238.52, 2008872.65; 825239.74, 2008874.19; 825241.06, 2008875.65; 825242.47, 2008877.02; 825243.97, 2008878.29; 825245.55, 2008879.46; 825247.20, 2008880.53; 825248.91, 2008881.48; 825249.96, 2008881.99; 825516.70, 2009006.30; 825517.43, 2009006.63; 825519.26, 2009007.35; 825521.13, 2009007.95; 825523.03, 2009008.43; 825524.97, 2009008.78; 825526.92, 2009009.01; 825528.88, 2009009.11; 825530.85, 2009009.08; 825532.58, 2009008.94; 825607.77, 2009000.89; 825608.00, 2009000.86; 825609.94, 2009000.58; 825611.86, 2009000.16; 825613.75, 2008999.62; 825615.60, 2008998.96; 825617.41, 2008998.18; 825619.15, 2008997.28; 825619.44, 2008997.12; 825657.84, 2008975.25; 825735.16, 2008935.69; 825736.06, 2008935.21; 825737.74, 2008934.20; 825739.36, 2008933.08; 825740.90, 2008931.86; 825742.35, 2008930.54; 825742.41, 2008930.48; 825805.54, 2008869.09; 825875.41, 2008891.79; 825982.60, 2009016.88; 826011.34, 2009100.61; 826011.81, 2009101.89; 826012.60, 2009103.69; 826013.49, 2009105.44; 826014.50, 2009107.13; 826015.62, 2009108.74; 826015.93, 2009109.15; 826234.92, 2009394.34; 826235.83, 2009395.46; 826237.15, 2009396.92; 826238.56, 2009398.29; 826240.06, 2009399.56; 826241.64, 2009400.73; 826243.28, 2009401.79; 826332.44, 2009455.31; 826363.91, 2009522.58; 826363.96, 2009522.68; 826364.85, 2009524.43; 826365.86, 2009526.12; 826366.98, 2009527.74; 826368.20, 2009529.27; 826369.52, 2009530.73; 826370.93, 2009532.10; 826372.43, 2009533.37; 826374.01, 2009534.54; 826375.66, 2009535.61; 826377.38, 2009536.56; 826379.15, 2009537.40; 826380.92, 2009538.11; 826507.54, 2009583.75; 826584.65, 2009645.47; 826584.74, 2009645.54; 826586.31, 2009646.72; 826587.96, 2009647.78; 826589.68, 2009648.74; 826591.46, 2009649.58; 826593.28, 2009650.30; 826595.15, 2009650.90; 826597.06, 2009651.38; 826598.99, 2009651.73; 826600.95, 2009651.96; 826602.91, 2009652.05; 826604.87, 2009652.02; 826606.83, 2009651.86; 826608.78, 2009651.58; 826610.70, 2009651.16; 826612.59, 2009650.62; 826614.44, 2009649.96; 826616.24, 2009649.18; 826617.99, 2009648.28; 826619.67, 2009647.27; 826621.29, 2009646.16; 826622.83, 2009644.94; 826624.29, 2009643.62; 826625.65, 2009642.21; 826626.92, 2009640.71; 826628.10, 2009639.13; 826629.16, 2009637.48; 826630.12, 2009635.76; 826630.96, 2009633.99; 826631.68, 2009632.16; 826632.28, 2009630.29; 826632.76, 2009628.38; 826633.11, 2009626.45; 826633.34, 2009624.50; 826633.43, 2009622.53; 826633.40, 2009620.57; 826633.24, 2009618.61; 826632.96, 2009616.67; 826632.54, 2009614.75; 826632.00, 2009612.86; 826631.34, 2009611.01; 826630.56, 2009609.20; 826629.66, 2009607.46; 826628.65, 2009605.77; 826627.54, 2009604.15; 826626.32, 2009602.61; 826625.00, 2009601.16; 826623.59, 2009599.79; 826622.18, 2009598.59; 826541.17, 2009533.75; 826541.08, 2009533.68; 826539.51, 2009532.51; 826537.86, 2009531.45; 826536.14, 2009530.49; 826534.36, 2009529.65; 826532.59, 2009528.95; 826413.02, 2009485.84; 826382.96, 2009421.56; 826382.91, 2009421.45; 826382.01, 2009419.71; 826381.00, 2009418.02; 826379.88, 2009416.40; 826378.66, 2009414.86; 826377.34, 2009413.41; 826375.93, 2009412.04; 826374.43, 2009410.77; 826372.86, 2009409.60; 826371.21, 2009408.54; 826279.08, 2009353.24; 826066.55, 2009076.47; 826037.54, 2008991.95; 826037.07, 2008990.68; 826036.29, 2008988.88; 826035.39, 2008987.13; 826034.38, 2008985.44; 826033.26, 2008983.83; 826032.04, 2008982.29; 826031.94, 2008982.17; 825915.52, 2008846.30; 825914.31, 2008844.97; 825912.90, 2008843.60; 825911.40, 2008842.33; 825909.82, 2008841.16; 825908.17, 2008840.09; 825906.45, 2008839.14; 825904.68, 2008838.30; 825902.85, 2008837.57; 825902.00, 2008837.28; 825806.87, 2008806.38; 825805.85, 2008806.07; 825803.94, 2008805.59; 825802.01, 2008805.24; 825800.06, 2008805.01; 825798.10, 2008804.91; 825796.13, 2008804.95; 825794.17, 2008805.11; 825792.23, 2008805.39; 825790.31, 2008805.81; 825788.42, 2008806.35; 825786.57, 2008807.01; 825784.77, 2008807.79; 825783.02, 2008808.69; 825781.33, 2008809.69; 825779.72, 2008810.81; 825778.18, 2008812.03; 825776.72, 2008813.35; 825776.66, 2008813.41; 825703.78, 2008884.28; 825629.89, 2008922.09; 825628.99, 2008922.57; 825628.70, 2008922.73; 825595.16, 2008941.84; 825534.49, 2008948.34; 825282.87, 2008831.08; 825256.20, 2008791.56; 825251.43, 2008738.26; 825259.11, 2008707.57; 825284.21, 2008655.11; 825304.76, 2008631.14; 825305.48, 2008630.28; 825306.65, 2008628.70; 825307.71, 2008627.05; 825308.67, 2008625.33; 825309.51, 2008623.55; 825310.23, 2008621.73; 825310.83, 2008619.86; 825311.31, 2008617.95; 825311.66, 2008616.02; 825311.89, 2008614.06; 825311.99, 2008612.10; 825311.96, 2008610.14; 825311.80, 2008608.18; 825311.51, 2008606.24; 825311.09, 2008604.31; 825310.55, 2008602.43; 825309.89, 2008600.57; 825309.11, 2008598.77; 825308.22, 2008597.02; 825307.21, 2008595.34; 825306.09, 2008593.72; 825304.87, 2008592.18; 825303.55, 2008590.73; 825302.14, 2008589.36; 825300.64, 2008588.09; 825299.06, 2008586.92; 825297.41, 2008585.85; 825295.69, 2008584.90; 825293.92, 2008584.05; 825292.09, 2008583.33; 825290.22, 2008582.73; 825288.31, 2008582.25; 825286.38, 2008581.90; 825284.43, 2008581.67; 825282.47, 2008581.58; 825280.50, 2008581.61; 825278.54, 2008581.77; 825276.60, 2008582.06; 825274.68, 2008582.47; 825272.79, 2008583.01; 825270.94, 2008583.67; 825269.14, 2008584.45; 825267.39, 2008585.35; 825265.70, 2008586.36; 825264.09, 2008587.47; 825262.55, 2008588.70; 825261.09, 2008590.01; 825259.72, 2008591.43; 825259.17, 2008592.06; 825236.04, 2008619.04; 825235.32, 2008619.90; 825234.15, 2008621.48; 825233.09, 2008623.13; 825232.13, 2008624.85; 825231.75, 2008625.62; 825203.63, 2008684.38; 825203.17, 2008685.39; 825202.45, 2008687.22; 825201.84, 2008689.09; 825201.58, 2008690.06; 825191.94, 2008728.60; 825191.73, 2008729.54; 825191.37, 2008731.47; 825191.15, 2008733.42; 825191.05, 2008735.38.

(iii) Note: Map of Unit 2 (Map 3) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(8) Unit 3: Tejas, Las Piedras, Puerto Rico.

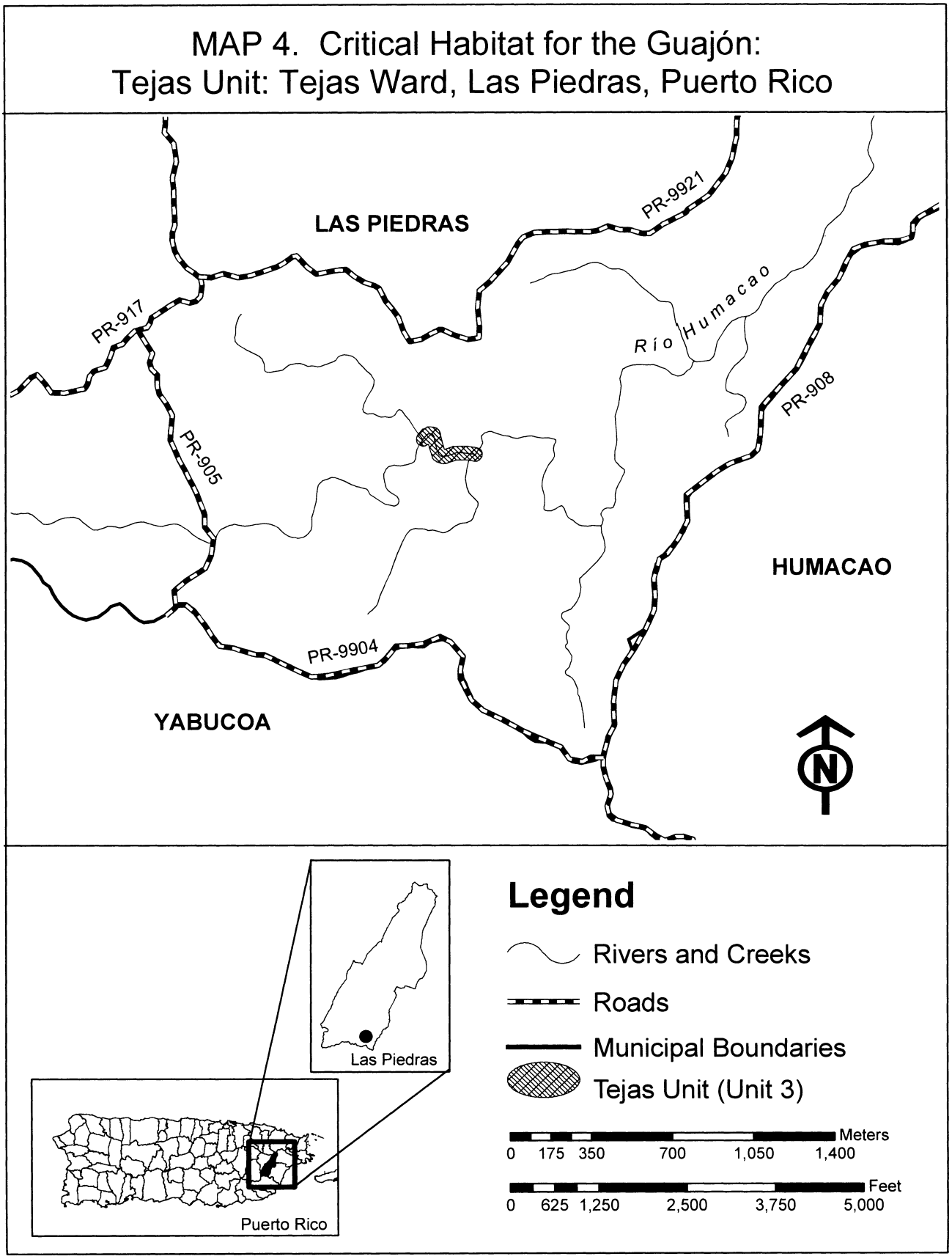
(i) *General Description:* Unit 3 consists of approximately 5.2 ac (2.1 ha) between Road PR–905 to the east, Road PR–908 to the west, Road PR–9921 to the north, and Road PR–9904 to the south within Tejas Ward, Las Piedras.

(ii) *Coordinates:* From Yabucoa, Humacao, Juncos, and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 3 bounded by the following UTM 19 NAD 83 coordinates (E, N):

829623.13, 2007423.98; 829623.16, 2007425.95; 829623.32, 2007427.91; 829623.60, 2007429.85; 829624.02, 2007431.77; 829624.56, 2007433.66; 829625.22, 2007435.51; 829626.00, 2007437.32; 829626.90, 2007439.06; 829627.90, 2007440.75; 829629.02, 2007442.37; 829629.38, 2007442.84; 829643.74, 2007461.45; 829644.61, 2007462.52; 829645.93, 2007463.98; 829647.34, 2007465.35; 829648.84, 2007466.62; 829650.41, 2007467.79; 829652.06, 2007468.86; 829653.78, 2007469.81; 829654.23, 2007470.04; 829665.53, 2007475.61; 829666.85, 2007476.23; 829668.68, 2007476.95; 829670.55, 2007477.55; 829672.46, 2007478.03; 829674.39, 2007478.39; 829676.34, 2007478.61; 829678.31, 2007478.71; 829680.27, 2007478.68; 829682.23, 2007478.52; 829682.50, 2007478.49; 829698.24, 2007476.54; 829699.91, 2007476.28; 829701.83, 2007475.87; 829703.72, 2007475.33; 829705.57, 2007474.67; 829707.37, 2007473.89; 829709.12, 2007472.99; 829710.81, 2007471.98; 829712.42, 2007470.87; 829713.96, 2007469.65; 829715.42, 2007468.33; 829716.79, 2007466.92; 829718.06, 2007465.42; 829719.23, 2007463.84; 829720.30, 2007462.19; 829721.25, 2007460.47; 829722.09, 2007458.70; 829722.82, 2007456.87; 829723.42, 2007455.00; 829723.52, 2007454.66; 829736.51, 2007407.12; 829744.37, 2007381.77; 829781.75, 2007394.68; 829783.28, 2007395.17; 829785.19, 2007395.65; 829787.12, 2007396.00; 829789.08, 2007396.22; 829791.04, 2007396.32; 829791.73, 2007396.33; 829845.90, 2007396.00; 829847.17, 2007395.96; 829849.13, 2007395.80; 829849.83, 2007395.71; 829881.85, 2007391.29; 829883.10, 2007391.09; 829885.02, 2007390.67; 829886.91, 2007390.13; 829888.76, 2007389.47; 829890.56, 2007388.69; 829892.31, 2007387.80; 829894.00, 2007386.79; 829895.61, 2007385.67; 829897.15, 2007384.45; 829898.61, 2007383.13; 829899.98, 2007381.72; 829901.25, 2007380.22; 829902.42, 2007378.64; 829903.49, 2007376.99; 829904.44, 2007375.28; 829905.28, 2007373.50; 829906.01, 2007371.67; 829906.61, 2007369.80; 829907.09, 2007367.90; 829907.44, 2007365.96; 829907.67, 2007364.01; 829907.76, 2007362.05; 829907.73, 2007360.08; 829907.57, 2007358.13; 829907.28, 2007356.18; 829906.87, 2007354.26; 829906.33, 2007352.37; 829905.67, 2007350.52; 829904.89, 2007348.72; 829903.99, 2007346.97; 829902.99, 2007345.28; 829901.87, 2007343.67; 829900.65, 2007342.13; 829899.33, 2007340.67; 829897.92, 2007339.30; 829896.42, 2007338.03; 829894.84, 2007336.86; 829893.19, 2007335.79; 829891.47, 2007334.84; 829889.70, 2007334.00; 829887.87, 2007333.27; 829886.00, 2007332.67; 829884.09, 2007332.19; 829882.16, 2007331.84; 829880.21, 2007331.61; 829878.25, 2007331.52; 829876.28, 2007331.55; 829874.32, 2007331.71; 829873.62, 2007331.80; 829843.56, 2007335.95; 829796.50, 2007336.24; 829750.67, 2007320.42; 829749.14, 2007319.93; 829747.23, 2007319.45; 829745.30, 2007319.10; 829743.34, 2007318.87; 829741.38, 2007318.78; 829739.42, 2007318.81; 829737.46, 2007318.97; 829735.51, 2007319.25; 829733.59, 2007319.67; 829731.70, 2007320.21; 829729.98, 2007320.82; 829709.83, 2007328.66; 829709.70, 2007328.71; 829707.90, 2007329.49; 829706.15, 2007330.39; 829704.46, 2007331.40; 829702.85, 2007332.51; 829701.31, 2007333.73; 829699.85, 2007335.05; 829698.48, 2007336.46; 829697.21, 2007337.96; 829696.04, 2007339.54; 829694.98, 2007341.19; 829694.02, 2007342.91; 829693.18, 2007344.68; 829692.46, 2007346.51; 829692.04, 2007347.75; 829679.00, 2007389.82; 829678.81, 2007390.45; 829678.71, 2007390.79; 829675.10, 2007404.00; 829674.74, 2007403.62 829673.33, 2007402.26; 829671.83, 2007400.98; 829670.25, 2007399.81; 829668.60, 2007398.75; 829666.89, 2007397.79; 829665.11, 2007396.95; 829663.28, 2007396.23; 829661.41, 2007395.62; 829659.51, 2007395.15; 829657.57, 2007394.79; 829655.62, 2007394.57; 829653.66, 2007394.47; 829651.69, 2007394.50; 829649.74, 2007394.66; 829647.79, 2007394.95; 829645.87, 2007395.36; 829643.98, 2007395.90; 829642.13, 2007396.56; 829640.33, 2007397.34; 829638.58, 2007398.24; 829636.89, 2007399.25; 829635.28, 2007400.36; 829633.74, 2007401.58; 829632.28, 2007402.90; 829630.91, 2007404.31; 829629.64, 2007405.81; 829628.47, 2007407.39; 829627.40, 2007409.04; 829626.45, 2007410.76; 829625.61, 2007412.53; 829624.88, 2007414.36; 829624.28, 2007416.23; 829623.80, 2007418.14; 829623.45, 2007420.07; 829623.22, 2007422.02; 829623.13, 2007423.98.

(iii) Note: Map of Unit 3 (Map 4) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit 4: Emajagua, Maunabo, Puerto Rico.

(i) *General Description:* Unit 4 consists of approximately 33.0 ac (13.4 ha) between Quebrada Arenas and Quebrada Emajagua, north of Road PR–901 within Emajagua Ward, Maunabo.

(ii) *Coordinates:* From Yabucoa and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 4 bounded by the following UTM 19 NAD 83 coordinates (E, N):

830301.03, 1993842.17; 830301.06, 1993844.14; 830301.22, 1993846.10; 830301.51, 1993848.04; 830301.93, 1993849.96; 830302.46, 1993851.85; 830303.12, 1993853.70; 830303.91, 1993855.50; 830304.80, 1993857.25; 830305.10, 1993857.77; 830382.85, 1993991.51; 830383.56, 1993992.68; 830384.68, 1993994.30; 830385.90, 1993995.83; 830387.22, 1993997.29; 830388.63, 1993998.66; 830389.55, 1993999.46; 830491.53, 1994084.69; 830602.31, 1994239.62; 830670.30, 1994401.70; 830645.67, 1994534.02; 830645.49, 1994535.09; 830645.27, 1994537.04; 830645.17, 1994539.01; 830645.20, 1994540.97; 830645.36, 1994542.93; 830645.65, 1994544.87; 830646.06, 1994546.79; 830646.60, 1994548.68; 830647.26, 1994550.53; 830648.04, 1994552.34; 830648.94, 1994554.09; 830649.02, 1994554.22; 830603.53, 1994664.55; 830603.03, 1994665.86; 830602.43, 1994667.73; 830601.95, 1994669.64; 830601.59, 1994671.57; 830601.37, 1994673.52; 830601.27, 1994675.49; 830601.30, 1994677.45; 830601.46, 1994679.41; 830601.75, 1994681.35; 830602.16, 1994683.28; 830602.70, 1994685.17; 830603.36, 1994687.02; 830604.14, 1994688.82; 830605.04, 1994690.57; 830606.05, 1994692.25; 830607.17, 1994693.87; 830608.39, 1994695.41; 830609.71, 1994696.87; 830611.12, 1994698.23; 830612.62, 1994699.51; 830614.19, 1994700.68; 830615.84, 1994701.74; 830617.56, 1994702.70; 830619.34, 1994703.54; 830621.17, 1994704.26; 830623.04, 1994704.86; 830624.94, 1994705.34; 830626.87, 1994705.70; 830628.83, 1994705.92; 830630.79, 1994706.02; 830632.75, 1994705.99; 830634.71, 1994705.83; 830636.66, 1994705.54; 830638.58, 1994705.13; 830640.47, 1994704.59; 830642.32, 1994703.93; 830644.12, 1994703.15; 830645.87, 1994702.25; 830647.56, 1994701.24; 830649.17, 1994700.12; 830650.71, 1994698.90; 830652.17, 1994697.58; 830653.54, 1994696.17; 830654.81, 1994694.67; 830655.98, 1994693.10; 830657.04, 1994691.45; 830658.00, 1994689.73; 830658.84, 1994687.95; 830659.06, 1994687.44; 830706.46, 1994572.47; 830780.50, 1994437.89; 830780.89, 1994437.15; 830781.73, 1994435.37; 830782.46, 1994433.55; 830783.06, 1994431.68; 830783.54, 1994429.77; 830783.89, 1994427.84; 830784.12, 1994425.89; 830784.19, 1994424.69; 830784.37, 1994420.55; 830925.97, 1994319.54; 830926.41, 1994319.23; 830927.95, 1994318.00; 830929.40, 1994316.69; 830929.47, 1994316.62; 830981.02, 1994266.48; 830982.32, 1994265.13; 830983.59, 1994263.63; 830984.76, 1994262.06; 830985.83, 1994260.41; 830986.78, 1994258.69; 830987.63, 1994256.91; 830987.69, 1994256.77; 831019.16, 1994183.23; 831048.99, 1994127.46; 831110.90, 1994086.77; 831152.31, 1994063.55; 831153.89, 1994062.60; 831155.51, 1994061.48; 831157.05, 1994060.26; 831158.50, 1994058.94; 831159.87, 1994057.53; 831161.14, 1994056.03; 831162.31, 1994054.46; 831163.38, 1994052.81; 831164.33, 1994051.09; 831165.17, 1994049.31; 831165.90, 1994047.48; 831166.50, 1994045.61; 831166.98, 1994043.71; 831167.33, 1994041.78; 831167.56, 1994039.82; 831167.65, 1994037.86; 831167.62, 1994035.90; 831167.46, 1994033.94; 831167.18, 1994031.99; 831166.76, 1994030.07; 831166.22, 1994028.18; 831165.56, 1994026.33; 831164.78, 1994024.53; 831163.88, 1994022.78; 831162.88, 1994021.10; 831161.76, 1994019.48; 831160.54, 1994017.94; 831159.22, 1994016.48; 831157.81, 1994015.11; 831156.31, 1994013.84; 831154.73, 1994012.67; 831153.08, 1994011.61; 831151.36, 1994010.65; 831149.59, 1994009.81; 831147.76, 1994009.09; 831145.89, 1994008.48; 831143.98, 1994008.01; 831142.05, 1994007.65; 831140.10, 1994007.43; 831138.14, 1994007.33; 831136.17, 1994007.36; 831134.21, 1994007.52; 831132.27, 1994007.81; 831130.35, 1994008.22; 831128.46, 1994008.76; 831126.61, 1994009.42; 831124.80, 1994010.20; 831123.06, 1994011.10; 831122.95, 1994011.16; 831080.61, 1994034.90; 831079.03, 1994035.85; 831078.79, 1994036.00; 831009.62, 1994081.48; 831008.24, 1994082.44; 831006.70, 1994083.66; 831005.24, 1994084.98; 831003.88, 1994086.39; 831002.61, 1994087.89; 831001.43, 1994089.47; 831000.37, 1994091.12; 830999.64, 1994092.40; 830965.59, 1994156.06; 830965.37, 1994156.49; 830964.52, 1994158.26; 830964.46, 1994158.40; 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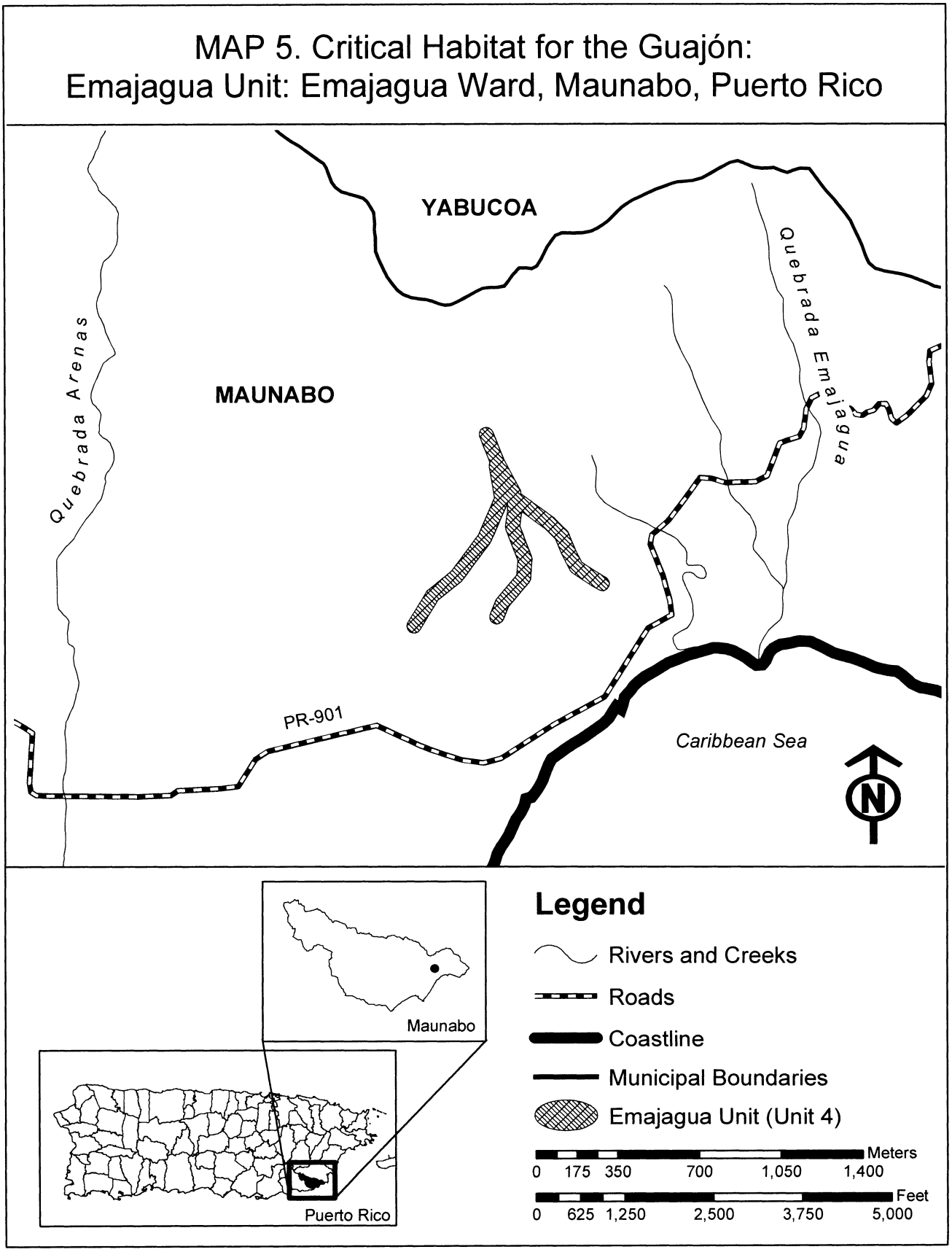
830690.85, 1993857.69; 830688.90, 1993857.47; 830686.93, 1993857.37; 830684.97, 1993857.40; 830683.01, 1993857.56; 830681.07, 1993857.85; 830679.14, 1993858.26; 830677.26, 1993858.80; 830675.40, 1993859.46; 830673.60, 1993860.24; 830671.85, 1993861.14; 830670.17, 1993862.15; 830668.55, 1993863.26; 830667.01, 1993864.49; 830665.55, 1993865.80; 830664.19, 1993867.22; 830662.91, 1993868.71; 830661.74, 1993870.29; 830660.68, 1993871.94; 830659.72, 1993873.66; 830658.88, 1993875.43; 830658.16, 1993877.26; 830657.56, 1993879.13; 830657.08, 1993881.04; 830656.72, 1993882.97; 830656.50, 1993884.92; 830656.40, 1993886.89; 830656.43, 1993888.85; 830656.59, 1993890.81; 830656.88, 1993892.75; 830657.29, 1993894.67; 830657.83, 1993896.56; 830658.46, 1993898.34; 830681.96, 1993958.36; 830681.99, 1993958.44; 830682.77, 1993960.24; 830683.66, 1993961.99; 830684.67, 1993963.68; 830685.79, 1993965.29; 830686.62, 1993966.37; 830769.74, 1994068.54; 830774.14, 1994134.12; 830721.67, 1994266.34; 830721.31, 1994267.29; 830720.71, 1994269.16; 830720.23, 1994271.07; 830719.88, 1994273.00; 830719.65, 1994274.95; 830719.55, 1994276.91; 830719.58, 1994278.88; 830719.74, 1994280.84; 830719.74, 1994280.85; 830727.37, 1994347.16; 830726.01, 1994379.24; 830656.38, 1994213.28; 830655.84, 1994212.07; 830654.95, 1994210.32; 830653.94, 1994208.63; 830653.12, 1994207.43; 830538.15, 1994046.64; 830537.86, 1994046.23; 830536.63, 1994044.69; 830535.32, 1994043.23; 830533.90, 1994041.86; 830532.98, 1994041.06; 830432.11, 1993956.76; 830357.02, 1993827.59; 830356.30, 1993826.42;

830355.19, 1993824.80; 830353.96, 1993823.26; 830352.65, 1993821.81; 830351.23, 1993820.44; 830349.74, 1993819.17; 830348.16, 1993818.00; 830346.51, 1993816.93; 830344.79, 1993815.97; 830343.02, 1993815.13; 830341.19, 1993814.41; 830339.32, 1993813.81; 830337.41, 1993813.33; 830335.48, 1993812.98; 830333.53, 1993812.75; 830331.56, 1993812.65; 830329.60, 1993812.69; 830327.64, 1993812.84; 830325.70, 1993813.13; 830323.78, 1993813.55; 830321.89, 1993814.08; 830320.04, 1993814.75; 830318.23, 1993815.53; 830316.48, 1993816.42; 830314.80, 1993817.43; 830313.18, 1993818.55; 830311.64, 1993819.77; 830310.19, 1993821.09; 830308.82, 1993822.50; 830307.55, 1993824.00; 830306.37, 1993825.58; 830305.31, 1993827.23; 830304.35, 1993828.94; 830303.51, 1993830.72; 830302.79, 1993832.55; 830302.19, 1993834.42; 830301.71, 1993836.32; 830301.36, 1993838.26; 830301.13, 1993840.21; 830301.03, 1993842.17.

(iii) Note: Map of Unit 4 (Map 5) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(10) Unit 5: Jacaboa, Patillas, Puerto Rico.

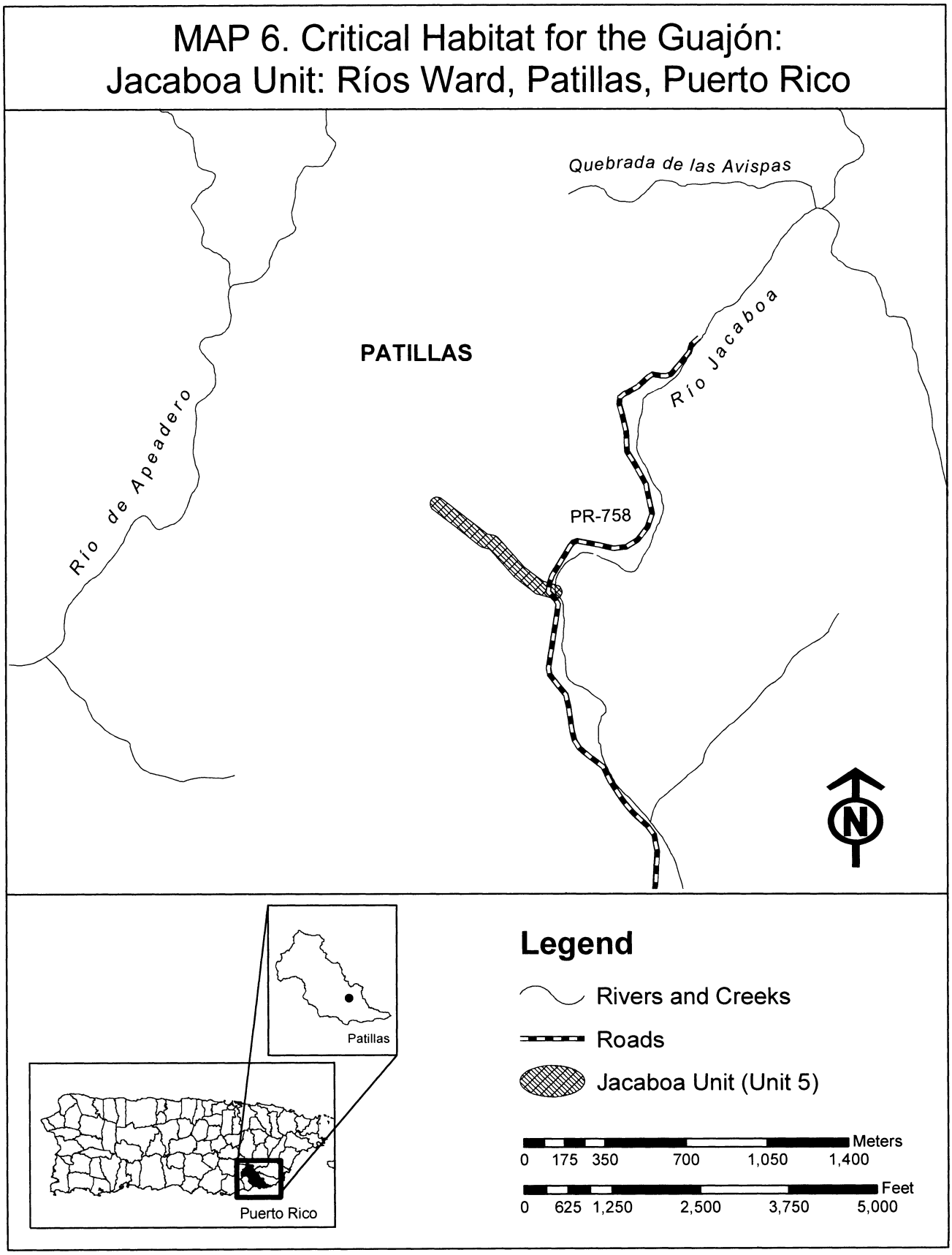
(i) *General Description:* Unit 5 consists of approximately 10.3 ac (4.2 ha) northwest of road PR–758 within Ríos Ward, Patillas.

(ii) *Coordinates:* From Yabucoa and Punta Tuna USGS 1:20,000 quadrangle maps. Unit 5 bounded by the following UTM 19 NAD 83 coordinates (E, N):

820101.76, 1993627.91; 820101.80, 1993629.87; 820101.96, 1993631.83; 820102.25, 1993633.77; 820102.66, 1993635.69; 820103.20, 1993637.58; 820103.86, 1993639.43; 820104.64, 1993641.24; 820105.54, 1993642.98; 820106.55, 1993644.67; 820107.67, 1993646.28; 820108.89, 1993647.82; 820110.21, 1993649.28; 820111.62, 1993650.65; 820113.12, 1993651.92; 820114.70, 1993653.09; 820116.35, 1993654.15; 820118.07, 1993655.11; 820119.84, 1993655.95; 820121.67, 1993656.67; 820123.54, 1993657.27; 820125.45, 1993657.75; 820127.38, 1993658.10; 820129.33, 1993658.32; 820131.30, 1993658.42; 820133.26, 1993658.39; 820135.22, 1993658.23; 820137.16, 1993657.94; 820139.08, 1993657.52; 820140.97, 1993656.98; 820142.82, 1993656.32; 820144.62, 1993655.54; 820146.37, 1993654.64; 820148.06, 1993653.63; 820149.67, 1993652.51; 820149.79, 1993652.43; 820252.55, 1993575.46; 820252.92, 1993575.18; 820351.83, 1993498.67; 820380.40, 1993494.03; 820380.96, 1993493.93; 820382.88, 1993493.52; 820384.77, 1993492.98; 820386.62, 1993492.32; 820388.43, 1993491.53; 820390.17, 1993490.64; 820391.86, 1993489.63; 820393.47, 1993488.51; 820395.01, 1993487.29; 820396.47, 1993485.97; 820397.77, 1993484.63; 820514.21, 1993356.97; 820592.94, 1993297.68; 820655.33, 1993281.06; 820656.79, 1993280.63; 820658.64, 1993279.97; 820660.44, 1993279.19; 820662.19, 1993278.29; 820663.87, 1993277.28; 820665.49, 1993276.16; 820667.03, 1993274.94; 820668.48, 1993273.62; 820669.85, 1993272.21; 820671.12, 1993270.71; 820672.29, 1993269.13; 820673.36, 1993267.48; 820674.31, 1993265.76; 820675.15, 1993263.99; 820675.87, 1993262.16; 820676.47, 1993260.29; 820676.95, 1993258.38; 820677.30, 1993256.45; 820677.53, 1993254.50; 820677.62, 1993252.54; 820677.59, 1993250.57; 820677.43, 1993248.61; 820677.14, 1993246.67; 820676.73, 1993244.75; 820676.19, 1993242.86; 820675.53, 1993241.01; 820674.74, 1993239.21; 820673.85, 1993237.46; 820672.84, 1993235.77; 820671.72, 1993234.16; 820670.50, 1993232.62; 820669.18, 1993231.16; 820667.76, 1993229.80; 820666.27, 1993228.53; 820664.69, 1993227.36; 820663.04, 1993226.29; 820661.32, 1993225.34; 820659.54, 1993224.50; 820657.72, 1993223.77; 820655.84, 1993223.17; 820653.94, 1993222.70; 820652.01, 1993222.34; 820650.05, 1993222.12; 820648.09, 1993222.02; 820646.13, 1993222.06; 820644.17, 1993222.22; 820642.22, 1993222.50; 820640.30, 1993222.92; 820639.87, 1993223.03; 820571.82, 1993241.16; 820570.37, 1993241.59; 820568.52, 1993242.25; 820566.71, 1993243.03; 820564.97, 1993243.93; 820563.28, 1993244.94; 820561.66, 1993246.06; 820561.49, 1993246.19; 820475.85, 1993310.68; 820474.48, 1993311.77; 820473.03, 1993313.09; 820471.73, 1993314.43; 820360.45, 1993436.43; 820334.68, 1993440.61; 820334.11, 1993440.71; 820332.19, 1993441.12; 820330.30, 1993441.66; 820328.45, 1993442.32; 820326.65, 1993443.11; 820324.90, 1993444.00; 820323.22, 1993445.01; 820321.60, 1993446.13; 820321.12, 1993446.50; 820216.36, 1993527.53; 820113.79, 1993604.37; 820112.36, 1993605.50; 820110.90, 1993606.82; 820109.54, 1993608.23; 820108.27, 1993609.73; 820107.10, 1993611.31; 820106.03, 1993612.96; 820105.08, 1993614.68; 820104.24, 1993616.46; 820103.52, 1993618.28; 820102.91, 1993620.15; 820102.44, 1993622.06; 820102.09, 1993623.99; 820101.86, 1993625.94; 820101.76, 1993627.91.

(iii) Note: Map of Unit 5 (Map 6) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(11) Unit 6: Calabazas, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 6 consists of approximately 13.8 ac (5.6 ha), including lands northeast of road PR–900, between Quebrada Guayabo to the south and Río Guayanés to the north, and south of Guayanés Unit, within Calabazas Ward, Yabucoa.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 6 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825303.81, 1999020.54; 825324.29, 1999071.68; 825361.95, 1999106.10; 825427.53, 1999113.37; 825493.52, 1999090.98; 825544.83, 1999057.79; 825546.92, 1999059.93; 825572.78, 1999028.51; 825577.55, 1998990.44; 825576.37, 1998922.62; 825547.19, 1998888.32; 825518.03, 1998851.89; 825465.30, 1998834.21; 825446.21, 1998836.06; 825416.29, 1998854.72; 825377.77, 1998881.73; 825354.21, 1998900.47; 825325.99, 1998948.81; 825303.81, 1999020.54.

(iii) Note: The map depicting Unit 6 is provided at paragraph (12)(iii) of this entry.

(12) Unit 7: Guayanés, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 7 consists of approximately 7.9 ac (3.2 ha) northeast of Road PR–900 between Quebrada Guayabo to the south and Río Guayanés to the north, and north of Unit 6, within Calabazas Ward, Yabucoa.

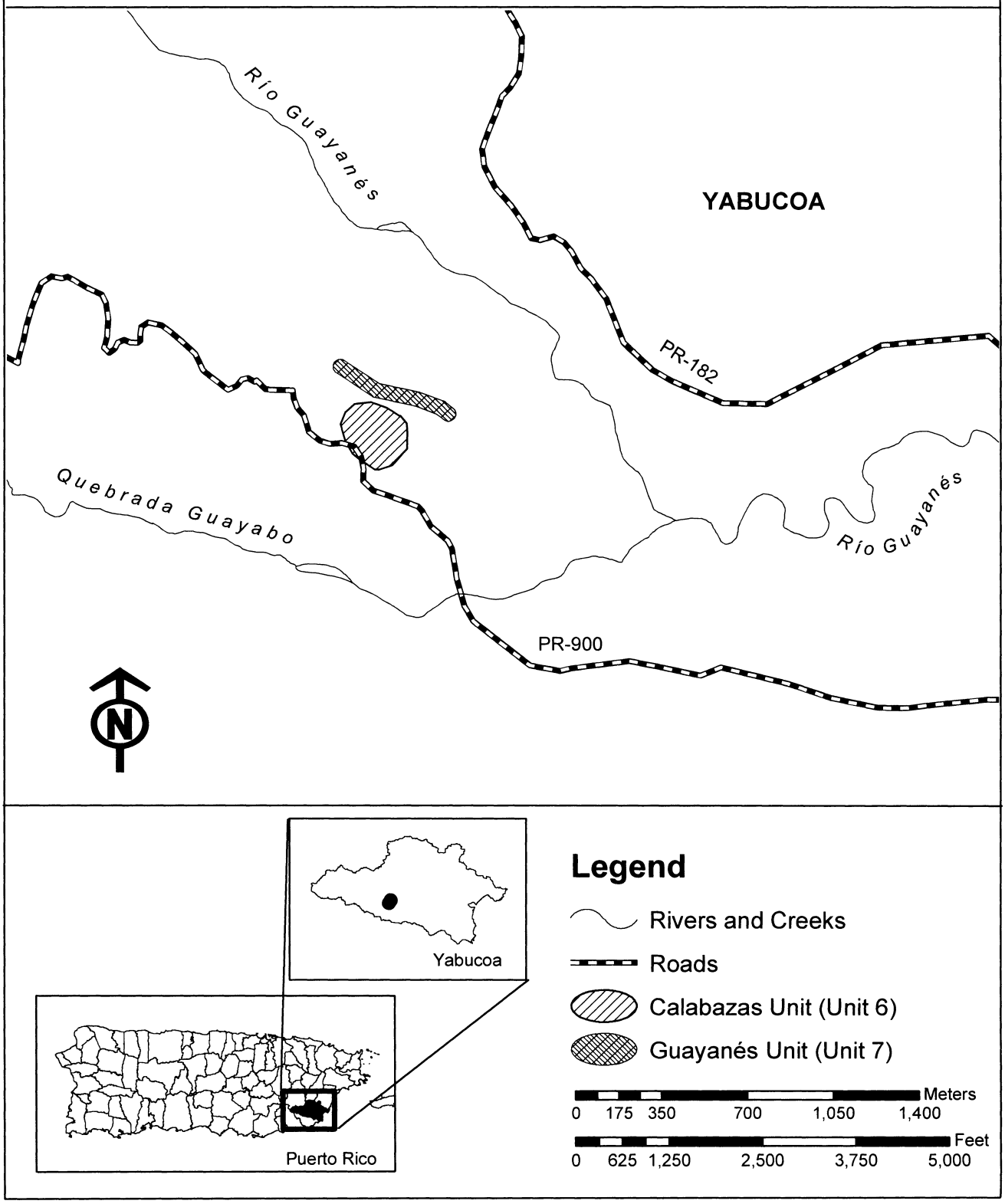
(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 7 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825269.89, 1999257.75; 825269.92, 1999259.72; 825270.08, 1999261.68; 825270.37, 1999263.62; 825270.78, 1999265.54; 825271.32, 1999267.43; 825271.98, 1999269.28; 825272.76, 1999271.09; 825273.66, 1999272.83; 825274.67, 1999274.52; 825275.79, 1999276.13; 825277.01, 1999277.67; 825278.33, 1999279.13; 825279.74, 1999280.50; 825281.24, 1999281.77; 825282.82, 1999282.94; 825284.47, 1999284.01; 825286.19, 1999284.96; 825287.96, 1999285.80; 825289.79, 1999286.52; 825291.66, 1999287.13; 825293.57, 1999287.60; 825295.50, 1999287.96; 825297.45, 1999288.18; 825299.41, 1999288.28; 825301.38, 1999288.25; 825303.34, 1999288.09; 825305.28, 1999287.80; 825307.20, 1999287.38; 825309.09, 1999286.85; 825310.94, 1999286.18; 825312.74, 1999285.40; 825314.49, 1999284.51; 825316.18, 1999283.50; 825316.22, 1999283.47; 825459.03, 1999191.10; 825625.66, 1999156.49; 825626.84, 1999156.22; 825628.73, 1999155.68; 825629.63, 1999155.37; 825721.19, 1999122.74; 825722.14, 1999122.38; 825723.95, 1999121.60; 825725.69, 1999120.71; 825727.38, 1999119.70; 825728.99, 1999118.58; 825729.55, 1999118.16; 825761.67, 1999093.18; 825762.66, 1999092.38; 825764.12, 1999091.06; 825765.49, 1999089.65; 825766.76, 1999088.15; 825767.93, 1999086.57; 825768.99, 1999084.92; 825769.95, 1999083.20; 825770.79, 1999081.43; 825771.51, 1999079.60; 825772.11, 1999077.73; 825772.59, 1999075.82; 825772.94, 1999073.89; 825773.17, 1999071.94; 825773.27, 1999069.98; 825773.23, 1999068.01; 825773.07, 1999066.05; 825772.79, 1999064.11; 825772.37, 1999062.19; 825771.83, 1999060.30; 825771.17, 1999058.45; 825770.39, 1999056.65; 825769.49, 1999054.90; 825768.48, 1999053.21; 825767.37, 1999051.60; 825766.15, 1999050.06; 825764.83, 1999048.60; 825763.41, 1999047.23; 825761.92, 1999045.96; 825760.34, 1999044.79; 825758.69, 1999043.72; 825756.97, 1999042.77; 825755.19, 1999041.93; 825753.37, 1999041.21; 825751.50, 1999040.60; 825749.59, 1999040.13; 825747.66, 1999039.77; 825745.71, 1999039.55; 825743.74, 1999039.45; 825741.78, 1999039.48; 825739.82, 1999039.64; 825737.88, 1999039.93; 825735.96, 1999040.35; 825734.07, 1999040.89; 825732.22, 1999041.55; 825730.41, 1999042.33; 825728.66, 1999043.22; 825726.98, 1999044.23; 825725.36, 1999045.35; 825724.81, 1999045.77; 825696.49, 1999067.79; 825611.42, 1999098.11; 825441.33, 1999133.44; 825440.15, 1999133.71; 825438.26, 1999134.25; 825436.41, 1999134.91; 825434.60, 1999135.69; 825432.86, 1999136.59; 825431.17, 1999137.60; 825431.13, 1999137.62; 825283.60, 1999233.04; 825282.03, 1999234.13; 825280.49, 1999235.35; 825279.04, 1999236.67; 825277.67, 1999238.08; 825276.40, 1999239.58; 825275.23, 1999241.16; 825274.16, 1999242.81; 825273.21, 1999244.53; 825272.37, 1999246.30; 825271.64, 1999248.13; 825271.04, 1999250.00; 825270.56, 1999251.91; 825270.21, 1999253.84; 825269.99, 1999255.79; 825269.89, 1999257.75.

(iii) Note: Map of Units 6 and 7 (Map 7) follows:

BILLING CODE 4310–55–P

MAP 7. Critical Habitat for the Guajón: Calabazas and Guayanés Units: Calabazas Ward, Yabucoa, Puerto Rico



BILLING CODE 4310–55–C

(13) Unit 8: Panduras, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 8 consists of approximately 28.6 ac (11.6 ha) to the northwest and southeast of Road PR–3 within Calabazas Ward, Yabucoa, and 18.2 ac (7.4 ha) of lands owned by the Puerto Rico Conservation Trust near the top of Cerro La Pandura.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 8 bounded by the following UTM 19 NAD 83 coordinates (E, N):

827566.07, 1997348.94; 827566.10, 1997350.90; 827566.26, 1997352.86; 827566.55, 1997354.81; 827566.96, 1997356.73; 827567.50, 1997358.62; 827568.16, 1997360.47; 827568.94, 1997362.27; 827569.84, 1997364.02; 827570.13, 1997364.53; 827611.88, 1997436.35; 827612.60, 1997437.52; 827613.72, 1997439.14; 827614.94, 1997440.68; 827616.26, 1997442.13; 827617.67, 1997443.50; 827619.16, 1997444.77; 827620.74, 1997445.94; 827622.39, 1997447.01; 827624.11, 1997447.96; 827625.89, 1997448.80; 827627.71, 1997449.53; 827629.58, 1997450.13; 827631.49, 1997450.61; 827633.42, 1997450.96; 827635.38, 1997451.18; 827637.34, 1997451.28; 827639.30, 1997451.25; 827641.26, 1997451.09; 827643.20, 1997450.80; 827645.13, 1997450.39; 827647.02, 1997449.85; 827648.87, 1997449.19; 827650.67, 1997448.41; 827652.42, 1997447.51; 827654.10, 1997446.50; 827655.72, 1997445.38; 827657.26, 1997444.16; 827658.72, 1997442.84; 827660.08, 1997441.43; 827661.35, 1997439.93; 827662.53, 1997438.36; 827663.59, 1997436.70; 827664.55, 1997434.99; 827665.39, 1997433.21; 827666.11, 1997431.38; 827666.71, 1997429.51; 827667.19, 1997427.61; 827667.54, 1997425.68; 827667.77, 1997423.72; 827667.86, 1997421.76; 827667.83, 1997419.80; 827667.67, 1997417.84; 827667.39, 1997415.89; 827666.97, 1997413.97; 827666.43, 1997412.08; 827665.77, 1997410.23; 827664.99, 1997408.43; 827664.09, 1997406.68; 827663.80, 1997406.17; 827627.55, 1997343.81; 827640.42, 1997269.96; 827711.77, 1997123.84; 827786.66, 1997042.73; 827883.73, 1996967.26; 827884.71, 1996966.46; 827886.17, 1996965.14; 827887.54, 1996963.73; 827888.44, 1996962.69; 827912.27, 1996933.87; 827952.33, 1996988.85; 827952.47, 1996989.05; 827953.69, 1996990.59; 827955.01, 1996992.05; 827956.43, 1996993.41; 827957.92, 1996994.69; 827959.50, 1996995.86; 827961.15, 1996996.92; 827962.87, 1996997.88; 827964.64, 1996998.72; 827966.47, 1996999.44; 827968.34, 1997000.04; 827968.39, 1997000.06; 828042.04, 1997020.99; 828043.90, 1997021.45; 828045.83, 1997021.80; 828047.79, 1997022.03; 828049.75, 1997022.12; 828051.71, 1997022.09; 828053.67, 1997021.93; 828055.62, 1997021.65; 828057.54, 1997021.23; 828059.35, 1997020.72; 828145.05, 1996993.46; 828145.12, 1996993.44; 828146.97, 1996992.78; 828148.78, 1996992.00; 828150.52, 1996991.10; 828152.21, 1996990.09; 828153.83, 1996988.97; 828155.37, 1996987.75; 828156.82, 1996986.43; 828158.19, 1996985.02; 828159.46, 1996983.52; 828160.63, 1996981.95; 828161.06, 1996981.32; 828201.73, 1996919.32; 828202.37, 1996918.29; 828203.33, 1996916.58; 828204.17, 1996914.80; 828204.82, 1996913.16; 828225.52, 1996856.56; 828225.58, 1996856.38; 828226.18, 1996854.51; 828226.66, 1996852.60; 828227.02, 1996850.67; 828227.24, 1996848.72; 828227.28, 1996848.25; 828230.87, 1996794.26; 828230.93, 1996792.77; 828230.90, 1996790.81; 828230.74, 1996788.85; 828230.45, 1996786.90; 828230.04, 1996784.98; 828229.50, 1996783.09; 828228.84, 1996781.24; 828228.06, 1996779.44; 828227.16, 1996777.69; 828226.15, 1996776.01; 828225.03, 1996774.39; 828223.81, 1996772.85; 828222.49, 1996771.39; 828221.16, 1996770.10; 828170.61, 1996723.90; 828170.53, 1996723.82; 828169.03, 1996722.55; 828167.45, 1996721.38; 828165.80, 1996720.31; 828164.09, 1996719.36; 828162.31, 1996718.52; 828162.31, 1996718.52; 828160.48, 1996717.80; 828158.61, 1996717.19; 828156.71, 1996716.72; 828154.77, 1996716.36; 828152.82, 1996716.14; 828150.86, 1996716.04; 828149.74, 1996716.04; 828067.24, 1996717.74; 828066.40, 1996717.77; 828064.44, 1996717.93; 828062.49, 1996718.22; 828060.57, 1996718.63; 828058.68, 1996719.17; 828056.83, 1996719.83; 828055.03, 1996720.61; 828054.09, 1996721.08; 827968.16, 1996765.39; 827967.35, 1996765.82; 827965.66, 1996766.83; 827964.05, 1996767.95; 827962.51, 1996769.17; 827961.05, 1996770.49; 827959.68, 1996771.90; 827958.41, 1996773.40; 827957.24, 1996774.98; 827956.17, 1996776.63; 827955.26, 1996778.28; 827922.76, 1996841.09; 827880.59, 1996878.48; 827879.64, 1996879.36; 827878.28, 1996880.77; 827877.37, 1996881.82; 827844.26, 1996921.88; 827747.85, 1996996.84; 827746.86, 1996997.64; 827745.40, 1996998.96; 827744.22, 1997000.18; 827664.66, 1997086.34; 827664.48, 1997086.53; 827663.21, 1997088.03; 827662.04, 1997089.61; 827660.97, 1997091.26; 827660.02, 1997092.98; 827659.74, 1997093.53; 827584.59, 1997247.43; 827584.03, 1997248.65; 827583.30, 1997250.48; 827582.70, 1997252.35; 827582.22, 1997254.26; 827581.99, 1997255.45; 827566.51, 1997344.29; 827566.39, 1997345.02; 827566.17, 1997346.98; 827566.07, 1997348.94.

(iii) Note: The map depicting Unit 8 is provided at paragraph (14)(iii) of this entry.

(14) Unit 9: Talante, Yabucoa-Maunabo, Puerto Rico.

(i) *General Description:* Unit 9 consists of approximately 23.5 ac (9.5 ha) east of Road PR–3, including the headwaters of the Talante Creek and five unnamed drainages. About 2.8 ac (1.1 ha) of Unit 9 are located within Calabazas Ward, Yabucoa, and the remaining 21.6 ac (8.7 ha) are located within Talante Ward, Maunabo.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 9 bounded by the following UTM 19 NAD 83 coordinates (E, N):

827501.36, 1996260.52; 827501.40, 1996262.48; 827501.41, 1996262.67; 827503.20, 1996295.22; 827502.70, 1996331.19; 827502.73, 1996333.01; 827504.51, 1996371.21; 827504.52, 1996371.27; 827504.68, 1996373.23; 827504.96, 1996375.18; 827505.38, 1996377.10; 827505.92, 1996378.99; 827506.58, 1996380.84; 827506.64, 1996380.97; 827506.08, 1996421.48; 827506.11, 1996423.36; 827506.11, 1996423.48; 827507.89, 1996457.21; 827507.49, 1996486.28; 827507.52, 1996488.16; 827507.68, 1996490.12; 827507.97, 1996492.06; 827508.39, 1996493.99; 827508.93, 1996495.87; 827509.59, 1996497.73; 827510.37, 1996499.53; 827511.26, 1996501.28; 827512.08, 1996502.66; 827524.53, 1996522.50; 827524.72, 1996522.80; 827525.84, 1996524.42; 827527.06, 1996525.96; 827528.38, 1996527.41; 827529.79, 1996528.78; 827531.28, 1996530.04; 827548.77, 1996543.95; 827551.50, 1996556.77; 827550.16, 1996581.70; 827550.12, 1996582.81; 827550.15, 1996584.77; 827550.31, 1996586.73; 827550.60, 1996588.68; 827551.01, 1996590.60; 827551.01, 1996590.60; 827551.55, 1996592.49; 827552.11, 1996594.08; 827562.90, 1996622.18; 827570.11, 1996645.71; 827570.06, 1996646.71; 827570.05, 1996647.35; 827570.13, 1996664.90; 827554.06, 1996695.96; 827554.02, 1996696.03; 827553.61, 1996696.87; 827529.60, 1996747.39; 827529.18, 1996748.32; 827528.45, 1996750.15; 827527.85, 1996752.02; 827527.37, 1996753.93; 827527.02, 1996755.86; 827526.80, 1996757.81; 827526.70, 1996759.77; 827526.70, 1996761.01; 827528.06, 1996816.12; 827528.09,

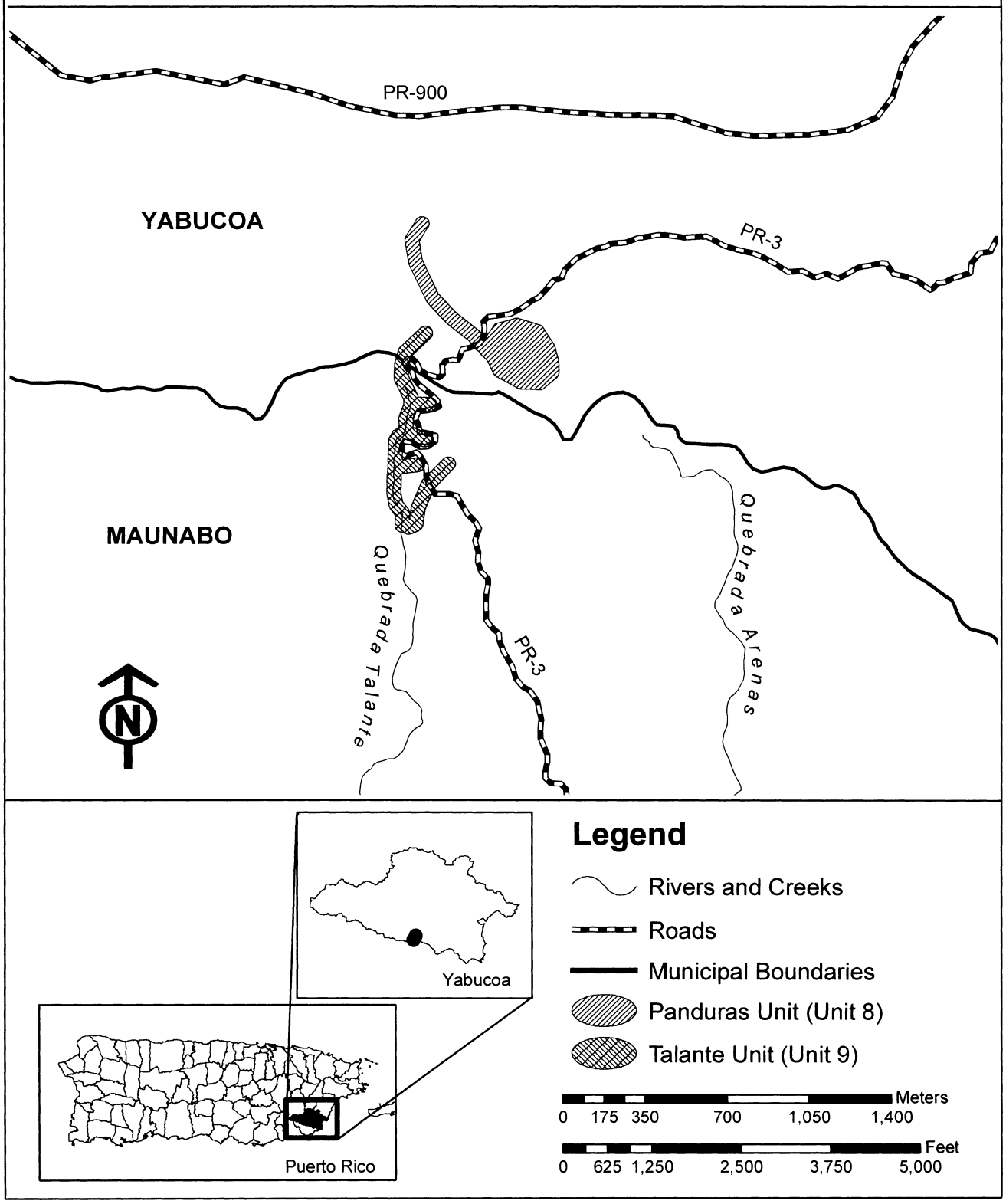
1996816.85; 827528.25, 1996818.81; 827528.53, 1996820.75; 827528.95, 1996822.67; 827529.49, 1996824.56; 827529.57, 1996824.81; 827547.87, 1996880.16; 827548.45, 1996881.75; 827549.23, 1996883.56; 827550.13, 1996885.30; 827551.14, 1996886.99; 827552.25, 1996888.61; 827553.48, 1996890.15; 827554.80, 1996891.60; 827554.86, 1996891.66; 827590.37, 1996928.18; 827591.34, 1996929.13; 827639.45, 1996974.29; 827639.83, 1996974.64; 827641.33, 1996975.92; 827642.90, 1996977.09; 827644.56, 1996978.15; 827646.27, 1996979.11; 827648.05, 1996979.95; 827649.88, 1996980.67; 827651.75, 1996981.27; 827653.65, 1996981.75; 827655.58, 1996982.10; 827657.54, 1996982.33; 827659.50, 1996982.43; 827661.46, 1996982.39; 827663.42, 1996982.23; 827665.37, 1996981.95; 827667.29, 1996981.53; 827669.18, 1996980.99; 827671.03, 1996980.33; 827672.83, 1996979.55; 827674.58, 1996978.65; 827676.26, 1996977.65; 827677.88, 1996976.53; 827679.42, 1996975.31; 827680.88, 1996973.99; 827682.24, 1996972.58; 827683.52, 1996971.08; 827684.69, 1996969.50; 827685.75, 1996967.85; 827686.71, 1996966.13; 827687.55, 1996964.36; 827688.27, 1996962.53; 827688.87, 1996960.66; 827689.35, 1996958.75; 827689.70, 1996956.82; 827689.93, 1996954.87; 827690.03, 1996952.90; 827689.99, 1996950.94; 827689.83, 1996948.98; 827689.55, 1996947.04; 827689.13, 1996945.12; 827688.59, 1996943.23; 827687.93, 1996941.38; 827687.15, 1996939.57; 827686.25, 1996937.83; 827685.25, 1996936.14; 827684.13, 1996934.52; 827682.91, 1996932.98; 827681.59, 1996931.53; 827680.55, 1996930.51; 827632.94, 1996885.81; 827602.72, 1996854.74; 827587.99, 1996810.19; 827586.92, 1996766.70; 827607.63, 1996723.10; 827620.43, 1996698.38; 827621.14, 1996697.71; 827622.51, 1996696.30; 827623.78, 1996694.80; 827624.95, 1996693.22; 827626.01, 1996691.57; 827626.97, 1996689.86; 827627.81, 1996688.08; 827628.53, 1996686.25; 827629.14, 1996684.38; 827629.61, 1996682.48; 827629.97, 1996680.54; 827630.19, 1996678.59; 827630.29, 1996676.63; 827630.29, 1996676.01; 827684.67, 1996673.75; 827684.89, 1996673.74; 827686.84, 1996673.58; 827688.79, 1996673.29; 827690.71, 1996672.87; 827692.60, 1996672.34; 827694.45, 1996671.67; 827694.45, 1996671.67; 827696.25, 1996670.89; 827698.00, 1996670.00; 827698.00, 1996670.00; 827699.69, 1996668.99; 827701.30, 1996667.87; 827702.84, 1996666.65; 827704.30, 1996665.33; 827705.66, 1996663.92; 827706.94, 1996662.42; 827708.11, 1996660.84; 827709.17, 1996659.19; 827709.17, 1996659.19; 827710.13, 1996657.47; 827710.97, 1996655.70; 827710.97, 1996655.70; 827711.69, 1996653.87; 827712.29, 1996652.00; 827712.77, 1996650.09; 827713.12, 1996648.16; 827713.35, 1996646.21; 827713.45, 1996644.25; 827713.42, 1996642.28; 827713.26, 1996640.32; 827712.97, 1996638.38; 827712.55, 1996636.46; 827712.01, 1996634.57; 827711.35, 1996632.72; 827711.35, 1996632.72; 827710.57, 1996630.92; 827709.68, 1996629.17; 827709.68, 1996629.17; 827708.67, 1996627.48; 827707.55, 1996625.87; 827706.33, 1996624.33; 827705.01, 1996622.87; 827703.60, 1996621.50; 827702.10, 1996620.23; 827700.52, 1996619.06; 827698.87, 1996617.99; 827698.87, 1996617.99; 827697.15, 1996617.04; 827695.38, 1996616.20; 827695.38, 1996616.20; 827693.55, 1996615.47; 827691.68, 1996614.87; 827689.77, 1996614.39; 827687.84, 1996614.04; 827685.89, 1996613.82; 827683.93, 1996613.72; 827682.99, 1996613.72; 827623.38, 1996614.57; 827620.02, 1996603.60; 827619.90, 1996603.21; 827619.34, 1996601.62; 827610.47, 1996578.53; 827611.68, 1996556.03; 827611.72, 1996554.91; 827611.69, 1996552.95; 827611.53, 1996550.99; 827611.24, 1996549.05; 827611.07, 1996548.16; 827610.79, 1996546.87; 827675.26, 1996519.57; 827676.37, 1996519.07; 827678.12, 1996518.17; 827679.81, 1996517.16; 827681.42, 1996516.04; 827682.96, 1996514.82; 827684.42, 1996513.50; 827685.79, 1996512.09; 827687.06, 1996510.59; 827688.23, 1996509.01; 827689.30, 1996507.36; 827690.25, 1996505.65; 827691.09, 1996503.87; 827691.81, 1996502.04; 827692.42, 1996500.17; 827692.89, 1996498.27; 827693.25, 1996496.33; 827693.47, 1996494.38; 827693.57, 1996492.42; 827693.54, 1996490.45; 827693.38, 1996488.50; 827693.09, 1996486.55; 827692.68, 1996484.63; 827692.14, 1996482.74; 827691.48, 1996480.89; 827690.69, 1996479.09; 827689.80, 1996477.34; 827688.79, 1996475.65; 827687.67, 1996474.04; 827686.45, 1996472.50; 827685.13, 1996471.04; 827683.72, 1996469.67; 827682.22, 1996468.40; 827680.64, 1996467.23; 827678.99, 1996466.17; 827677.27, 1996465.21; 827675.50, 1996464.37; 827673.67, 1996463.65; 827671.80, 1996463.05; 827669.90, 1996462.57; 827667.96, 1996462.21; 827666.01, 1996461.99; 827664.05, 1996461.89; 827662.08, 1996461.92; 827660.12, 1996462.08; 827658.18, 1996462.37; 827656.26, 1996462.79; 827654.37, 1996463.32; 827652.59, 1996463.96; 827580.29, 1996492.29; 827572.67, 1996486.23; 827567.66, 1996478.25; 827567.96, 1996457.04; 827567.93, 1996455.16; 827567.92, 1996455.04; 827566.14, 1996421.31; 827566.34, 1996406.71; 827631.73, 1996413.78; 827632.50, 1996413.86; 827634.46, 1996413.95; 827636.42, 1996413.92; 827638.38, 1996413.76; 827640.33, 1996413.47; 827642.25, 1996413.06; 827644.14, 1996412.52; 827645.99, 1996411.86; 827645.99, 1996411.86; 827647.79, 1996411.08; 827649.54, 1996410.18; 827651.22, 1996409.17; 827652.84, 1996408.05; 827654.38, 1996406.83; 827655.84, 1996405.51; 827657.20, 1996404.10; 827658.48, 1996402.61; 827659.65, 1996401.03; 827660.71, 1996399.38; 827661.67, 1996397.66; 827662.51, 1996395.88; 827662.51, 1996395.88; 827663.23, 1996394.06; 827663.83, 1996392.19; 827664.31, 1996390.28; 827664.66, 1996388.35; 827664.89, 1996386.39; 827664.99, 1996384.43; 827664.95, 1996382.47; 827664.79, 1996380.51; 827664.51, 1996378.57; 827664.09, 1996376.64; 827663.55, 1996374.75; 827662.89, 1996372.90; 827662.89, 1996372.90; 827662.11, 1996371.10; 827661.21, 1996369.35; 827661.21, 1996369.35; 827660.20, 1996367.67; 827659.09, 1996366.05; 827657.87, 1996364.51; 827656.55, 1996363.05; 827655.14, 1996361.69; 827653.64, 1996360.42; 827652.06, 1996359.25; 827650.41, 1996358.18; 827648.69, 1996357.22; 827646.92, 1996356.38; 827646.92, 1996356.38; 827645.09, 1996355.66; 827643.22, 1996355.06; 827641.31, 1996354.58; 827639.38, 1996354.23; 827639.14, 1996354.19; 827563.34, 1996343.54; 827562.76, 1996331.12; 827563.26, 1996295.01; 827563.23, 1996293.13; 827563.22, 1996292.95; 827561.59, 1996263.45; 827570.34, 1996223.52; 827594.25, 1996193.51; 827594.27, 1996193.48; 827595.44, 1996191.90; 827596.51, 1996190.25; 827597.46, 1996188.53; 827598.30, 1996186.75; 827599.03, 1996184.93; 827599.63, 1996183.06; 827600.11, 1996181.15; 827600.46, 1996179.22; 827600.69, 1996177.27; 827600.78, 1996175.30; 827600.79, 1996174.55; 827600.57, 1996148.78; 827600.59, 1996148.79; 827607.79, 1996201.75; 827608.00, 1996203.07; 827608.41, 1996204.99; 827608.95, 1996206.88; 827609.61, 1996208.73; 827609.81, 1996209.22; 827634.31, 1996268.25; 827650.95, 1996310.98; 827651.00, 1996311.11; 827651.78, 1996312.91; 827652.68, 1996314.66; 827653.69, 1996316.35; 827654.80, 1996317.96; 827656.02, 1996319.50; 827657.34, 1996320.96; 827657.40,

1996321.02; 827719.64, 1996385.01; 827741.95, 1996410.24; 827742.86, 1996411.23; 827744.27, 1996412.59; 827745.77, 1996413.86; 827747.35, 1996415.04; 827749.00, 1996416.10; 827750.71, 1996417.06; 827752.49, 1996417.90; 827754.32, 1996418.62; 827756.19, 1996419.22; 827758.09, 1996419.70; 827760.03, 1996420.05; 827761.98, 1996420.28; 827763.94, 1996420.37; 827765.91, 1996420.34; 827767.87, 1996420.18; 827769.81, 1996419.90; 827771.73, 1996419.48; 827773.62, 1996418.94; 827775.47, 1996418.28; 827777.27, 1996417.50; 827779.02, 1996416.60; 827780.71, 1996415.59; 827782.32, 1996414.48; 827783.86, 1996413.25; 827785.32, 1996411.94; 827786.69, 1996410.52; 827787.96, 1996409.03; 827789.13, 1996407.45; 827790.19, 1996405.80; 827791.15, 1996404.08; 827791.99, 1996402.30; 827792.71, 1996400.48; 827793.31, 1996398.61; 827793.79, 1996396.70; 827794.15, 1996394.77; 827794.37, 1996392.82; 827794.47, 1996390.85; 827794.44, 1996388.89; 827794.28, 1996386.93; 827793.99, 1996384.99; 827793.58, 1996383.07; 827793.04, 1996381.18; 827792.37, 1996379.33; 827791.59, 1996377.52; 827790.70, 1996375.77; 827789.69, 1996374.09; 827788.57, 1996372.47; 827787.35, 1996370.93; 827786.94, 1996370.46; 827764.16, 1996344.69; 827763.25, 1996343.71; 827763.19, 1996343.65; 827704.70, 1996283.52; 827690.15, 1996246.15; 827690.10, 1996246.02; 827689.90, 1996245.54; 827666.77, 1996189.80; 827657.85, 1996124.12; 827657.64, 1996122.80; 827657.22, 1996120.88; 827656.68, 1996118.99; 827656.02, 1996117.14; 827655.24, 1996115.33; 827654.34, 1996113.59; 827653.34, 1996111.90; 827652.22, 1996110.28; 827651.00, 1996108.74; 827649.68, 1996107.29; 827648.27, 1996105.92; 827646.77, 1996104.65; 827645.19, 1996103.48; 827643.54, 1996102.41; 827641.82, 1996101.46; 827640.30, 1996100.73; 827608.11, 1996086.40; 827607.85, 1996086.29; 827607.85, 1996086.29; 827606.02, 1996085.57; 827604.15, 1996084.96; 827604.15, 1996084.96; 827602.25, 1996084.49; 827600.31, 1996084.13; 827598.36, 1996083.91; 827596.40, 1996083.81; 827594.44, 1996083.84; 827592.48, 1996084.00; 827590.53, 1996084.29; 827588.61, 1996084.70; 827588.61, 1996084.70; 827586.72, 1996085.24; 827586.03, 1996085.47; 827560.45, 1996094.38; 827559.30, 1996094.80; 827557.49, 1996095.59; 827555.75, 1996096.48; 827554.06, 1996097.49; 827552.44, 1996098.61; 827550.90, 1996099.83; 827549.45, 1996101.15; 827548.08, 1996102.56; 827546.81, 1996104.06; 827545.64, 1996105.64; 827544.57, 1996107.29; 827543.62, 1996109.01; 827542.78, 1996110.78; 827542.05, 1996112.61; 827541.45, 1996114.48; 827540.97, 1996116.38; 827540.62, 1996118.32; 827540.40, 1996120.27; 827540.30, 1996122.23; 827540.30, 1996122.99; 827540.64, 1996164.41; 827519.02, 1996191.56; 827518.99, 1996191.60; 827517.82, 1996193.18; 827516.75, 1996194.83; 827515.80, 1996196.54; 827514.96, 1996198.32; 827514.23, 1996200.15; 827513.63, 1996202.02; 827513.17, 1996203.85; 827502.06, 1996254.60; 827502.04, 1996254.67; 827501.69, 1996256.61; 827501.46, 1996258.56; 827501.36, 1996260.52.

(iii) Note: Map of Units 8 and 9 (Map 8) follows:

BILLING CODE 4310–55–P

MAP 8. Critical Habitat for the Guajón: Panduras and Talante Units: Calabazas Ward, Yabucoa and Talante Ward, Maunabo, Puerto Rico



BILLING CODE 4310–55–C

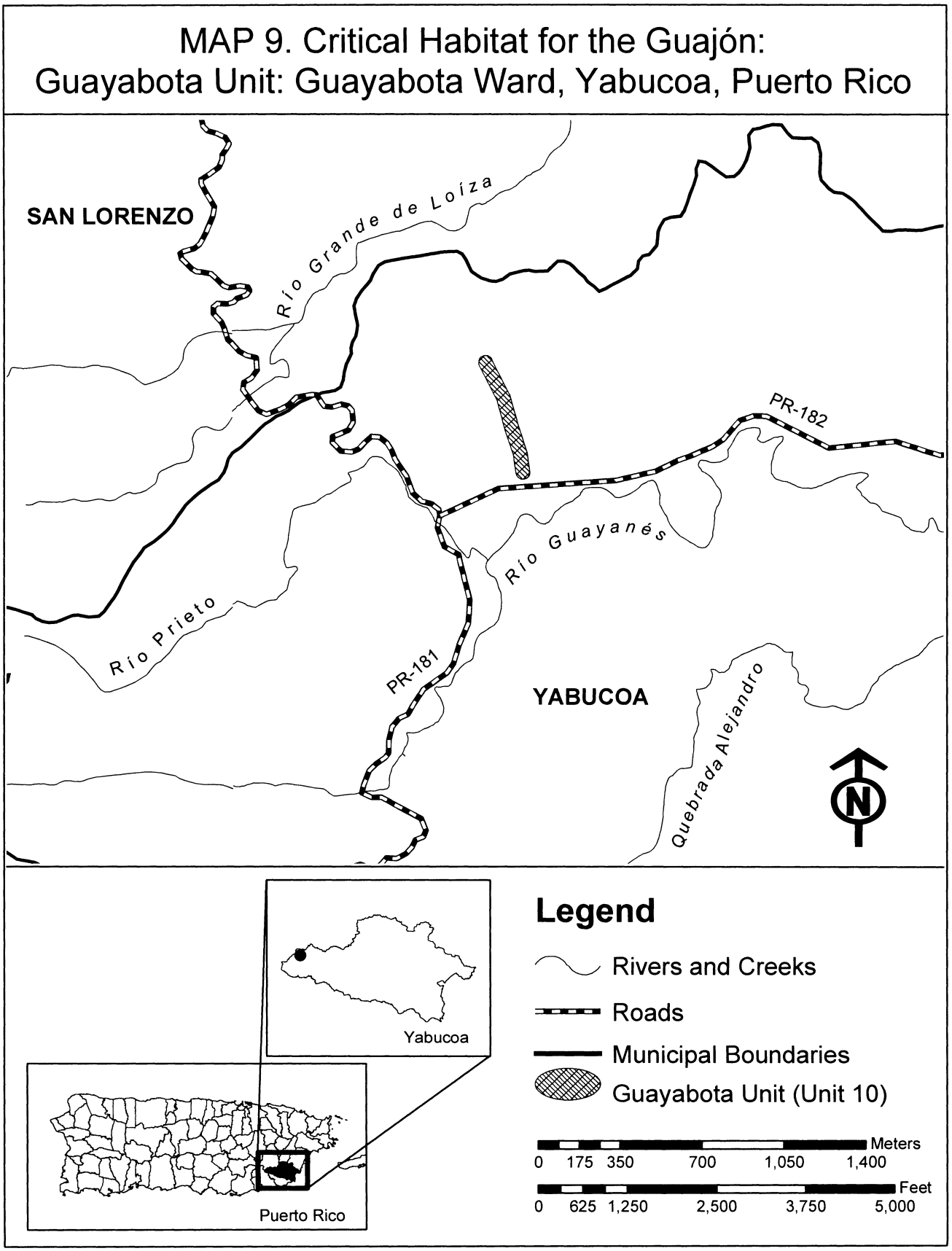
(15) Unit 10: Guayabota, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 10 consists of approximately 13.1 ac (5.3 ha) to the northeast of intersection of roads PR–181 to the east, and PR–182 and Rio Guayanés to the south, and south of the municipal boundary with San Lorenzo, within Guayabota Ward, Yabucoa.

(ii) *Coordinates:* From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 10 bounded by the following UTM 19 NAD 83 coordinates (E, N):

818663.90, 2001950.98; 818669.55, 2002001.91; 818692.20, 2002048.84; 818715.15, 2002074.58; 818757.13, 2002102.71; 818816.53, 2002097.18; 818863.37, 2002080.88; 818903.97, 2002056.02; 818923.80, 2002001.21; 818925.95, 2001999.12; 818936.95, 2001969.61; 818946.01, 2001927.36; 818917.06, 2001876.11; 818883.41, 2001858.69; 818834.74, 2001853.78; 818779.64, 2001855.13; 818739.10, 2001875.75; 818691.94, 2001915.35; 818689.82, 2001915.32; 818663.90, 2001950.98.

(iii) Note: Map of Unit 10 (Map 9) follows:



BILLING CODE 4310–55–C

(16) Unit 11: Guayabito, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 11 consists of approximately 17.3 ac (7.0 ha) south of Road PR–900 and north of the Maunabo boundary, within Guayabota Ward, Yabucoa.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 11 bounded by the following UTM 19 NAD 83 coordinates (E, N):

822520.09, 1998835.84; 822520.13, 1998837.81; 822520.29, 1998839.76; 822520.57, 1998841.71; 822520.99, 1998843.63; 822521.53, 1998845.52; 822522.19, 1998847.37; 822522.97, 1998849.17; 822523.87, 1998850.92; 822524.88, 1998852.61; 822526.00, 1998854.22; 822527.22, 1998855.76; 822528.54, 1998857.22; 822529.95, 1998858.58; 822531.45, 1998859.85; 822533.03, 1998861.02; 822534.68, 1998862.09; 822536.39, 1998863.04; 822538.17, 1998863.88; 822540.00, 1998864.61; 822541.87, 1998865.21; 822543.77, 1998865.69; 822545.32, 1998865.98; 822611.77, 1998876.73; 822655.55, 1998901.23; 822685.38, 1998957.12; 822733.68, 1999416.01; 822733.71, 1999416.30; 822734.00, 1999418.24; 822734.41, 1999420.16; 822734.95, 1999422.05; 822735.61, 1999423.90; 822736.39, 1999425.71; 822737.29, 1999427.45; 822738.30, 1999429.14; 822738.30, 1999429.14; 822739.42, 1999430.76; 822740.64, 1999432.30; 822741.96, 1999433.75; 822743.37, 1999435.12; 822744.87, 1999436.39; 822746.45, 1999437.56; 822746.45, 1999437.56; 822748.10, 1999438.62; 822749.81, 1999439.58; 822751.59, 1999440.42; 822753.42, 1999441.14; 822755.29, 1999441.74; 822757.19, 1999442.22; 822759.13, 1999442.57; 822761.08, 1999442.80; 822763.04, 1999442.89; 822765.01, 1999442.86; 822766.97, 1999442.70; 822768.91, 1999442.41; 822770.83, 1999442.00; 822772.72, 1999441.46; 822774.57, 1999440.80; 822776.37, 1999440.02; 822778.12, 1999439.12; 822779.81, 1999438.11; 822779.81, 1999438.11; 822781.42, 1999436.99; 822782.96, 1999435.77; 822783.85, 1999434.99; 822805.32, 1999415.26; 822805.89, 1999414.73; 822807.26, 1999413.32; 822808.53, 1999411.82; 822809.70, 1999410.24; 822810.76, 1999408.59; 822811.72, 1999406.87; 822812.56, 1999405.10; 822813.28, 1999403.27; 822813.88, 1999401.40; 822814.36, 1999399.49; 822814.71, 1999397.56; 822814.94, 1999395.61; 822815.03, 1999393.64; 822815.04, 1999393.56; 822815.59, 1999353.44; 822834.40, 1999326.93; 822859.47, 1999302.21; 822860.64, 1999300.99; 822861.91, 1999299.49; 822863.08, 1999297.91; 822864.14, 1999296.26; 822865.10, 1999294.55; 822865.94, 1999292.77; 822866.66, 1999290.94; 822867.26, 1999289.07; 822867.74, 1999287.17; 822868.09, 1999285.23; 822868.32, 1999283.28; 822868.41, 1999281.32; 822868.42, 1999280.68; 822868.13, 1999220.49; 822872.70, 1999182.15; 822872.81, 1999181.05; 822872.89, 1999179.72; 822875.48, 1999111.28; 822875.49, 1999110.64; 822875.46, 1999108.68; 822875.30, 1999106.72; 822875.01, 1999104.77; 822874.60, 1999102.85; 822874.06, 1999100.96; 822873.40, 1999099.11; 822873.18, 1999098.57; 822846.96, 1999035.79; 822846.40, 1999034.52; 822845.50, 1999032.78; 822844.49, 1999031.09; 822843.37, 1999029.48; 822842.15, 1999027.94; 822840.83, 1999026.48; 822840.54, 1999026.18; 822738.32, 1998923.47; 822737.20, 1998922.41; 822735.70, 1998921.14; 822734.13, 1998919.96; 822733.36, 1998919.47; 822704.39, 1998865.19; 822704.15, 1998864.75; 822703.14, 1998863.06; 822702.02, 1998861.45; 822700.80, 1998859.91; 822699.48, 1998858.45; 822698.06, 1998857.09; 822696.57, 1998855.82; 822694.99, 1998854.64; 822693.34, 1998853.58; 822692.56, 1998853.13; 822636.47, 1998821.73; 822635.52, 1998821.22; 822633.75, 1998820.38; 822631.92, 1998819.66; 822630.05, 1998819.06; 822628.14, 1998818.58; 822626.59, 1998818.29; 822554.91, 1998806.70; 822554.53, 1998806.64; 822552.57, 1998806.41; 822550.61, 1998806.31; 822548.65, 1998806.35; 822546.69, 1998806.51; 822544.75, 1998806.80; 822542.83, 1998807.21; 822540.94, 1998807.75; 822539.09, 1998808.41; 822537.28, 1998809.19; 822535.53, 1998810.09; 822533.85, 1998811.10; 822532.23, 1998812.22; 822530.69, 1998813.44; 822529.24, 1998814.76; 822527.87, 1998816.17; 822526.60, 1998817.67; 822525.43, 1998819.25; 822524.36, 1998820.90; 822523.41, 1998822.61; 822522.57, 1998824.39; 822521.85, 1998826.22; 822521.25, 1998828.09; 822520.77, 1998829.99; 822520.42, 1998831.93; 822520.19, 1998833.88; 822520.09, 1998835.84; 822752.71, 1999023.06; 822781.60, 1999297.57; 822786.94, 1999290.03; 822787.92, 1999288.73; 822789.19, 1999287.23; 822790.36, 1999286.02; 822808.30, 1999268.32; 822808.06, 1999218.93; 822808.07, 1999218.29; 822808.17, 1999216.32; 822808.28, 1999215.22; 822812.93, 1999176.24; 822815.22, 1999115.62; 822793.82, 1999064.36; 822752.71, 1999023.06.

(iii) Note: The map depicting Unit 11 is provided at paragraph (17)(iii) of this entry.

(17) Unit 12: Guayabo, Yabucoa, Puerto Rico.

(i) *General Description:* Unit 12 consists of approximately 9.8 ac (3.9 ha) within Guayabota Ward, Yabucoa, crossing Road PR–900, north of the Maunabo boundary, and about 3,025 ft (922 m) west of Unit 11.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 12 is bounded by the following UTM 19 NAD 83 coordinates (E, N):

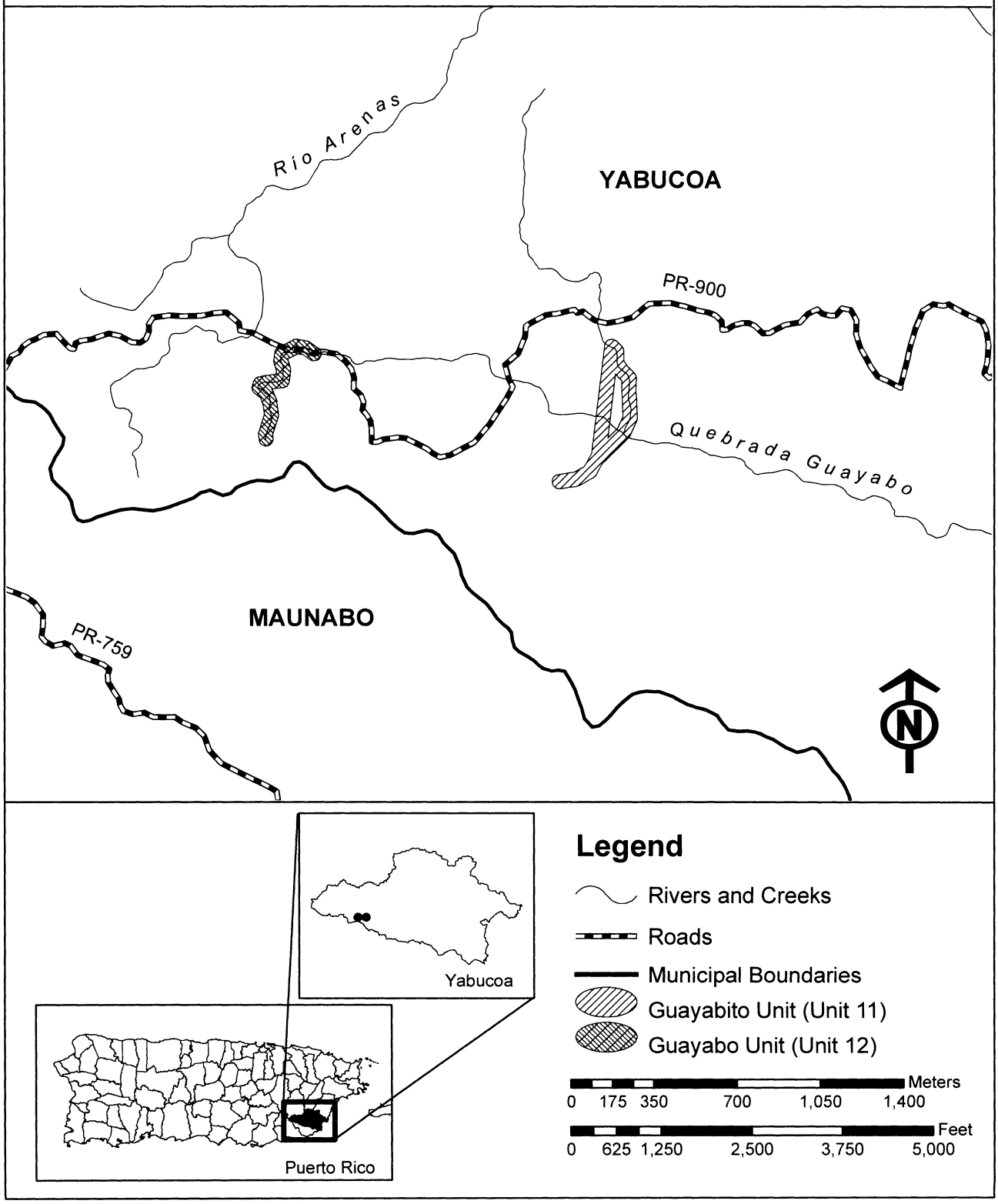
821249.15, 1999215.02; 821249.18, 1999216.98; 821249.34, 1999218.94; 821249.63, 1999220.88; 821250.04, 1999222.80; 821250.19, 1999223.36; 821255.15, 1999241.68; 821255.54, 1999243.01; 821256.21, 1999244.86; 821256.99, 1999246.67; 821257.88, 1999248.41; 821258.89, 1999250.10; 821260.01, 1999251.72; 821261.23, 1999253.25; 821262.55, 1999254.71; 821263.97, 1999256.08; 821265.46, 1999257.35; 821267.04, 1999258.52; 821268.69, 1999259.58; 821270.41, 1999260.54; 821272.19, 1999261.38; 821274.01, 1999262.10; 821275.88, 1999262.70; 821276.77, 1999262.94; 821304.05, 1999269.84; 821305.07, 1999270.08; 821307.00, 1999270.43; 821308.01, 1999270.56; 821349.11, 1999275.25; 821350.61, 1999289.71; 821339.99, 1999325.55; 821339.91, 1999325.83; 821339.43, 1999327.74; 821339.08, 1999329.67; 821338.85, 1999331.62; 821338.76, 1999333.59; 821338.79, 1999335.55; 821338.95, 1999337.51; 821338.97, 1999337.72; 821342.49, 1999366.45; 821342.75, 1999368.18; 821343.16, 1999370.10; 821343.70, 1999371.99; 821344.36, 1999373.84; 821345.15, 1999375.64; 821346.04, 1999377.39; 821347.05, 1999379.08; 821348.17, 1999380.69; 821349.39, 1999382.23; 821350.71, 1999383.69; 821352.12, 1999385.05; 821353.62, 1999386.32; 821355.20, 1999387.50; 821356.85, 1999388.56; 821358.57, 1999389.51; 821359.49, 1999389.97; 821386.84, 1999402.86; 821418.08, 1999420.93; 821419.39, 1999421.65; 821421.17, 1999422.49; 821423.00, 1999423.21; 821424.87, 1999423.81; 821426.77, 1999424.29; 821428.71, 1999424.64; 821430.66, 1999424.86; 821432.62, 1999424.96; 821434.58, 1999424.93; 821436.54, 1999424.77; 821437.64, 1999424.62; 821476.83, 1999418.65; 821477.68, 1999418.51; 821479.60, 1999418.09; 821481.49, 1999417.55; 821483.34, 1999416.89; 821485.14, 1999416.11; 821486.89, 1999415.21; 821488.57, 1999414.20; 821488.70, 1999414.12; 821525.83, 1999389.92; 821527.32, 1999388.88; 821528.86, 1999387.66; 821530.31, 1999386.34; 821531.68, 1999384.93; 821532.95, 1999383.43;

821534.12, 1999381.85; 821535.19, 1999380.20; 821536.14, 1999378.48; 821536.98, 1999376.71; 821537.70, 1999374.88; 821538.30, 1999373.01; 821538.78, 1999371.10; 821539.13, 1999369.17; 821539.36, 1999367.22; 821539.45, 1999365.26; 821539.42, 1999363.29; 821539.26, 1999361.33; 821538.97, 1999359.39; 821538.56, 1999357.47; 821538.02, 1999355.58; 821537.36, 1999353.73; 821536.58, 1999351.93; 821535.68, 1999350.18; 821534.67, 1999348.49; 821533.55, 1999346.88; 821532.33, 1999345.34; 821531.01, 1999343.88; 821529.60, 1999342.52; 821528.10, 1999341.24; 821526.52, 1999340.07; 821524.87, 1999339.01; 821523.15, 1999338.05; 821521.38, 1999337.21; 821519.55, 1999336.49; 821517.68, 1999335.89; 821515.77, 1999335.41; 821513.84, 1999335.06; 821511.89, 1999334.84; 821509.93, 1999334.74; 821507.96, 1999334.77; 821506.00, 1999334.93; 821504.06, 1999335.22; 821502.14, 1999335.64; 821500.25, 1999336.17; 821498.40, 1999336.84; 821496.60, 1999337.62; 821494.85, 1999338.52; 821493.16, 1999339.53; 821493.04, 1999339.61; 821461.35, 1999360.26; 821439.02, 1999363.66; 821415.82, 1999350.25; 821414.50, 1999349.53; 821413.59, 1999349.08; 821400.08, 1999342.71; 821399.34, 1999336.63; 821409.88, 1999301.06; 821409.96, 1999300.78; 821410.44, 1999298.88; 821410.79, 1999296.94; 821411.01, 1999294.99; 821411.11, 1999293.03; 821411.08, 1999291.06; 821410.95, 1999289.44; 821406.35, 1999245.05; 821406.32, 1999244.72; 821406.03, 1999242.78; 821405.62, 1999240.85; 821405.08, 1999238.97; 821404.41, 1999237.12; 821403.63, 1999235.31; 821402.74, 1999233.56; 821401.73, 1999231.88; 821400.61, 1999230.26; 821399.39, 1999228.72; 821398.07, 1999227.27; 821396.65, 1999225.90; 821395.16, 1999224.63; 821393.58, 1999223.46; 821391.93, 1999222.39; 821390.21, 1999221.44; 821388.43, 1999220.60; 821386.61, 1999219.88; 821384.74, 1999219.28; 821382.83, 1999218.80; 821380.90, 1999218.45; 821379.89, 1999218.32; 821331.62, 1999212.81; 821331.68, 1999212.76; 821333.04, 1999211.35; 821334.31, 1999209.85; 821335.48, 1999208.27; 821336.55, 1999206.62; 821337.50, 1999204.90; 821338.34, 1999203.13; 821338.95, 1999201.61; 821353.85, 1999161.41; 821353.96, 1999161.09; 821354.56, 1999159.22; 821355.04, 1999157.32; 821355.39, 1999155.41; 821362.58, 1999107.28; 821362.58, 1999107.25; 821362.80, 1999105.30; 821362.90, 1999103.34; 821362.87, 1999101.37; 821362.71, 1999099.41; 821362.42, 1999097.47; 821362.01, 1999095.55; 821361.72, 1999094.50; 821339.65, 1999018.19; 821340.99, 1999002.89; 821341.00, 1999002.72; 821341.10, 1999000.76; 821341.07, 1998998.79; 821340.91, 1998996.83; 821340.62, 1998994.89; 821340.20, 1998992.97; 821339.66, 1998991.08; 821339.00, 1998989.23; 821338.22, 1998987.43; 821337.32, 1998985.68; 821336.31, 1998983.99; 821335.20, 1998982.38; 821333.97, 1998980.84; 821332.66, 1998979.38; 821331.24, 1998978.02; 821329.75, 1998976.75; 821328.17, 1998975.58; 821326.52, 1998974.51; 821324.80, 1998973.56; 821323.02, 1998972.72; 821321.19, 1998971.99; 821319.32, 1998971.39; 821317.42, 1998970.91; 821315.49, 1998970.56; 821313.53, 1998970.34; 821311.57, 1998970.24; 821309.61, 1998970.27; 821307.65, 1998970.43; 821305.70, 1998970.72; 821303.78, 1998971.14; 821301.89, 1998971.68; 821300.04, 1998972.34; 821298.24, 1998973.12; 821296.49, 1998974.02; 821294.81, 1998975.03; 821293.19, 1998976.15; 821291.65, 1998977.37; 821290.20, 1998978.69; 821288.83, 1998980.10; 821287.56, 1998981.60; 821286.39, 1998983.17; 821285.32, 1998984.83; 821284.37, 1998986.54; 821283.53, 1998988.32; 821282.81, 1998990.15; 821282.21, 1998992.02; 821281.73, 1998993.92; 821281.38, 1998995.86; 821281.17, 1998997.64; 821279.33, 1999018.53; 821279.32, 1999018.70; 821279.22, 1999020.66; 821279.26, 1999022.62; 821279.42, 1999024.58; 821279.70, 1999026.53; 821280.12, 1999028.45; 821280.40, 1999029.50; 821302.21, 1999104.89; 821296.46, 1999143.46; 821285.64, 1999172.65; 821260.86, 1999191.71; 821259.75, 1999192.61; 821258.29, 1999193.93; 821256.92, 1999195.35; 821255.65, 1999196.84; 821254.48, 1999198.42; 821253.42, 1999200.07; 821252.46, 1999201.79; 821251.62, 1999203.57; 821250.90, 1999205.39; 821250.30, 1999207.26; 821249.82, 1999209.17; 821249.47, 1999211.10; 821249.25, 1999213.06; 821249.15, 1999215.02.

(iii) Note: Map of Units 11 and 12 (Map 10) follows:

BILLING CODE 4310–55–P

MAP 10. Critical Habitat for the Guajón: Guayabito and Guayabo Units: Guayabota Ward, Yabucoa, Puerto Rico



BILLING CODE 4310–55–C

(18) Unit 13: El Cielito, Maunabo, Puerto Rico.

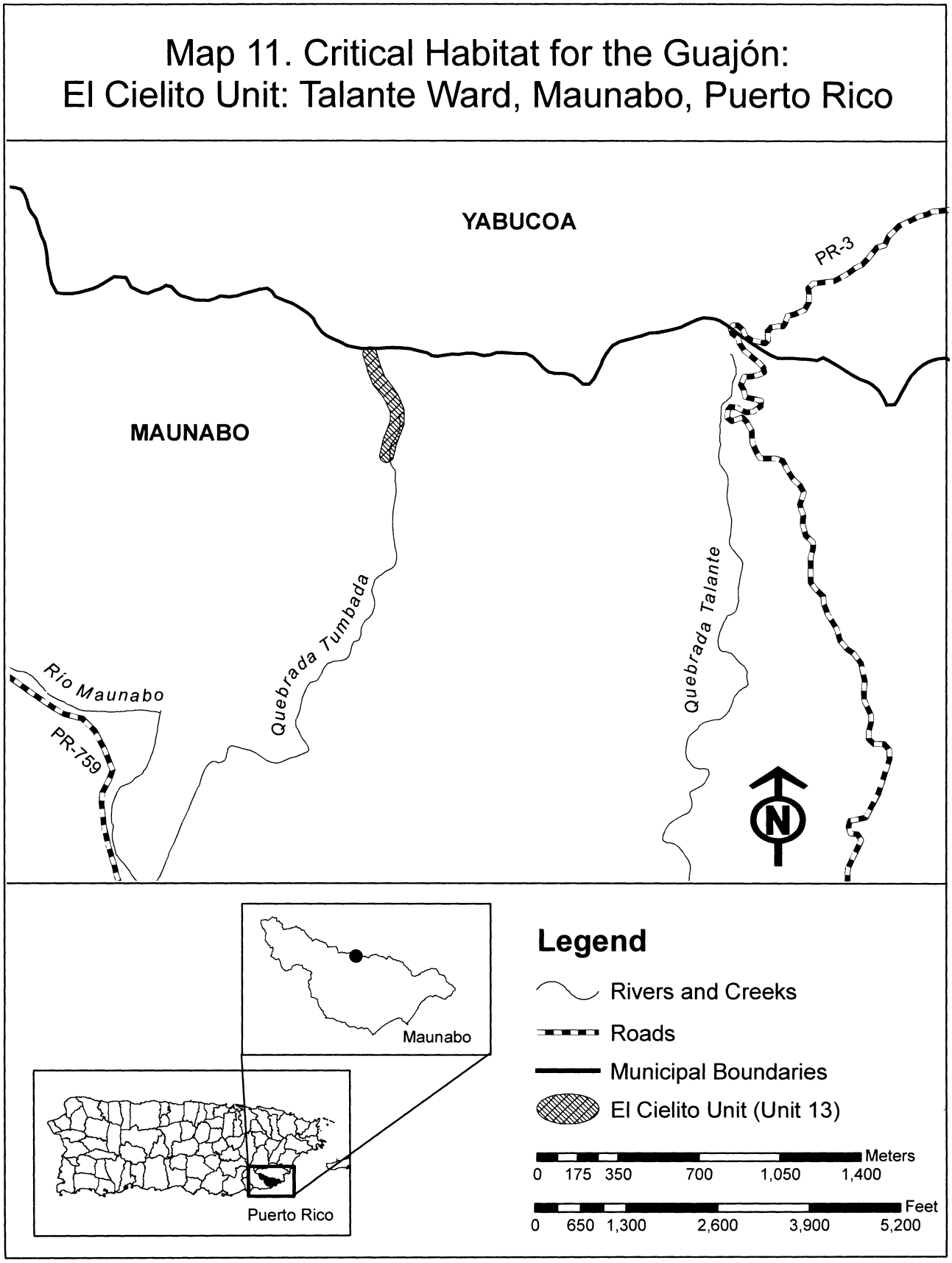
(i) *General Description:* Unit 13 consists of approximately 7.84 ac (3.17 ha), between the municipal boundary of Yabucoa to the north, PR–759 to the south and west, and PR–3 to the east, within Talante Ward, Maunabo.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 13 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825982.02, 1996690.65; 825982.05, 1996692.62; 825982.22, 1996694.58; 825982.51, 1996696.52; 825982.93, 1996698.44; 825983.48, 1996700.33; 825984.14, 1996702.18; 825984.93, 1996703.98; 825985.83, 1996705.72; 825986.85, 1996707.40; 825987.97, 1996709.02; 825989.19, 1996710.55; 825990.52, 1996712.01; 825991.93, 1996713.37; 825993.43, 1996714.64; 825995.01, 1996715.80; 825996.67, 1996716.86; 825998.39, 1996717.81; 826000.17, 1996718.65; 826002.00, 1996719.37; 826003.87, 1996719.96; 826005.78, 1996720.44; 826007.71, 1996720.78; 826009.66, 1996721.00; 826011.63, 1996721.09; 826013.59, 1996721.06; 826015.55, 1996720.89; 826017.49, 1996720.60; 826019.41, 1996720.18; 826021.30, 1996719.63; 826023.15, 1996718.97; 826024.95, 1996718.18; 826026.69, 1996717.28; 826028.38, 1996716.27; 826029.99, 1996715.14; 826031.53, 1996713.92; 826032.98, 1996712.59; 826034.34, 1996711.18; 826035.61, 1996709.68; 826036.77, 1996708.10; 826037.84, 1996706.44; 826038.79, 1996704.72; 826039.62, 1996702.94; 826040.34, 1996701.11; 826040.80, 1996699.72; 826058.80, 1996639.86; 826064.87, 1996626.21; 826065.02, 1996625.87; 826065.62, 1996624.39; 826077.68, 1996591.67; 826117.27, 1996543.05; 826117.56, 1996542.70; 826118.72, 1996541.12; 826119.34, 1996540.18; 826137.43, 1996511.67; 826137.87, 1996510.96; 826138.82, 1996509.24; 826139.63, 1996507.52; 826162.49, 1996454.74; 826162.51, 1996454.69; 826163.23, 1996452.86; 826163.82, 1996450.98; 826164.30, 1996449.08; 826164.64, 1996447.14; 826164.86, 1996445.19; 826164.96, 1996443.23; 826165.66, 1996392.36; 826165.62, 1996390.40; 826165.46, 1996388.44; 826165.16, 1996386.49; 826164.74, 1996384.58; 826164.20, 1996382.69; 826163.81, 1996381.55; 826132.56, 1996296.82; 826120.53, 1996241.20; 826120.29, 1996240.18; 826119.75, 1996238.29; 826119.08, 1996236.44; 826118.30, 1996234.64; 826117.39, 1996232.89; 826116.38, 1996231.21; 826115.26, 1996229.60; 826114.03, 1996228.06; 826112.71, 1996226.61; 826111.29, 1996225.25; 826109.79, 1996223.98; 826108.21, 1996222.81; 826106.56, 1996221.75; 826104.84, 1996220.80; 826103.06, 1996219.97; 826101.23, 1996219.25; 826099.36, 1996218.65; 826097.45, 1996218.18; 826095.51, 1996217.83; 826093.56, 1996217.61; 826091.60, 1996217.52; 826089.63, 1996217.56; 826087.68, 1996217.72; 826085.73, 1996218.02; 826083.81, 1996218.44; 826081.93, 1996218.98; 826080.08, 1996219.65; 826078.28, 1996220.43; 826076.53, 1996221.34; 826074.85, 1996222.35; 826073.24, 1996223.47; 826071.70, 1996224.70; 826070.25, 1996226.02; 826068.88, 1996227.44; 826067.62, 1996228.94; 826066.45, 1996230.52; 826065.39, 1996232.17; 826064.44, 1996233.89; 826063.60, 1996235.67; 826062.89, 1996237.50; 826062.29, 1996239.37; 826061.82, 1996241.28; 826061.47, 1996243.21; 826061.25, 1996245.17; 826061.16, 1996247.13; 826061.20, 1996249.09; 826061.36, 1996251.05; 826061.65, 1996253.00; 826061.83, 1996253.89; 826074.31, 1996311.58; 826074.55, 1996312.60; 826075.09, 1996314.49; 826075.48, 1996315.62; 826105.53, 1996397.10; 826104.99, 1996436.39; 826085.46, 1996481.49; 826069.59, 1996506.50; 826027.95, 1996557.62; 826027.67, 1996557.98; 826026.50, 1996559.56; 826025.44, 1996561.21; 826024.49, 1996562.93; 826023.65, 1996564.71; 826023.06, 1996566.20; 826009.61, 1996602.69; 826003.16, 1996617.18; 826003.01, 1996617.52; 826002.29, 1996619.34; 826001.84, 1996620.74; 825983.29, 1996682.42; 825983.15, 1996682.90; 825982.68, 1996684.80; 825982.33, 1996686.74; 825982.11, 1996688.69; 825982.02, 1996690.65.

(iii) Note: Map of Unit 13 (Map 11) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(19) Unit 14: Verraco, San Lorenzo, Puerto Rico.

(i) *General Description:* Unit 14 consists of approximately 8.9 ac (3.6 ha), between PR–181 to the north and west, Río Grande de Loíza to the east and south, and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo.

(ii) *Coordinates:* From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 14 bounded by the following UTM 19 NAD 83 coordinates (E, N):

818021.78, 2003743.38; 818021.82, 2003745.35; 818021.98, 2003747.31; 818022.27, 2003749.25; 818022.69, 2003751.17; 818023.24, 2003753.06; 818023.90, 2003754.90; 818024.69, 2003756.71; 818025.59, 2003758.45; 818026.61, 2003760.13; 818027.41, 2003761.31; 818041.40, 2003780.81; 818041.72, 2003781.25; 818042.95, 2003782.78; 818044.27, 2003784.24; 818045.68, 2003785.60; 818047.19, 2003786.87; 818048.77, 2003788.03; 818050.42, 2003789.09; 818051.64, 2003789.78; 818072.66, 2003801.02; 818073.16, 2003801.29; 818074.94, 2003802.12; 818076.77, 2003802.84; 818078.64, 2003803.44; 818080.55, 2003803.91; 818082.48, 2003804.26; 818084.44, 2003804.48; 818086.40, 2003804.57; 818088.36, 2003804.53; 818089.35, 2003804.46; 818118.63, 2003801.99; 818119.61, 2003801.89; 818121.55, 2003801.60; 818123.47, 2003801.18; 818125.20, 2003800.69; 818179.90, 2003783.29; 818180.06, 2003783.24; 818181.91, 2003782.58; 818183.71, 2003781.79; 818183.86, 2003781.72; 818240.72, 2003754.27; 818242.32, 2003753.44; 818244.00, 2003752.42; 818245.61, 2003751.30; 818247.15, 2003750.08; 818248.60, 2003748.75; 818249.96, 2003747.34; 818251.23, 2003745.84; 818252.40, 2003744.26; 818253.46, 2003742.60; 818254.41, 2003740.88; 818255.24, 2003739.10; 818255.96, 2003737.28; 818256.56, 2003735.40; 818257.03, 2003733.50; 818257.38, 2003731.56; 818257.60, 2003729.61; 818257.69, 2003727.65; 818257.65, 2003725.68; 818257.49, 2003723.73; 818257.19, 2003721.78; 818256.77, 2003719.86; 818256.23, 2003717.97; 818255.56, 2003716.13; 818254.78, 2003714.33; 818253.88, 2003712.58; 818252.86, 2003710.90; 818251.74, 2003709.28; 818250.51, 2003707.75; 818249.19, 2003706.30; 818247.78, 2003704.93; 818246.27, 2003703.67; 818244.69, 2003702.50; 818243.04, 2003701.44; 818241.32, 2003700.49; 818239.54, 2003699.65; 818237.71, 2003698.93; 818235.84, 2003698.34; 818233.93, 2003697.87; 818232.00, 2003697.52; 818230.05, 2003697.30; 818228.08, 2003697.21; 818226.12, 2003697.24; 818224.16, 2003697.41; 818222.22, 2003697.70; 818220.30, 2003698.12; 818218.41, 2003698.67; 818216.56, 2003699.33; 818214.76, 2003700.12; 818214.61, 2003700.19; 818187.94, 2003713.06; 818216.83, 2003685.69; 818233.41, 2003672.94; 818247.97, 2003666.94; 818249.43, 2003666.29; 818251.18, 2003665.38; 818252.86, 2003664.37; 818254.47, 2003663.25; 818256.01, 2003662.02; 818257.46, 2003660.70; 818258.83, 2003659.29; 818260.09, 2003657.78; 818261.26, 2003656.20; 818262.32, 2003654.55; 818263.27, 2003652.83; 818264.11, 2003651.05; 818264.82, 2003649.22; 818265.42, 2003647.35; 818265.89, 2003645.44; 818266.24, 2003643.51; 818266.46, 2003641.56; 818266.55, 2003639.59; 818266.51, 2003637.63; 818266.35, 2003635.67; 818266.06, 2003633.73; 818265.64, 2003631.81; 818265.09, 2003629.92; 818264.43, 2003628.07; 818263.64, 2003626.27; 818262.74, 2003624.53; 818261.72, 2003622.84; 818260.60, 2003621.23; 818259.38, 2003619.69; 818258.05, 2003618.24; 818256.64, 2003616.88; 818255.14, 2003615.61; 818253.56, 2003614.44; 818251.90, 2003613.38; 818250.18, 2003612.43; 818248.40, 2003611.60; 818246.57, 2003610.88; 818244.70, 2003610.28; 818242.80, 2003609.81; 818240.86, 2003609.46; 818238.91, 2003609.24; 818236.95, 2003609.15; 818236.49, 2003609.16; 818236.87, 2003608.20; 818237.46, 2003606.33; 818237.94, 2003604.42; 818238.28, 2003602.49; 818238.50, 2003600.54; 818238.59, 2003598.57; 818238.56, 2003596.61; 818238.39, 2003594.65; 818238.10, 2003592.71; 818237.68, 2003590.79; 818237.13, 2003588.90; 818236.47, 2003587.05; 818235.68, 2003585.25; 818234.78, 2003583.51; 818233.77, 2003581.82; 818232.64, 2003580.21; 818231.42, 2003578.67; 818230.10, 2003577.22; 818229.24, 2003576.35; 818227.83, 2003574.98; 818226.33, 2003573.72; 818224.75, 2003572.55; 818223.09, 2003571.49; 818221.37, 2003570.54; 818219.59, 2003569.70; 818217.76, 2003568.98; 818215.89, 2003568.39; 818213.99, 2003567.92; 818212.05, 2003567.57; 818210.10, 2003567.35; 818208.14, 2003567.26; 818206.17, 2003567.29; 818204.21, 2003567.46; 818202.27, 2003567.75; 818200.35, 2003568.17; 818198.46, 2003568.72; 818196.62, 2003569.38; 818194.81, 2003570.17; 818193.07, 2003571.07; 818191.39, 2003572.08; 818189.77, 2003573.21; 818188.24, 2003574.43; 818186.87, 2003575.67; 818119.61, 2003627.58; 818118.47, 2003628.50; 818117.02, 2003629.82; 818116.33, 2003630.51; 818088.04, 2003659.86; 818054.31, 2003681.68; 818054.28, 2003681.70; 818052.67, 2003682.82; 818051.13, 2003684.04; 818049.68, 2003685.37; 818048.32, 2003686.78; 818047.05, 2003688.28; 818046.58, 2003688.89; 818030.14, 2003710.85; 818029.44, 2003711.82; 818028.38, 2003713.48; 818027.43, 2003715.20; 818026.59, 2003716.97; 818025.88, 2003718.80; 818025.28, 2003720.68; 818024.81, 2003722.58; 818024.52, 2003724.15; 818022.15, 2003739.10; 818022.09, 2003739.47; 818021.87, 2003741.42; 818021.78, 2003743.38;

(iii) Note: The map depicting Unit 14 is provided at paragraph (20)(iii) of this entry.

(20) Unit 15: Cueva Marcela Unit, San Lorenzo, Puerto Rico.

(i) *General Description*: Unit 15 consists of approximately 7.47 ac (3.02 ha), between PR–181 and Quebrada Verraco to the north, PR–181 to the west, and Río Grande de Loíza and the municipal boundary of Yabucoa to the south, within Espino Ward, San Lorenzo.

(ii) *Coordinates*: From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 15 bounded by the following UTM 19 NAD 83 coordinates (E, N):

818171.51, 2003361.29; 818171.55, 2003363.25; 818171.72, 2003365.21; 818172.01, 2003367.15; 818172.43, 2003369.07; 818172.97, 2003370.96; 818173.64, 2003372.81; 818174.42, 2003374.61; 818175.33, 2003376.36; 818176.34, 2003378.04; 818177.46, 2003379.65; 818178.69, 2003381.19; 818180.01, 2003382.64; 818181.43, 2003384.00; 818182.93, 2003385.27; 818184.51, 2003386.44; 818186.16, 2003387.50; 818187.88, 2003388.45; 818189.66, 2003389.28; 818191.49, 2003390.00; 818193.36, 2003390.60; 818195.27, 2003391.07; 818197.20, 2003391.42; 818199.16, 2003391.64; 818201.12, 2003391.73; 818203.08, 2003391.69; 818205.04, 2003391.53; 818206.98, 2003391.23; 818208.90, 2003390.81; 818210.79, 2003390.27; 818212.64, 2003389.60; 818214.44, 2003388.82; 818216.19, 2003387.92; 818217.87, 2003386.90; 818219.48, 2003385.78; 818219.89, 2003385.47; 818287.51, 2003333.26; 818288.65, 2003332.34; 818290.10, 2003331.02; 818291.46, 2003329.60; 818292.73, 2003328.10; 818293.05, 2003327.68; 818343.46, 2003261.48; 818344.31, 2003260.32; 818345.37, 2003258.66; 818346.32, 2003256.94; 818347.15, 2003255.17; 818347.87, 2003253.34; 818348.47, 2003251.46; 818348.94, 2003249.56; 818349.29, 2003247.62; 818349.51, 2003245.67; 818349.60, 2003243.71; 818349.56, 2003241.74;

818349.40, 2003239.79; 818349.10, 2003237.84; 818348.68, 2003235.92; 818348.14, 2003234.03; 818347.47, 2003232.19; 818346.69, 2003230.39; 818345.79, 2003228.64; 818344.77, 2003226.96; 818343.65, 2003225.34; 818342.42, 2003223.81; 818341.10, 2003222.36; 818339.69, 2003220.99; 818338.18, 2003219.73; 818336.60, 2003218.56; 818334.95, 2003217.50; 818333.23, 2003216.55; 818331.45, 2003215.71; 818329.62, 2003214.99; 818327.75, 2003214.40; 818325.84, 2003213.93; 818323.91, 2003213.58; 818321.96, 2003213.36; 818319.99, 2003213.27; 818318.03, 2003213.30; 818316.07, 2003213.47; 818314.13, 2003213.76; 818312.21, 2003214.18; 818310.32, 2003214.73; 818308.47, 2003215.39; 818306.67, 2003216.18; 818304.93, 2003217.08; 818303.24, 2003218.09; 818301.63, 2003219.22; 818300.09, 2003220.44; 818298.64, 2003221.77; 818297.28, 2003223.18; 818296.01, 2003224.68; 818295.69, 2003225.10; 818247.68, 2003288.15; 818183.19, 2003337.94; 818182.05, 2003338.86; 818180.60, 2003340.18; 818179.24, 2003341.60; 818177.97, 2003343.10; 818176.81, 2003344.68; 818175.74, 2003346.33; 818174.79, 2003348.05; 818173.96, 2003349.83; 818173.24, 2003351.66; 818172.64, 2003353.53; 818172.17, 2003355.44; 818171.82, 2003357.37; 818171.60, 2003359.33; 818171.51, 2003361.29; 818164.80, 2003448.26; 818164.84, 2003450.23; 818165.01, 2003452.18; 818165.30, 2003454.13; 818165.72, 2003456.05; 818166.26, 2003457.93; 818166.93, 2003459.78; 818167.72, 2003461.58; 818168.62, 2003463.33; 818169.63, 2003465.01; 818170.75, 2003466.62; 818171.98, 2003468.16; 818173.30, 2003469.61; 818174.72, 2003470.98; 818176.22, 2003472.24; 818177.80, 2003473.41; 818179.45, 2003474.47; 818181.17, 2003475.42; 818182.95, 2003476.26; 818184.78, 2003476.97; 818186.65, 2003477.57; 818188.15, 2003477.95; 818251.08, 2003492.29; 818296.61, 2003523.57; 818376.74, 2003594.09; 818377.97, 2003595.11; 818379.55, 2003596.27; 818381.20, 2003597.34; 818382.92, 2003598.29; 818384.70, 2003599.12; 818386.53, 2003599.84; 818388.40, 2003600.44; 818390.31, 2003600.91; 818392.24, 2003601.26; 818394.20, 2003601.48; 818396.16, 2003601.57; 818398.12, 2003601.53; 818400.08, 2003601.36; 818402.02, 2003601.07; 818403.94, 2003600.65; 818405.83, 2003600.11; 818407.68, 2003599.44; 818409.48, 2003598.66; 818411.23, 2003597.75; 818412.91, 2003596.74; 818414.52, 2003595.62; 818416.06, 2003594.39; 818417.51, 2003593.07; 818418.87, 2003591.65; 818420.14, 2003590.15; 818421.31, 2003588.57; 818422.37, 2003586.92; 818423.32, 2003585.20; 818424.15, 2003583.42; 818424.87, 2003581.59; 818425.47, 2003579.72; 818425.94, 2003577.81; 818426.29, 2003575.88; 818426.51, 2003573.92; 818426.60, 2003571.96; 818426.56, 2003570.00; 818426.40, 2003568.04; 818426.10, 2003566.10; 818425.68, 2003564.18; 818425.14, 2003562.29; 818424.47, 2003560.44; 818423.69, 2003558.64; 818422.79, 2003556.89; 818421.77, 2003555.21; 818420.65, 2003553.60; 818419.42, 2003552.06; 818418.10, 2003550.61; 818416.69, 2003549.25; 818416.41, 2003549.00; 818334.93, 2003477.30; 818333.70, 2003476.28; 818332.12, 2003475.11; 818332.09, 2003475.09; 818280.35, 2003439.55; 818278.72, 2003438.50; 818277.00, 2003437.55; 818275.22, 2003436.72; 818273.39, 2003436.00; 818271.52, 2003435.40; 818270.02, 2003435.02; 818201.50, 2003419.40; 818201.09, 2003419.31; 818199.16, 2003418.97; 818197.21, 2003418.75; 818195.25, 2003418.66; 818193.28, 2003418.69; 818191.32, 2003418.86; 818189.38, 2003419.15; 818187.46, 2003419.57; 818185.57, 2003420.11; 818183.72, 2003420.78; 818181.92, 2003421.57; 818180.18, 2003422.47; 818178.49, 2003423.48; 818176.88, 2003424.61; 818175.35, 2003425.83; 818173.89, 2003427.15; 818172.53, 2003428.57; 818171.26, 2003430.07; 818170.10, 2003431.65; 818169.04, 2003433.31; 818168.09, 2003435.03; 818167.25, 2003436.80; 818166.53, 2003438.63; 818165.94, 2003440.50; 818165.46, 2003442.41; 818165.12, 2003444.35; 818164.90, 2003446.30; 818164.80, 2003448.26;

(iii) Note: Map of Units 14 and 15 (Map 12) follows:

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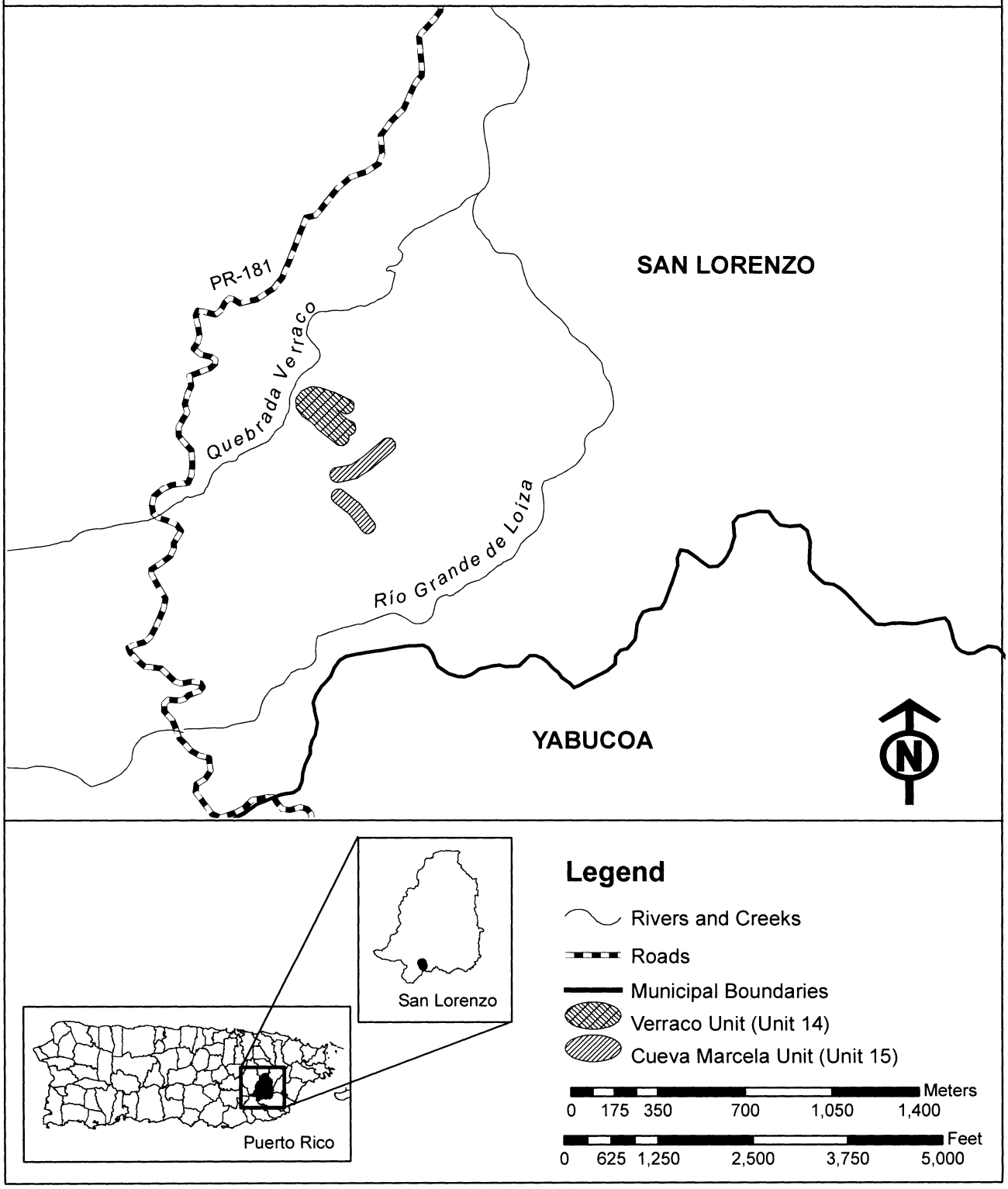
Map 12. Critical Habitat for the Guajón: Cueva Marcela and Verraco Units: Espino Ward, San Lorenzo, Puerto Rico



BILLING CODE 4310–55–C

(21) Unit 16: Ceiba Sur Unit, Juncos, Puerto Rico.

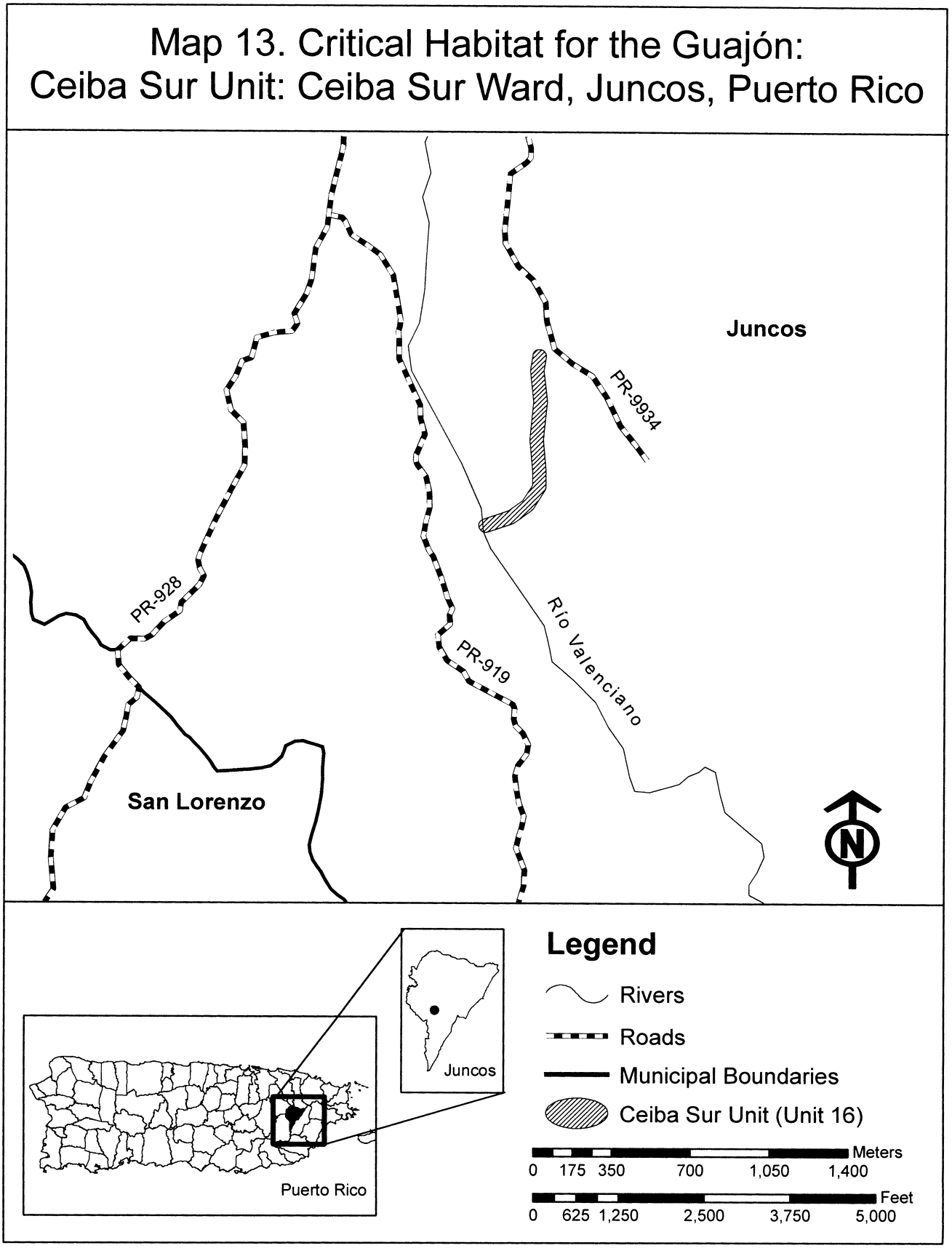
(i) *General Description:* Unit 16 consists of approximately 13.92 ac (5.63 ha) between Road PR–9934 to the east, and Road PR–919 to the west within Ceiba Sur Ward, Juncos.

(ii) *Coordinates:* From Juncos USGS 1:20,000 quadrangle map. Unit 16 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825495.74, 2015729.02; 825495.78, 2015730.98; 825495.94, 2015732.94; 825496.23, 2015734.88; 825496.65, 2015736.80; 825497.20, 2015738.69; 825497.86, 2015740.54; 825498.65, 2015742.34; 825499.55, 2015744.08; 825500.57, 2015745.77; 825501.69, 2015747.38; 825502.91, 2015748.92; 825504.24, 2015750.37; 825505.65, 2015751.73; 825507.15, 2015753.00; 825508.73, 2015754.17; 825510.39, 2015755.23; 825512.11, 2015756.18; 825513.89, 2015757.01; 825515.50, 2015757.66; 825623.97, 2015797.10; 825686.46, 2015843.70; 825729.39, 2015913.29; 825728.50, 2015977.04; 825714.36, 2016115.79; 825714.30, 2016116.45; 825714.21, 2016118.41; 825714.25, 2016120.38; 825714.32, 2016121.45; 825728.89, 2016288.33; 825712.58, 2016422.79; 825712.46, 2016424.02; 825712.36, 2016425.98; 825712.40, 2016427.95; 825712.57, 2016429.90; 825712.65, 2016430.55; 825721.59, 2016494.66; 825721.80, 2016495.95; 825722.22, 2016497.87; 825722.77, 2016499.76; 825723.43, 2016501.61; 825724.22, 2016503.41; 825725.12, 2016505.16; 825726.13, 2016506.84; 825727.26, 2016508.45; 825728.48, 2016509.99; 825729.80, 2016511.44; 825731.22, 2016512.80; 825732.72, 2016514.07; 825734.30, 2016515.24; 825735.96, 2016516.30; 825737.68, 2016517.25; 825739.45, 2016518.09; 825741.28, 2016518.80; 825743.16, 2016519.40; 825745.06, 2016519.87; 825747.00, 2016520.22; 825748.95, 2016520.44; 825750.91, 2016520.53; 825752.88, 2016520.50; 825754.83, 2016520.33; 825756.78, 2016520.04; 825758.70, 2016519.62; 825760.59, 2016519.07; 825762.43, 2016518.41; 825764.24, 2016517.62; 825765.98, 2016516.72; 825767.66, 2016515.71; 825769.28, 2016514.58; 825770.81, 2016513.36; 825772.27, 2016512.04; 825773.63, 2016510.62; 825774.90, 2016509.12; 825776.06, 2016507.54; 825777.12, 2016505.88; 825778.08, 2016504.16; 825778.91, 2016502.39; 825779.63, 2016500.56; 825780.23, 2016498.69; 825780.70, 2016496.78; 825781.05, 2016494.84; 825781.27, 2016492.89; 825781.36, 2016490.93; 825781.32, 2016488.96; 825781.16, 2016487.01; 825781.07, 2016486.36; 825772.67, 2016426.13; 825788.89, 2016292.45; 825789.01, 2016291.22; 825789.11, 2016289.26; 825789.07, 2016287.29; 825788.99, 2016286.22; 825774.40, 2016119.05; 825788.38, 2015981.81; 825788.44, 2015981.16; 825788.53, 2015979.19; 825789.56, 2015905.38; 825789.53, 2015903.42; 825789.36, 2015901.46; 825789.07, 2015899.52; 825788.65, 2015897.60; 825788.10, 2015895.71; 825787.44, 2015893.86; 825786.65, 2015892.06; 825785.75, 2015890.32; 825785.09, 2015889.20; 825734.57, 2015807.29; 825734.21, 2015806.72; 825733.09, 2015805.11; 825731.86, 2015803.57; 825730.54, 2015802.12; 825729.12, 2015800.76; 825727.62, 2015799.49; 825726.96, 2015798.98; 825656.34, 2015746.31; 825655.42, 2015745.66; 825653.76, 2015744.59; 825652.04, 2015743.64; 825650.26, 2015742.81; 825648.65, 2015742.17; 825536.03, 2015701.22; 825535.81, 2015701.14; 825533.94, 2015700.54; 825532.03, 2015700.07; 825530.10, 2015699.72; 825528.15, 2015699.50; 825526.19, 2015699.41; 825524.22, 2015699.45; 825522.26, 2015699.61; 825520.32, 2015699.91; 825518.40, 2015700.33; 825516.51, 2015700.87; 825514.66, 2015701.54; 825512.86, 2015702.32; 825511.12, 2015703.22; 825509.43, 2015704.24; 825507.82, 2015705.36; 825506.28, 2015706.59; 825504.83, 2015707.91; 825503.47, 2015709.32; 825502.20, 2015710.83; 825501.03, 2015712.41; 825499.97, 2015714.06; 825499.02, 2015715.78; 825498.19, 2015717.56; 825497.47, 2015719.39; 825496.87, 2015721.26; 825496.40, 2015723.17; 825496.05, 2015725.10; 825495.83, 2015727.05; 825495.74, 2015729.02

(iii) Note: Map of Unit 16 (Map 13) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(22) Unit 17: Playita Unit, Yabucoa, Puerto Rico.

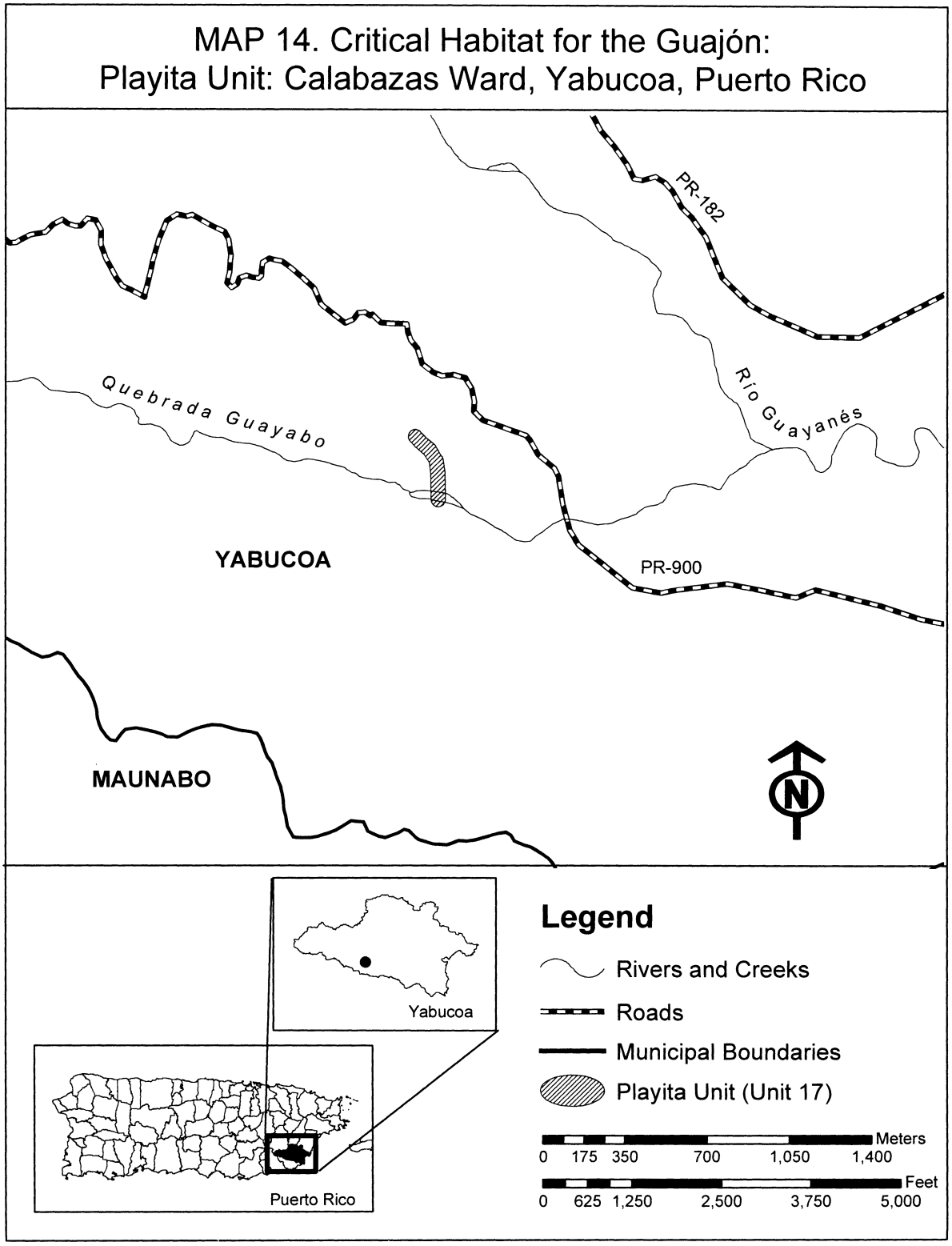
(i) *General Description:* Unit 17 consists of approximately 5.27 ac (2.13 ha), between PR–900 to the north and east and the municipal boundary of *Maunabo* to the south, within Calabazas Ward, Yabucoa.

(ii) *Coordinates:* From Yabucoa USGS 1:20,000 quadrangle map. Unit 17 bounded by the following UTM 19 NAD 83 coordinates (E, N):

825120.79, 1998673.78; 825120.83, 1998675.74; 825121.00, 1998677.70; 825121.29, 1998679.64; 825121.71, 1998681.56; 825122.25, 1998683.45; 825122.92, 1998685.30; 825123.71, 1998687.10; 825124.61, 1998688.85; 825125.62, 1998690.53; 825126.74, 1998692.14; 825127.97, 1998693.68; 825129.29, 1998695.13; 825130.71, 1998696.49; 825132.21, 1998697.76; 825133.79, 1998698.93; 825135.44, 1998699.99; 825137.16, 1998700.94; 825138.94, 1998701.77; 825140.77, 1998702.49; 825142.64, 1998703.09; 825144.55, 1998703.56; 825146.49, 1998703.91; 825148.44, 1998704.13; 825150.40, 1998704.22; 825152.37, 1998704.18; 825154.32, 1998704.02; 825156.27, 1998703.72; 825158.19, 1998703.30; 825160.07, 1998702.76; 825161.92, 1998702.09; 825163.72, 1998701.31; 825165.47, 1998700.40; 825167.15, 1998699.39; 825168.76, 1998698.27; 825170.30, 1998697.04; 825171.75, 1998695.72; 825172.48, 1998694.98; 825196.33, 1998670.14; 825233.38, 1998640.82; 825234.24, 1998640.12; 825235.69, 1998638.80; 825237.05, 1998637.38; 825238.32, 1998635.88; 825239.49, 1998634.30; 825240.24, 1998633.15; 825266.62, 1998590.83; 825266.93, 1998590.32; 825267.88, 1998588.60; 825268.71, 1998586.82; 825269.43, 1998584.99; 825270.03, 1998583.12; 825270.50, 1998581.21; 825270.83, 1998579.42; 825279.64, 1998520.84; 825279.66, 1998520.70; 825279.88, 1998518.75; 825279.96, 1998517.25; 825283.32, 1998403.46; 825283.33, 1998402.99; 825283.29, 1998401.03; 825283.13, 1998399.07; 825282.84, 1998397.12; 825282.42, 1998395.21; 825281.87, 1998393.32; 825281.20, 1998391.47; 825280.42, 1998389.67; 825279.52, 1998387.92; 825278.50, 1998386.24; 825277.38, 1998384.63; 825276.15, 1998383.09; 825274.83, 1998381.64; 825273.42, 1998380.27; 825271.91, 1998379.01; 825270.33, 1998377.84; 825268.68, 1998376.78; 825266.96, 1998375.83; 825265.18, 1998374.99; 825263.35, 1998374.28; 825261.48, 1998373.68; 825259.57, 1998373.21; 825257.64, 1998372.86; 825255.69, 1998372.64; 825253.72, 1998372.55; 825251.76, 1998372.59; 825249.80, 1998372.75; 825247.86, 1998373.05; 825245.94, 1998373.46; 825244.05, 1998374.01; 825242.20, 1998374.68; 825240.40, 1998375.46; 825238.65, 1998376.36; 825236.97, 1998377.38; 825235.36, 1998378.50; 825233.82, 1998379.73; 825232.37, 1998381.05; 825231.01, 1998382.46; 825229.74, 1998383.97; 825228.57, 1998385.55; 825227.51, 1998387.20; 825226.56, 1998388.92; 825225.73, 1998390.70; 825225.01, 1998392.53; 825224.41, 1998394.40; 825223.94, 1998396.31; 825223.59, 1998398.24; 825223.37, 1998400.19; 825223.29, 1998401.69; 825219.99, 1998513.68; 825212.36, 1998564.33; 825192.03, 1998596.96; 825157.45, 1998624.31; 825156.60, 1998625.01; 825155.15, 1998626.34; 825154.42, 1998627.07; 825129.15, 1998653.40; 825128.52, 1998654.08; 825127.25, 1998655.59; 825126.08, 1998657.17; 825125.02, 1998658.82; 825124.07, 1998660.54; 825123.24, 1998662.32; 825122.52, 1998664.15; 825121.92, 1998666.02; 825121.45, 1998667.93; 825121.10, 1998669.86; 825120.88, 1998671.81; 825120.79, 1998673.78;

(iii) Note: Map of Unit 17 (Map 14) follows:

BILLING CODE 4310–55–P



* * * * *

Dated: September 24, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–5056 Filed 10–22–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
October 23, 2007

Part III

Department of Energy

10 CFR Part 609

Loan Guarantees for Projects That Employ Innovative Technologies; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 609

RIN 1901–AB21

Loan Guarantees for Projects That Employ Innovative Technologies

AGENCY: Office of the Chief Financial Officer, Department of Energy.

ACTION: Final rule.

SUMMARY: On May 16, 2007, the Department of Energy (DOE or the Department) published a Notice of Proposed Rulemaking and opportunity for comment (NOPR) to establish regulations for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (Title XVII or the Act). Title XVII authorizes the Secretary of Energy (Secretary) to make loan guarantees for projects that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Title XVII also identifies ten categories of technologies and projects that are potentially eligible for loan guarantees. The two principal goals of Title XVII are to encourage commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits. DOE believes that commercial use of these technologies will help sustain and promote economic growth, produce a more stable and secure energy supply and economy for the United States, and improve the environment. Having considered all of the comments submitted to DOE in response to the NOPR, the Department today is issuing this final rule.

DATES: *Effective Date:* This rule is effective upon October 23, 2007.

FOR FURTHER INFORMATION CONTACT: David G. Frantz, Director, Loan Guarantee Program Office, Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8336, e-mail: *lgprogram@hq.doe.gov;* or Warren Belmar, Deputy General Counsel for Energy Policy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–6758, e-mail: *warren.belmar@hq.doe.gov;* or Lawrence R. Oliver, Assistant General Counsel for Fossil Energy and Energy Efficiency, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9521, e-mail: *lawrence.oliver@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Public Comments on the Notice of Proposed Rulemaking and DOE's Responses
A. Technologies
1. Definition of New or Significantly Improved Technologies
2. Definition of Technologies in General Use
3. Nuclear Generation Projects
B. Financial Structure Issues
1. Lender Risk, Stripping and Pari Passu
2. Equity Requirements for Project Sponsors
3. Other Governmental Assistance
4. Credit Assessment and Rating Requirements
C. Project Costs
D. Solicitation
E. Payment of the Credit Subsidy Cost
F. Assessment of Fees
G. Eligible Lenders and Servicing Requirements
H. Federal Credit Reform Act of 1990 (FCRA)
I. Default and Audit Provisions
J. Tax Exempt Debt
K. Full Faith and Credit
L. Responses to August 2006 Solicitation
M. Other Issues Raised in the Public Comments
III. Regulatory Review
A. Executive Order 12866
B. National Environmental Policy Act of 1969
C. The Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act of 1995
F. Treasury and General Government Appropriations Act, 1999
G. Executive Order 13132
H. Executive Order 12988
I. Treasury and General Government Appropriations Act, 2001
J. Executive Order 13211
K. Congressional Notification
L. Approval by the Office of the Secretary of Energy

I. Introduction and Background

Today's final rule establishes policies, procedures and requirements for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514). Title XVII authorizes the Secretary of Energy, after consultation with the Secretary of the Treasury, to make loan guarantees for projects that ''(1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' (42 U.S.C. 16513(a))

On May 16, 2007, the Department published a Notice of Proposed Rulemaking and Opportunity for Comment (NOPR, 72 FR 27471) to establish regulations for the Title XVII loan guarantee program. DOE held a public meeting on the NOPR in Washington, DC on June 15, 2007.

Section 20320(a) of Public Law 110–5, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5) authorized DOE to issue guarantees under the Title XVII program for loans in the ''total principal amount, any part of which is to be guaranteed, of $4,000,000,000.'' Section 20320(b) of Public Law 110–5 further provides that no loan guarantees may be issued under the Title XVII program until DOE promulgates final regulations that include ''(1) programmatic, technical, and financial factors the Secretary will use to select projects for loan guarantees; (2) policies and procedures for selecting and monitoring lenders and loan performance; and (3) any other policies, procedures, or information necessary to implement Title XVII of the Energy Policy Act of 2005.'' The regulations being finalized today fulfill that requirement.

Section 1702 of the Act outlines general terms and conditions for Loan Guarantee Agreements and directs the Secretary to include in Loan Guarantee Agreements ''such detailed terms and conditions as the Secretary determines appropriate to ''(i) protect the interests of the United States in case of a default [as defined in regulations issued by the Secretary]; and (ii) have available all the patents and technology necessary for any person selected, including the Secretary, to complete and operate the project.'' (42 U.S.C. 16512(g)(2)(c)) Section 1702(i) requires the Secretary to prescribe regulations outlining record-keeping and audit requirements. This final rule sets forth application procedures, outlines terms and conditions for Loan Guarantee Agreements, and lists records and documents that project participants must keep and make available upon request.

II. Public Comments on the NOPR and DOE's Responses

DOE received comments on the NOPR from 47 interested parties. Twenty interested parties presented oral comments and/or submitted written comments for the record at the public meeting. DOE summarizes below the major areas of the NOPR on which it received public comment, and discusses the Department's responses to those comments. Only major areas of the NOPR are discussed here, although DOE carefully reviewed all comments it received on the NOPR, and in some cases made adjustments to the rule text

that are not discussed at length in this preamble.

A. Technologies

A principal purpose of the Title XVII loan guarantee program is to support ''innovative technology'' projects in the United States that ''employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' (42 U.S.C. 16513(a)(2)) Section 1701(1) (A) of the Act defines ''commercial technology'' as ''a technology in general use in the commercial marketplace.'' (42 U.S.C. 16511(1)(A))

Title XVII does not require, but on the other hand does not prohibit, different treatment for different eligible technologies or projects in the Title XVII program. Furthermore, the Act does not explain or define the phrase ''new or significantly improved'' in section 1703(a)(2), nor does it explain or define the terms ''general use'' or ''commercial marketplace.'' In the NOPR, DOE proposed to define the term ''new or significantly improved technology'' to mean ''a technology concerned with the production, consumption, or transportation of energy, and that has either only recently been discovered or learned, or that involves or constitutes one or more meaningful and important improvements in the productivity or value of the technology.'' (72 FR 27480)

Because Title XVII focuses on encouraging and incentivizing innovative technologies not already in ''general use'' in the U.S. commercial marketplace, DOE stated in the NOPR that the Title XVII loan guarantee program should only be open to projects that employ a technology that has been used in a very limited number of U.S. commercial projects or used in a commercial project for only a limited period of time. Therefore, DOE proposed two possible ways of interpreting ''general use'': it could mean ''ordered for, installed in, or used in five or more commercial projects in the United States,'' or ''in operation in a commercial project in the United States for a period of five years, as measured beginning on the date the technology was commissioned on a project.'' (72 FR 27480) DOE requested comment on these alternatives, and also on whether the same definition should apply to all types of projects and technologies eligible for loan guarantees. (72 FR 27474) As DOE stated in the NOPR, a project may be eligible for a Title XVII loan guarantee if it uses technology that has been used in any number of projects and for any period of time outside the United States, so long as the technology is not in ''general use'' in the United States.

1. Definition of New or Significantly Improved Technology

Public Comments: Section 609.2 of the proposed regulations defined ''new or significantly improved technology'' to mean ''a technology concerned with the production, consumption or transportation of energy, and that has either only recently been discovered or learned, or that involves or constitutes one or more meaningful and important improvements in the productivity or value of the technology.'' Several commenters expressed the view that this definition is too narrow because it does not include improvements in ''new systems or system integration.'' Other commenters stated that the definition should reference or include the term ''commercial use.'' Some commenters stated that the definition was appropriate.

Parson & Whittemore Incorporated (P&W) and Forest Energy System, LLC (FES), for example, assert that the proposed definition of new or significantly improved fails to capture the potential value of ''systems'' rather than individual technologies. They recommend expanding the definition to include improvements from new systems or systems integration. (P&W at 1; FES at 1).

The Nuclear Energy Institute (NEI) and Bechtel Corporation (Bechtel) challenged the NOPR's proposal to require that the technology be both new or significantly improved *and* not in general use in the commercial marketplace in the United States. They maintain that Title XVII only requires that a technology be new or significantly improved ''as compared to'' commercial technologies in service in the U.S. at the time the guarantee is issued. (NEI at 25; Bechtel at 5).

The Verenium Corporation (Verenium) stated that it is possible that a technology has been in existence for some time but has never been commercially applied for some reason, such as a technology that was not viable when competing with oil at $20 a barrel but is competitive with oil at $60 a barrel. Verenium stated that DOE should focus on technologies ''not yet in'' use and therefore should make the definition of New or Significantly Improved Technology refer to the defined term ''Commercial Technology.'' (Verenium at 10).

The Union of Concerned Scientists (UCS), however, stated that ''DOE needs to develop objective criteria to demarcate 'new' or 'significantly improved' technologies from the sprucing up and recycling of current technologies,'' and asserted that the approach of the NOPR relied upon ''subjective judgments concerning the definition rather than employing more objective, quantitative measures of novelty and significant improvement.'' (UCS at 1). UCS did not, however, offer any suggestions as to what sort of ''objective, quantitative measures of novelty and significant improvement'' would be appropriate for adoption in the rule. TXU Generation Development Company LLC (TXU) argued that the rule should adopt a ''flexible definition'' with DOE and expert consultants making decisions on particular technologies at the preliminary application stage. (TXU at 7).

Eastman Chemical Company (Eastman) supported the NOPR's proposed disqualification of projects solely in the research, development, or demonstration phase as long as the criteria is applied ''to the overall project and does not make a project ineligible just because one subsection of technology is new.'' Eastman adds: ''Arguably, a use of proven or commercial technologies in a new or novel configuration, combination, or implementation method, such as polygeneration should qualify as a 'new or significantly improved technology.' '' (Eastman at 3).

Beacon Power Corporation (Beacon) recommends broadening the definition by adding the following italicized phrase so that the definition would read: ''technologies concerned with the * * * productivity or value of the technology *or an improvement over an existing technology that will perform the same function.*'' (Beacon at 3). Ameren Services Company (Ameren) supported the proposed definition of new or significantly improved technologies, subject to the addition of the following phrase: ''in service in the United States at the time the guarantee is issued,'' which is part of the statutory definition in § 1703(a)(2) of the Act. (Ameren at 2).

DOE Response: There is no one universally accepted or agreed upon definition of the term ''technology.'' Generally, technology is thought to be the practical application of science to industrial or commercial objectives. Technology may also include electronic or digital products and systems considered as a group. DOE believes that the term ''technology'' in Title XVII was intended to have a very broad meaning, given the purposes of Title XVII, and therefore does not believe it is advisable to set down by rule a narrow definition of what will be considered a ''technology'' for purposes of this program.

However, the Department believes it is important to establish what may enable a particular technology to be considered ''new or significantly improved''. By its explicit terms, the Title XVII loan guarantee program is not open to all technologies and projects, but only those that are new or significantly improved in comparison to commercial technologies in use in the United States.

Several commenters asserted that the proposed definition of ''new and significantly improved technology'' in the NOPR mistakenly requires that in order to be eligible for a loan guarantee, a project must employ a technology that is both new and improved and is not in commercial use in the United States. They argue that the regulatory definition should be clarified to make clear that the test is new or significantly improved *as compared to* commercial technologies in service in the United States. They correctly quote Title XVII, but are mistaken as to the import of that language and the language in the NOPR. Either a technology is in general use in the U.S. commercial marketplace or it is not. If it is in general use, then the same technology could not possibly be ''new or significantly improved'' in comparison to technology in general use in the U.S. commercial marketplace, and it is ineligible for a Title XVII loan guarantee. Yet a technology does not automatically become eligible for a Title XVII loan guarantee merely because it is not a U.S. commercial technology; rather, it must be ''new or significantly improved'' in comparison to such commercial technology. If the statute required only that it be ''new'' or ''different'' in comparison to commercial technologies, then it might well be that in order to become eligible for a Title XVII guarantee, all a project sponsor would need to show is that it was using a technology currently not in commercial use in the United States. But such an interpretation of Title XVII would render as surplusage the words ''or significantly improved'' in section 1703(a)(2) of the Act. As a result, the term ''new or significantly improved'' cannot simply mean not currently in commercial use in the United States; it must mean that the technology itself is either newly developed, or it must constitute a significant improvement over technologies currently in U.S. commercial use. Notably, in order to be eligible for a loan guarantee a technology need not be *both* new and significantly improved, but must only be one or the other.

DOE does believe it is useful to clarify that while a ''new'' technology must be newly developed, discovered or learned, a ''significantly improved'' technology may in fact be ''old'' but a significant improvement over technologies currently in commercial use in the United States. Thus, and as noted in the NOPR, DOE agrees with the assertions by some commenters that a technology could be eligible for a loan guarantee even if it was developed long ago and even if it is used in the same commercial application outside the United States, as long as that technology is not in general commercial use for that application in the United States at the time the loan guarantee is issued. Consistent with DOE's interpretation of section 1703(a)(2) of the Act, section 609.2 of the final rule provides, in part, as follows:

> *New or significantly improved technology* means a technology concerned with the production, consumption or transportation of energy that is not a Commercial Technology, and that has either: (i) Only recently been developed, discovered or learned; or (ii) involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

2. Definition of Technologies in General Use

Public Comments: Under section 1703(a)(2) of the Act, projects are eligible for Title XVII loan guarantees only if they employ new or significantly improved technologies as compared to ''commercial technologies'' that are ''in service in the United States'' when guarantees are issued. Section 1701(1)(A) defines ''commercial technology'' to mean ''a technology in general use in the commercial marketplace.'' The NOPR proposed two alternative definitions of ''general use'': A technology would be considered to be in ''general use'' if it had been ''ordered for, installed in, or used in five or more [commercial] projects in the United States''; or alternatively, if it had been ''in operation in a commercial project in the United States for a period of five or more years as measured beginning on the date the technology was commission[ed] on a project.'' This definition is important because, as noted above, a proposed technology cannot qualify a project for a Title XVII loan guarantee if it is in ''general use'' in the U.S. commercial marketplace.[1]

Several commenters stated that the first of the alternatives set forth in the NOPR was acceptable, but the second alternative definition should not be an option or should be revised. On the other hand, several commenters stated that the second alternative definition would be appropriate for nuclear projects because the early operational phase is more useful in determining whether a technology is workable and acceptable. Other commenters stated that the second alternative should not be adopted because it likely would lead to a very large number of nuclear projects being eligible for loan guarantees since there is a long period of time between initiation of work on a nuclear generation facility and the completion of five years of operation, and during this time a large number of projects using the same technology could apply for and be granted loan guarantees. Still other commenters were of the view that it is impossible to adequately define ''general use'' and asserted that DOE therefore should approve or disapprove loan guarantee proposals to use technologies on a case-by-case basis. Commenters also expressed the view that the two alternative definitions for ''general use'' should be combined into one definition.

More specifically, in their joint comments Constellation Nuclear Utilities, Inc., Entergy Corporation, Exelon Corporation, and NRG Energy, Inc. (Nuclear Utilities) asserted that for nuclear technologies the definition of a technology that is in ''general use'' should be based upon five or more years of operation of any given new design (e.g., an advanced reactor design that is separately certified by the Nuclear Regulatory Commission (NRC)). They argued that if DOE were to use the ''five or more projects'' alternative for defining what constituted ''general use,'' it would be essential that the phrase ''order for, installed in, or used in'' should be changed to ''ordered for, installed in, and used in,'' since for nuclear plants, ordering would take place many years before use. (Nuclear Utilities at 19–20). NEI, Dominion Resources Services, Inc. (Dominion) and Excelsior Energy, Inc. (Excelsior) submitted similar comments. (NEI at 24, Dominion at 12, Excelsior at 2–3).

Southern Company Services, Inc., (Southern) stated that technology should be considered in ''general use'' when financing has been established for five or more projects in the United States. Southern stated that its proposed interpretation of ''general use'' would assist DOE's effort in having a broad portfolio of large and small projects with a wide variety of technologies

[1] Notably, the existence of technology in a project that is in general commercial use in the United States does not in itself *disqualify* a project from eligibility for a Title XVII loan guarantee. Most if not all projects that are eligible for loan guarantees will employ some technologies that are in such general use.

supported by the Title XVII program, because it would limit the number of project participants that employ the same technology. Southern also asserted that the successful implementation of five projects employing a particular technology should greatly reduce the concerns of the credit markets, and stated that not considering a technology to be in ''general use'' until it has been in operation in a commercial project in the United States for five years could result in an unlimited number of projects utilizing the same technology. (Southern at 1).

Verenium stated that if over a five-year period a technology has been used in fewer than five projects, the technology is probably not in general use because it would indicate there is some barrier to competitiveness. The restriction to five projects, according to Verenium, should be stated as only a ''presumption,'' so that DOE could deviate from it in appropriate circumstances. Verenium further argued that the term ''ordered for'' may be ambiguous, and thus suggested the use of ''in the process of being installed'' if DOE adopts an alternative employing this concept, and thus suggested the following language for the definition of Commercial Technology:

> ''*Commercial Technology* means a technology in general use in the commercial marketplace in the United States, but does not include a technology solely by use of such technology in a demonstration project funded by DOE. A technology is *presumed to be* in general use if it has been installed or used *or is in the process of being installed* in five commercial projects in the United States.''

(Verenium at 12–13).

Standard & Poor's (S&P) stated that projects involving integrated gasification combined cycle (IGCC) and coal-to-liquids (CTL) technologies currently lack a commercial track record and therefore would be assigned a risk premium by that rating agency. However, S&P said that if there are at least five operational projects using a particular technology, and as long as there was a material track record of operations, the perceived risk and thus the risk premium associated with the technology would be substantially reduced. (S&P at 2). The Iogen Corporation (Iogen), believes that the definition proposed in the NOPR is too restrictive and notes that the financial community has displayed great reticence to providing debt financing at reasonable commercial rates for new technologies that have not been widely demonstrated. Iogen would prefer that DOE not adopt a single ''bright line'' test and that the Department instead rely on market forces to determine the need for a guarantee. However, if the Department is going to develop a test, Iogen proposes to combine the two alternatives into one modified definition, so that a particular technology would be considered to be in general use if it had been installed or used in five or more projects in the United States for a period of five years. (Iogen at 2–3).

The Coal Utilization Research Council (CURC) stated that the ''proposed definition of general use is not suitable as it relates to projects that will use technologies that have been in commercial use for other applications,'' and that ''size, process configurations, and technology modifications are among the several general characteristics of projects that need to be considered when applying the general use definition.'' (CURC at 5). Baard Energy L.L.C. (Baard) proposed that, with respect to CTL projects, ''general use'' should be defined by the first alternative set forth in the NOPR, i.e., technologies that have been installed and used in five or more commercial projects in the United States. Baard asserts that the second alternative, five years, is too short. In order to accommodate construction schedules for CTL plants and to allow for innovations and improvements, Baard maintains that the second alternative should be extended to ten years. (Baard at 3).

Bechtel Power Corporation (Bechtel) recommends combining the two alternatives for determining ''general use'' proposed in the NOPR, as follows:

> The technology or combination of technologies have been ordered for, installed in, and used in five or more projects in the U.S., each for a period of five years, measured from date of commissioning.

Bechtel's other comments regarding ''general use'' are focused on new nuclear technologies that have never been built in the United States. According to Bechtel, the technologies in question (''Gen III'' and ''Gen III+'' nuclear designs) should be judged individually for purposes of determining whether either of the alternative meanings of ''general use'' proposed in the NOPR apply to them. Bechtel states that the ''general use'' language in the rule must clearly distinguish new generations or new applications of a technology such as Gen III or Gen III+ in order to assure that they are not excluded from loan guarantee eligibility by the fact that over 100 nuclear plants have been built in the United States, when those plants used different designs and were constructed in a much different industry and regulatory environment. (Bechtel at 4).

CPS supports the second alternative definition set forth in the NOPR, and submits that the five to seven year construction period for a nuclear project means that starting the ''clock'' from the time the technology is commissioned on a project, may mean that the project is disqualified at or prior to the technology's in-service date. CPS asserts that guarantees should be available, to the extent of appropriations, until each distinct technology is in full commercial operation. (CPS at 7). Abengoa Bioenergy New Technologies (ABNT) recommends that DOE select the definition which utilizes time from first commercialization as the basis for defining ''general use.'' ABNT argues that if the other alternative is selected, DOE will be discouraging competition and applications from a number of projects which are eligible under a given solicitation or invitation, and that by determining eligibility on the basis of ''a fixed window of time,'' DOE will provide certainty that a project will remain eligible for a loan guarantee at some future time regardless of intervening events with other projects or technologies. ABNT does not dispute the NOPR's proposal of a five-year time frame, but suggests that a superior approach may be to establish a time frame according to the commercial technology defined in each solicitation or invitation. (ABNT at 1).

DOE Response: DOE agrees with concerns expressed by many commenters about the ''five project'' alternative proposed in the NOPR. These commenters were concerned that a definition that did not include an operational component, which lenders need to develop confidence that a technology is proven and is viable in actual commercial operation, may not be workable for this program, and may not result in effective reduction of commercial risk and effective increased commercial marketplace acceptance prior to the closing of loan guarantee program eligibility. DOE believes that other entities considering incorporation of a particular technology into their planning want to see technologies proven in actual practice before investing substantial sums on that technology and incorporating it into large-scale capital expenditure plans. Furthermore, operational experience reduces risk from the standpoint of the credit and debt markets, and can lead to increased access to capital markets at lower rates. We particularly note and find persuasive S&P's comment that if there were at least five operational projects in a particular technology

within the United States, the perceived risk premium associated with the technology should be substantially reduced. We also note that adoption of the ''five projects'' proposal in the NOPR but without including an operational period could result in technologies or projects involving very long development and construction times being disqualified from receiving additional loan guarantees before even one project had commenced commercial operations, or in extreme cases, before any projects employing the technology had even commenced construction.

After review and evaluation of the comments, DOE accordingly has revised section 609.2 of the NOPR as follows:

Commercial Technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three or more commercial projects in the United States, in the same general application as in the proposed project, and has been in operation in each such commercial project for a period of at least five years. The five year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology. For purposes of this section, commercial projects include projects that have been the recipients of loan guarantees from DOE under this part.

DOE believes this definition reasonably addresses the concerns that DOE considers persuasive. By referring to the ''same general application'' as the proposed project, the definition provides that a technology is not necessarily considered in ''general use'' if it has been used for completely different projects or applications than in the proposed project. For example, the fact that fuel cells have been used in some small-scale applications for flashlights would not disqualify an application for a project that proposed to use fuel cells to power a motor vehicle. The definition also makes clear that it is only use of a technology in a project in the United States that can potentially render it in ''general use'' for the purposes of this program. The definition provides that each of three projects using a particular technology must be in service for five years before the technology is considered to be in general use. Thus, this definition deals with the concern expressed by some commenters that technologies should be barred from program eligibility only if there has been substantial actual operational experience with them. Finally, the definition clarifies that projects that have received loan guarantees will be counted when determining whether technologies have been used in a sufficient number of projects to render them no longer eligible for the program. DOE believes this is consistent with the overall purpose of the program in encouraging the introduction of new and improved technologies into the commercial marketplace, but ensuring that technologies do not remain forever dependent on loan guarantee support in order to be commercially viable. The Title XVII program should help introduce technologies to the commercial marketplace, but it should be up to those technologies and to the commercial marketplace as to whether the technologies continue to be economically and technologically viable, or not.

DOE notes that even though the definition of ''commercial technology'' it is adopting in this rule may permit multiple projects using the same technology to be eligible for a Title XVII guarantee, DOE is under no obligation to seek authority for, or to issue solicitations for, all or any particular technology that may fall within the outer limits of eligibility for a loan guarantee, as that eligibility is prescribed by Title XVII and this rule. Indeed, it is perfectly possible that DOE may decide not to issue a solicitation covering a certain technology, even though projects using that technology would be eligible under this rule for a loan guarantee. Furthermore, this definition of ''commercial technology'' in no way limits DOE's ability to include within a solicitation a selection criterion, and assign a weighting for that criterion, based on the number of projects already in service using that technology.

3. Nuclear Generation Projects

Public Comments: Comments from the nuclear industry asserted that regulations proposed in the NOPR were not appropriate or workable for commercial nuclear power projects because of the size and unique regulatory and litigation-related risks surrounding these projects. The industry's stated primary concern is the ability of industry participants to access the capital markets at what they view as reasonable rates, terms and conditions.

CPS Energy (CPS), on behalf of itself and the Large Public Power Conference, a group of utility companies with nuclear power facilities, recommended that new nuclear technology should be defined separately and differently from other technologies eligible for Title XVII loan guarantees. CPS cited two principal factors supporting this recommendation: (1) The capital intensive nature of new nuclear development; and (2) the different technologies proposed represent vastly different scales of new technology, as compared with other types of eligible projects. CPS stated that the cost of new nuclear generating capability is in the neighborhood of $2,000 per kilowatt and the capacity of the plants is in excess of 1,300 megawatts, that five different reactor technologies are being proposed, and that none of the technologies currently are in operation in the United States. Therefore, CPS asserted that each of the five technologies should be treated as a distinct new technology eligible for loan guarantees. (CPS at 7).

Iogen, however, strongly opposed DOE making the loan guarantee program more favorable for larger projects involving electricity generation from nuclear power or coal combustion/gasification than for other types of projects, such as those that would advance the President's ''20 in Ten'' initiative, which Iogen said depends on the widespread deployment of advanced biofuels refineries. (Iogen at 1). The American Council on Global Nuclear Competitiveness (ACGNC) stated that DOE should look beyond nuclear power plants when defining the term ''advanced nuclear energy facilities'' that appear in section 1703 of the Act. ACGNC stated that this language is broad enough to allow DOE to issue loan guarantees to projects that will restore the domestic nuclear energy design, manufacturing, service and supply industry, such as uranium mining and milling operations; uranium conversion and enrichment facilities; reactor component fabrication facilities; and used fuel recycling plants. (ACGNC at 2–3). Goldman and Sachs & Co. (Goldman Sachs) recommended that the final rule expressly include nuclear power generating stations and advanced technology low enriched uranium (LEU) production facilities in the definition of what could constitute an eligible project. Goldman Sachs emphasized that the described facilities are essential to fostering the domestic development of emissions-free, affordable base-load nuclear power generation, and that advanced nuclear energy facilities are one of the ten categories of projects specifically addressed in the Act. (Goldman Sachs at 5).

DOE Response: Nuclear projects were the only type of projects for which some commenters asserted the final rule should accord different treatment than other technologies. However, most if not all of those comments argued that different treatment was appropriate because of the very large cost and long construction and permitting/licensing time for such projects. And yet, similar

arguments could be made in support of some other types of potentially eligible projects, such as refineries, IGCC facilities, or CTL projects. No commenters argued that nuclear technology per se makes nuclear projects deserving of different and more favorable treatment than the final rule affords to other projects that have large capital requirements and difficult regulatory environments. Moreover, DOE believes it has dealt appropriately with many if not most of the concerns expressed by nuclear industry participants regarding the issues of ''general use'' and other matters discussed elsewhere in this preamble and in the final rule text. Therefore, the final rule does not differentiate between nuclear power generation projects and all other projects.

B. Financial Structure Issues

The Act imposes certain limitations on the financial structure of proposed projects, including that a loan guarantee ''shall not exceed an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee as estimated at the time at which the guarantee is issued.'' (42 U.S.C. 16512(c)) Section 1702(g)(2)(B) of the Act further requires that ''with respect to any property acquired pursuant to a guarantee or related agreements, [DOE's rights] shall be superior to the rights of any other person with respect to the property.'' In the NOPR, the Department interpreted this statutory provision to require that DOE possess a first lien priority in the assets of the project and other assets pledged as security, and stated that because DOE believed it is not permitted by Title XVII to adopt a *pari passu* security structure, Holders of the non-guaranteed portion of a loan or debt instrument supported by a Title XVII guarantee would have a subordinate claim to DOE in the event of default.

DOE proposed in the NOPR that it only would issue a guarantee for up to 90 percent of a particular debt instrument or loan obligation for an Eligible Project. This limitation was subject to the overriding statutory requirement that DOE's guarantees for a particular project could not exceed 80 percent of Project Costs. Furthermore, in connection with any loan guaranteed by DOE that may be participated, syndicated, traded, or otherwise sold on the secondary market, DOE proposed to require that the guaranteed portion and the non-guaranteed portion of the debt instrument or loan be sold on a pro-rata basis. In the NOPR, DOE proposed not to allow the guaranteed portion of the debt to be ''stripped'' from the non-guaranteed portion, i.e., sold separately as an instrument fully guaranteed by the Federal government.

The Act does not mandate a specific equity contribution to a project that receives a Title XVII loan guarantee, but DOE proposed in the NOPR that in order to receive a loan guarantee, Project Sponsors must have a significant equity stake in the proposed project. DOE solicited comments on the merits of adopting a minimum equity percentage requirement for projects, and stated that in evaluating loan guarantee applications, the Department would consider whether and to what extent a Project Sponsor will rely upon other government assistance (e.g., grants, tax credits, other loan guarantees, *etc.*) to support financing, construction or operation of a project.

Finally, DOE proposed to require with submission of an application for a loan guarantee a ''credit assessment'' for the project without a loan guarantee from a nationally recognized rating agency, where the size and estimated cost of the project justify such an assessment. Additionally, DOE proposed to require that not later than 30 days prior to closing, Applicants must provide a ''credit rating'' from a nationally recognized rating agency reflecting the Final Term Sheet for the project without a Federal guarantee. The Department requested comments as to whether it should establish a project size (dollar) threshold below which DOE could waive the credit assessment and rating requirements.

Public Comments:

1. Lender Risk, Stripping and Pari Passu

Commenters that addressed the 90 percent, no stripping, and pari passu provisions in the NOPR were generally opposed to these restrictions. S&P commented on the 90 percent guarantee limitation in combination with the stripping prohibition stating that ''[t]his is the provision [sic] that has the greatest credit consequence. The rating associated with a partially guaranteed obligation will be substantially lower than the 'AAA' rating of a fully guaranteed instrument . . . [and] will result in a significantly higher cost of debt for the project than if it was fully guaranteed.'' (S&P at 5). S&P also stated that ''[t]he disadvantage created by the partial guarantee can be overcome if the loan can be 'stripped', effectively creating two tranches of debt, one with a 'AAA' rating and the second rated much lower.'' (S&P at 5).

NEI asserted that allowing 90 percent guaranteed loans, instead of placing the limit at 80 percent as did the August 2006 Guidelines, did not improve what NEI viewed as a limitation adversely affecting the overall viability of the Title XVII program for nuclear projects. NEI stated that the NOPR would create a financing structure that is not workable. It would create, according to NEI, a hybrid loan facility for which there is no market, a debt instrument with a guaranteed portion and a non-guaranteed potion which cannot be stripped, and would render the unsecured, non-guaranteed portion of the debt ''quasi-equity.'' The impact, according to NEI, would be to compromise project economics, increase debt service requirements, and increase costs to electricity consumers.

NEI further said if DOE's proposal were adopted, the Title XVII loan guarantee program would not operate like other successful Federal loan guarantee programs. NEI stated that those other programs generally provide for 100 percent Federal guarantee coverage of the loan amount; allow *pari passu* treatment of non-guaranteed commercial debt; and permit stripping of guaranteed debt from non-guaranteed debt and follow standard practice in determining eligible project costs. NEI said that DOE's NOPR was deficient on all four of these issues. (NEI at 2–3).

In a set of joint comments, Citigroup, Credit Suisse, Goldman Sachs, Lehman Brothers, Morgan Stanley and Merrill Lynch (Investment Bankers) stated that investors or lenders in the fixed income markets will be acutely concerned about a number of political, regulatory and litigation-related risks surrounding nuclear power, including the possibility of delays in commercial operation of a completed plant. The Investment Bankers also stated that these risks, combined with the higher capital costs and longer construction schedules of nuclear plants, as compared to other electric generation facilities, may make lenders unwilling to make long-term loans to such projects on commercially viable terms. (Investment Bankers at 1).

The Nuclear Utilities also stated that the Title XVII loan guarantee program must guarantee debt through workable financing instruments. They asserted that limiting guarantee coverage to 90 percent, prohibiting *pari passu* security structures, and prohibiting ''stripping,'' would result in a program that would not support the financing of new nuclear plants in the United States. The Nuclear Utilities said that their primary concern relates to the percentage of a project's debt the loan guarantee will cover. They believe that DOE would be fully justified in guaranteeing 100 percent of a Guaranteed Obligation, up to 80 percent of project cost. Moreover, the Nuclear Utilities stated that

providing 100 percent guarantee coverage of a debt instrument is not only necessary because commercially viable financing is not available on an non-guaranteed basis, but also because a 100 percent U.S. government guarantee will enable lenders and borrowers to maximize the efficiency of the existing, well-established marketplace for government guaranteed debt. The Nuclear Utilities also believe that the ''no stripping'' requirement combined with the prohibition on *pari passu* security structures, creates a form of ''hybrid'' debt for which there is no natural, existing market. According to the nuclear industry, the market participants would incur a significantly higher average cost of financing, as well as unnecessary transaction costs to achieve project structures that would enable the project's debt to be placed with its appropriate constituents in the existing marketplace. The Nuclear Utilities stated that such structures could lead to a form of ''synthetic'' stripping that undercuts the purpose of the no stripping requirement. (Nuclear Utilities at 5–8). They recommended that any concern about lender due diligence should be addressed by DOE retaining outside legal, technical, and financial experts to supplement its internal expertise in performing the necessary project due diligence and assessing project risks, and that the reasonable costs and expenses of these experts should normally be borne by the sponsors and constitute part of project costs. (Nuclear Utilities at 10–11).

The Investment Bankers expressed views that are generally consistent with those of the Nuclear Utilities. They also noted that in some cases, investors in the AAA government-guaranteed market are restricted, legally or otherwise, from investing in the sub-debt market. They said that requiring investors to own interests through a mandated hybrid instrument in both AAA paper and deeply subordinated ''quasi-equity'' paper removes both of these financing instruments from their natural market. (Investment Bankers at 1). The Investment Bankers stated that ''[t]here is a deep and highly efficient market for 'AAA' government guaranteed paper. Investors in that market are distinctly different from those investors who participate in the sub-debt market. Requiring investors to own interests through a mandated hybrid instrument in both AAA paper and deeply subordinated 'quasi-equity' paper removes both of these financing instruments from their natural markets.'' (Investment Bankers at 1). The 100 percent Government guaranteed debt instruments are purchased by investors who are more risk averse. Investors in non-guaranteed debt instruments are willing to take more risk for the prospect of greater returns on their investments. Verenium also expressed concern about the 90 percent guarantee limitation and the prohibition on ''stripping'' that are similar to the concerns expressed by the Investment Bankers and the Nuclear Utilities. (Verenium at 4). Verenium suggested that one alternative to 100 percent guarantees would be to allow the non-guaranteed loan to be repaid on a shorter amortization schedule than the guaranteed loan. (Verenium at 6).

According to JP Morgan Securities, Inc. (JP Morgan) it is unclear how lenders would fund the non-guaranteed portions of a partially guaranteed loan on which stripping was prohibited since banks rarely lend for tenures beyond eight to ten years, particularly when the debt is subordinated. JP Morgan further stated that an expectation that lenders would maintain the non-guaranteed portions for the life of such loans is unrealistic, and that by taking a second lien interest, a lender's participation is tantamount to an equity investment. (JP Morgan at 1).

Bechtel contended that a commercially viable market does not exist for a hybrid instrument for which stripping is barred. Eliminating stripping, according to Bechtel, is not in line with other Federal loan guarantee programs and would increase the cost of project debt by eliminating a bank's ability to utilize various securitization vehicles, such as the Private Export Funding Corporation (PEFCO) or Govco, Inc., the special purpose lending vehicle of Citigroup, which provide efficient and cost effective vehicles to fund federally guaranteed loans. Bechtel further agreed that the first lien requirement in the NOPR is inconsistent with established norms in project lending and that the Export Import Bank of the United States, the Overseas Private Investment Corporation, and the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) program at the Department of Transportation treat any non-guaranteed debt as pari passu in terms of both payment and security. (Bechtel at 2).

Power Holdings of Illinois LLC (Illinois), however, supported the 90 percent loan guarantee limitation in the NOPR, and the proposed prohibition on stripping. (Illinois at 1). Baard also agreed with the 90 percent limitation. Baard said that this limit was an improvement over the 80 percent of debt instrument guarantee limit set forth in the August 2006 Guidelines, and that it would be an effective mechanism for ensuring that investors/lenders perform rigorous due diligence prior to committing their money for a project. (Baard at 5).

2. Equity Requirements for Project Sponsors

Almost all parties that submitted comments on this issue were opposed to a fixed numeric minimum equity requirement. Illinois agreed with the concept that Project Sponsors should be required to have a significant equity stake in a project, but said DOE should not adopt a fixed, numeric minimum equity percentage, threshold, or requirement. Illinois asserted that equity structure in a given project can vary with a number of factors, including technology used and the market for the project's products, and that imposing a fixed, numeric minimum equity percentage threshold or requirement for projects that might for good reason fall below such a threshold could result in the exclusion of otherwise worthy projects. (Illinois at 2). NEI also stated that DOE should not mandate a specific minimum equity percentage for eligible projects. The appropriate debt/equity ratio, according to NEI, will vary across technologies and sectors and among projects, and should be determined by project economics. (NEI at 23). Bechtel offered similar comments. (Bechtel at 2).

3. Other Governmental Assistance

Most parties commenting on this issue stated that other governmental assistance to a project should be considered beneficial to the project and to DOE, and should not be used to exclude projects from consideration for the Title XVII program or regarded as a negative factor when evaluating the merits of particular projects. With respect to DOE's consideration of the ''extent the Applicant will rely on other federal and non-federal governmental assistance'' (section 609.7(b)(9) of the proposed regulations), Iogen agreed that this factor should be considered, but a primary consideration should be whether there was significant private equity involvement in a proposed project. Iogen stated that under no circumstances should Federal government assistance be counted toward any equity contribution requirement. Iogen agreed that DOE should include Federal government assistance only as an evaluation factor, and not as one of the six disqualifying conditions listed at section 609.7(a) of the proposed regulations because, among other things, government assistance reduces total project costs, thus reducing the size of any loan

guarantee, increases the likelihood of debt repayment, allows DOE to better leverage its participation in a variety of projects, and is an indicator of strong political and community support. Iogen also stated that presence of Federal government assistance does not, in itself, limit the level of private commitment. For example, Iogen stated that a project with 20% federal assistance, a 50% loan guarantee, and 30% equity, could reasonably be preferred over a project with an 80% loan guarantee and 20% equity. (Iogen at 4–5).

Bechtel stated that multiple forms of governmental assistance should not be a negative factor because tax and other incentives are intended to be complementary, not exclusive, and multiple forms of governmental assistance could enhance a project's economics and creditworthiness. Therefore, Bechtel asserted that subsidy costs should be adjusted to reflect the reduced risk of default where there are multiple forms of governmental assistance. (Bechtel at 6). The Nuclear Utilities also expressed the view that other forms of governmental assistance should be viewed positively. (Nuclear Utilities at 20–23). CURC stated that if a project obtains other forms of governmental assistance, the cost of the loan guarantee should be adjusted to reflect the reduced risk of default on the underlying debt obligation as a result of the other support. CURC said that DOE should not limit a project's ability to receive more than one form of federal assistance. (CURC at 5).

4. Credit Assessment and Rating Requirements

The NOPR proposed that a project sponsor must obtain a preliminary credit assessment and subsequent credit rating for a project without a loan guarantee from a recognized credit rating agency. (609.6(b)(21) and 609.9(f)). Most commenters that expressed a view on this issue stated that a credit assessment or rating was not very useful, and too expensive and that a better value could be obtained from entities other than established rating agencies.

USEC Inc. (USEC) stated that it does not understand the purpose of proposed § 609.9(f) which required that applicants obtain a credit rating from a nationally recognized rating agency reflecting the final term sheet without a Federal guarantee. USEC said that such a requirement would add to the cost of the application process with little benefit since the credit rating agencies are ill-equipped to evaluate the technical risks associated with new or emerging technologies. USEC stated that credit rating agencies look to historical data—not clearly relevant to new or emerging technologies. On the other hand, USEC said that DOE is positioned to conduct such an evaluation on its own with the other information provided in the application. (USEC at 5).

S&P stated that the credit assessments provided at the time of application will likely have to be limited to a rating category (with the '+' and '−' signs that normally accompany S&P ratings), because project documentation will likely be in a very preliminary state at this point. (S&P at 8). Goldman Sachs recommended that the requirement for a credit assessment as part of the application submission be eliminated from the final rule although sponsors should be able to elect to obtain a credit assessment as part of their application submission if they wish to do so. Goldman Sachs stated that obtaining a credit assessment is a long process that ''frequently consumes valuable time and resources during the most critical stages of negotiation.'' Also, Goldman Sachs asserted that ''the primary rating agencies often do not provide a final rating until all documents have been negotiated and closing is imminent'' and that the rating will ''be highly dependent on the existence of the loan guarantee, and thus a rating without the guarantee will be of little substantive value.'' (Goldman Sachs at 9).

FES and P&W proposed that DOE set a project cost threshold of $25 million for waiving the credit rating requirement. (FES at 3, P&W at 2). Illinois also stated that DOE generally should have authority to waive any credit rating requirement. However, according to Illinois, a simple project size threshold for waiving the requirement would oversimplify the circumstances under which DOE would consider such waivers. Illinois stated that rather than a simple project size threshold, DOE should set forth other criteria, such as a ratio of project debt to sponsor equity, the duration of the loan guarantee or the credit subsidy cost, in addition to the project size. (Illinois at 2).

DOE Response:

1. Lender Risk, Stripping and Pari Passu

The primary goals of the Title XVII loan guarantee program are to encourage and incentivize the commercial use in the United States of new or significantly improved energy-related technologies and to achieve substantial environmental benefits.

Sections 609.10(d)(3), (4) and (13) of the NOPR provided, in sum, that (1) DOE could guarantee no more than 90 percent of any debt instrument for an eligible project, (2) the guaranteed portion of any debt instrument could not be stripped from the non-guaranteed portion, and (3) DOE must have a first lien on all project assets pledged as collateral for a guaranteed loan. The vast majority of comments DOE received were in opposition to those provisions.

DOE is persuaded by the comments it received that identified a number of problems and difficulties with proposed sections 609.10(d)(3) and (4), and therefore is revising those sections in the final rule. Because the program focuses on innovative technologies, for which there often is not readily available private market financing at reasonable terms, and thus there is not always a readily available commercial market substitute for debt that does not receive a Title XVII guarantee, DOE has determined that an alternative approach is more appropriate.

Sections 609.10(d)(3) and (4) now provide that DOE may guarantee up to 100 percent of the amount of a loan for a project that receives a Title XVII loan guarantee, so long as all loan guarantees DOE issues for a particular project do not exceed 80 percent of Project Costs, which is a limitation imposed by Title XVII itself. As provided in the NOPR, section 609.7, DOE will evaluate the extent to which the requested amount of the loan guarantee, and the requested amount of guaranteed obligations are reasonable, relative to the nature and scope of the project.

In accordance with Federal credit policy, DOE will issue 100 percent loan guarantees only if the loan is issued and funded by the Treasury Department's Federal Financing Bank. DOE also will issue loan guarantees for loans from private lenders where the guarantee sought is for less than 100 percent of the loan amount, and the final rule provides that if DOE guarantees 90 percent or less of a Guaranteed Obligation, the Eligible Lenders and other Holders will not be prohibited from separating the guaranteed portion from the non-guaranteed portion of the debt instrument. Thus, in cases where a lender issues a loan and receives a guarantee for more than 90 percent of the loan amount, the non-guaranteed portion cannot be stripped from the guaranteed portion.

If a loan is not 100 percent guaranteed, it can be obtained from an approved Eligible Lender. Moreover, if 90 percent or less of a loan is guaranteed by DOE, the Department is allowing Eligible Lenders and other Holders to strip the guaranteed portion of a Guaranteed Obligation from the non-

guaranteed portion. DOE believes that in such circumstances, DOE still will gain the benefit of private sector debt market underwriting, but at the same time will ensure that Eligible Projects are able to obtain necessary financing, and be able to do so on reasonable terms.

In the unique context of loan guarantees for innovative energy projects, DOE believes that the changes made from the NOPR will assist projects in obtaining financing on reasonable terms. DOE recognizes that Federal credit policy generally encourages Federal credit programs to require that guaranteed obligations have a non-guaranteed portion. As noted above, the program focuses on innovative technologies for which there is often not readily available private market financing at reasonable terms, and thus there may not always be a readily available commercial market substitute for debt that does not receive a Title XVII guarantee. Therefore, the Department has concluded that these terms are necessary and appropriate to carry out the purposes of this program.

DOE has determined that it should allow stripping on some partially guaranteed loans—i.e., only those on which DOE has guaranteed 90 percent or less of the Guaranteed Obligation. As noted above, the Title XVII program presents a unique situation—one in which loan guarantees will be issued for projects that otherwise might have little or no access to financing on reasonable terms, primarily because of the innovative nature of the eligible technologies and projects.

Where DOE guarantees more than 90 percent of the amount of a Guaranteed Obligation, the guaranteed portion cannot be stripped from the non-guaranteed portion of the loan. In such situations, DOE is concerned that there may not be a sufficient amount of non-guaranteed debt to cause reasonable and appropriate debt market due diligence being performed.

DOE notes that several of the commenters cited other Federal credit programs as justification for removing taxpayer protections proposed in the NOPR; in several cases Title XVII is significantly different from the programs cited. For example, financing under the TIFIA program is statutorily limited to 33 percent of eligible project costs, and therefore there is significant equity and lender participation. The Title XVII program is likely to be extremely large, with $4 billion of loan volume already provided under the 2007 Continuing Resolution, and $9 billion requested in the 2008 President's Budget. DOE already has pre-applications from the first solicitation requesting in excess of $25 billion in loan guarantees. The Title XVII program involves advanced technologies, which by nature are riskier than technologies already in commercial operation.

DOE believes its resolution of the issues addressed above will help ensure that eligible projects of all sizes can gain access to credit on reasonable terms. DOE is concerned about project access to capital markets at reasonable interest rates and on reasonable terms and conditions, and believes that the modifications it has made to the regulations in this final rule address the commenters' concerns, while reducing the chance that unnecessary risks and costs are placed on the Federal taxpayers.

It is customary and common practice in project financing for multiple lenders to enter into a *pari passu* structure with respect to assets pledged as collateral to secure debt. If such a structure were employed for the Title XVII program, DOE, pursuant to its Loan Guarantee Agreement, and lenders that held non-guaranteed debt, could share proportionately in the proceeds from the sale of project assets pledged as collateral if there were a default and the collateral was sold. In the NOPR, DOE interpreted Title XVII's requirement that DOE have a superior right to project assets pledged as collateral to prohibit *pari passu* structures, and as requiring all other lenders to be subordinate to DOE.

In the final rule, DOE has modified its regulations to provide that DOE and the Holders of the non-guaranteed portion of the Guaranteed Obligations may share the proceeds received from the sale of project assets. The Department interprets the Title XVII provision requiring DOE to have a superior right to project assets pledged as collateral to mean that DOE retains superior rights within the meaning of the statute even if the Department shares the proceeds from the sale of project assets with the Holders of the non-guaranteed debt as long as DOE controls the disposition of all project assets. Under this interpretation, it is solely within DOE's authority to determine whether, and under what terms, the project assets will be sold at all. For example, DOE retains—as a superior right—the ability, even over the objections of other parties, to decide against the liquidation of project assets and instead to complete construction of the project, subject to appropriations, or to sell an incomplete project to an entity that will complete the project.

The Department views this interpretation as being consistent with section 1702(g)(2)(A) of the Act, which provides that if DOE makes a payment on the guaranteed debt, the Department is subrogated to the rights of the Holder, including the right to ''complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guaranteed or related agreements, or permit the borrower * * * to continue to pursue the purposes of the project.'' The Secretary cannot do any of those things unless the Secretary owns or controls the entire project. There is no provision, for example, for the Secretary to purchase the interest of the non-guaranteed lenders or holders of debt that is not supported by a Title XVII guarantee. Furthermore, section 1702(g)(2)(B) provides that the rights of the Secretary, with respect to any property acquired pursuant to a guarantee or related agreements, shall be superior to the rights of any other person with respect to the property, and this provision limits DOE's rights to the collateral to ''property acquired pursuant to a guarantee.''

Insofar as it is applicable here, the Department reaffirms the view it expressed in 1980 in connection with the loan guarantee program for alternative fuels, that while DOE is required under section 1702(g)(2)(B) to have a first lien on all project assets, the Department is not prohibited from negotiating and agreeing with parties about how the proceeds from the sale of collateral will be shared. Section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974, Loan Guarantees for Alternative Fuel Demonstration Facilities, Pub. L. No. 93–577, as amended, (Alternative Fuels Act), contained provisions similar to section 1702(g)(2)(B).[2] Section 19(g)(2) of the Alternative Fuels Act provided, in part, that:

> The rights of the Secretary with respect to any property acquired pursuant to such guarantee or related agreements shall be superior to the rights of any other person with respect to such property.

In the preamble to the final rule implementing section 19(g)(2) of the Alternative Fuels Act and in response to arguments by commenters concerning the issue of *pari passu* sharing of the project collateral, DOE stated as follows:

> Subsection 796.11(a)(9) of the proposed regulation required that the guaranteed loan not be subordinate to any other loan for the project and that the guaranteed loan be in a first lien position with respect to assets of the project and other collateral which are pledged as security for repayment of the

[2] Section 19 appeared at 42 U.S.C. section 5919 and was repealed by Pub. L. No. 109–58, the Energy Policy Act of 2005, at section 1009(b)(12).

guaranteed loan. DOE construes the Act to require this, and that only with regard to assets not directly related to the project, but which may be pledged as collateral, may a less than first lien position be acceptable to DOE.

(45 FR 15468, 15471).

DOE today adopts the same interpretation of Title XVII as it adopted in regard to nearly identical language in section 19(g)(2) of the Alternative Fuels Act. Thus, DOE interprets the language in Title XVII as requiring a first lien on all project assets, but as allowing DOE to treat assets pledged to secure a project loan that are not project assets the same as project assets. Consistent with the regulations concerning the disposition of proceeds from the sale of assets pursuant to the Alternative Fuels Act (section 796(f) and (k)), section 609.15 of today's final rule also provides that where DOE only guarantees a portion of a Guaranteed Obligation, the Secretary may enter into inter-creditor or other arrangements to share the proceeds from the sale of project collateral with lenders or other holders of the non-guaranteed portion of the Guaranteed Obligation. DOE may, at the discretion of the Secretary, share the proceeds from the sale of collateral. DOE is limited, however, to no greater than a pro rata share for the non-guaranteed Holder. However, in cases where DOE guarantees 100 percent of a loan, the loan must be issued to and funded by the Federal Financing Bank. In those circumstances, DOE will have a first lien priority on project assets pledged as collateral and all other debt for the project at issue must be subordinate to the Guaranteed Obligation.

2. Equity Requirements for Project Sponsors

Title XVII does not itself impose any minimum equity contribution requirement on projects that receive Title XVII loan guarantees. Section 1702(c) provides that DOE can guarantee loans for no more than 80 percent of the cost of a project, but does not place any requirements on where or how a Project Sponsor may obtain other funds for an Eligible Project. Nonetheless, in the NOPR, the Department explained that DOE believed it was prudent to require Project Sponsors to have a substantial equity stake in a project before the project could receive a Title XVII loan guarantee. Thus, DOE proposed (in section 609.7(a)(6) of the proposed regulations) that applications would be denied if ''[t]he applicant will not provide a significant equity contribution.''

Most commenters agreed that the regulations should contain an equity contribution requirement, and that the regulations should not set a fixed numeric minimum equity percentage threshold or requirement. Commenters said some projects might have good reasons for not meeting some numeric threshold, and that a specific numeric threshold might result in the rejection of otherwise meritorious projects. Some commenters objected even to DOE requiring by rule that projects have a ''significant'' equity contribution.

A Title XVII loan guarantee will be offered only to projects where the project sponsors make a significant equity contribution toward the Project Cost. If private investors or project sponsors do not see fit to make any significant equity investment in a capital project, it is hard to see why DOE should back loans for the project with a Federal guarantee. Such projects might well be appropriate for grant money or research and development assistance, but in light of the overall purposes of Title XVII and the statutory requirement that DOE can issue loan guarantees for no more than 80 percent of project cost, the Department believes it would not be prudent to eliminate any equity requirement for the program. It is in the interest of the Federal government to ensure that borrowers have a significant equity interest in the assets to ensure the financial success of the project. Eliminating the requirement might result in project sponsors financing a project entirely through a combination of government-backed loans, and other loans and government assistance. The Department does not believe such an approach would be consistent with the establishment of an overall sound Title XVII program.

Furthermore, DOE will consider the type and degree of equity contribution proposed for an eligible project for a Title XVII loan guarantee to determine whether such contribution is significant and meets the eligibility requirements for a loan guarantee agreement. In evaluating whether a borrower or project sponsor is contributing significant equity to a project, the Department will consider ''equity'' to be cash contributed by the Borrowers or other principals. Equity does not include proceeds from the non-guaranteed portion of any debt supported by a Title XVII loan guarantee or from any other non-guaranteed debt. The value of other forms of government financial assistance or support also does not constitute ''equity.'' The Department has set forth this definition of ''equity'' in section 609.2 of the final rule.

At the same time, DOE agrees with commenters that the Department should not by regulation establish a specified numerical minimum on the equity contribution to an Eligible Project. There likely will be a myriad of financing arrangements and differing circumstances for the disparate types of technologies and projects potentially eligible for Title XVII loan guarantees. The Department believes, based on the record before it, that it should not set at this time a numerical minimum for the equity contribution to an eligible project.

The determination of the significance of the equity contribution cannot practicably be made at the time that the loan application is filed. Thus, DOE has revised section 609.7(a)(6) of the NOPR which stated that an Application will be disqualified if ''[t]he applicant will not provide a significant equity contribution'' by deleting the words ''a significant'' and inserting the word ''an.'' DOE has retained section 609.7(b)(7) which provides that DOE will consider ''[t]he amount of equity commitment to the project by the Applicant and other principals involved in the project'' when evaluating Applications for Title XVII loan guarantees. DOE will evaluate the amount of equity that will be contributed to a project when evaluating a project against other projects. Section 609.10(d)(5) of today's final rule, however, provides that the Project Sponsors must, at a minimum, have a significant equity investment in a project.

3. Other Governmental Assistance

Section 609.7(b)(9) of the NOPR provided that DOE will consider ''whether and to what extent the Applicant will rely on other governmental assistance'' when evaluating Applications for Title XVII loan guarantees. In the NOPR preamble, the Department noted that the receipt of other government assistance generally would be viewed negatively. (72 FR 27476).

Several commenters stated that DOE should consider other governmental assistance as a positive and not a negative evaluation factor. As noted above, those commenters asserted that the receipt of other assistance from Federal, state or local governments should be viewed as indicating support for a project and thus adding to its commercial viability, rather than reflecting financial and commercial weakness. Most commenters that expressed a view did believe that it would be appropriate for DOE to at least consider the receipt of other government

assistance in evaluating Applications. See e.g. Bechtel at 6, Eastman at 3; and Goldman Sachs at 9.

DOE has retained section 609.7(b)(9) in the final rule as it was proposed in the NOPR. As DOE stated in the NOPR, we recognize that in certain circumstances, multiple forms of Federal assistance to the same project could enhance important national energy policy priorities. We believe the current language in section 609.7(b)(9) is sufficient to address these circumstances.

4. Credit Assessment and Rating Requirements

Section 609.6(b)(21) of the NOPR required the Applicant to submit with its Application a credit assessment for the project without a loan guarantee ''where the size and estimated cost of the project justify such an assessment.'' Section 609.9(f) of the NOPR proposed to require that not ''later than 30 days prior to closing, the applicant must provide a credit rating from a nationally recognized rating agency reflecting the Final Term Sheet for the project without a Federal guarantee.''

Most commenters complained that the rating agency requirements proposed in the NOPR would impose unnecessary costs and burdens on project sponsors, with little corresponding benefit to the Department. (Bechtel, at p. 2–3) Other commenters suggested that the requirement for a credit assessment be eliminated from the final rule. (e.g. Goldman Sachs at p. 9) Two commenters proposed a threshold of $25 million for waiving the credit rating requirement. Another expressed the view that DOE should be able to waive the requirement where appropriate. Two commenters thought that a waiver should not depend on project size, but rather should depend on other factors as well such as the ratio of project debt to sponsor equity.

DOE has retained the credit assessment and rating requirement provisions, 609.6(b)(21) and 609.9(f). DOE believes that these requirements will be beneficial in aiding the Department when it determines the credit subsidy scores for particular projects, and when it assesses and evaluates the risks and benefits of particular projects.

DOE notes the distinction between the credit rating on the overall project debt which lenders or project sponsors may wish to obtain for pricing the debt; and the credit rating without considering the benefit of the guarantee, which will inform DOE's evaluation of the project and estimation of the Credit Subsidy Cost.

DOE agrees that in some circumstances, it may be desirable to waive a credit rating requirement. For example, projects for which project costs fall below a certain level may not warrant the cost of a credit rating, should the cost prove large in comparison to the overall cost of the project. Therefore, in the final rule DOE has added to section 609.9(f) the following language: ''where the total Project Cost for an Eligible Project is projected to exceed $25 million.'' The Department selected this number because it believes any project that costs below that amount may find it uneconomic to obtain a credit rating and to participate in the Title XVII program. By putting this threshold in place, DOE seeks to support smaller projects.

C. Project Costs

Sections 609.2 and 609.12 of the proposed regulations defined ''Project Costs'' as those costs, including escalation and contingencies, that are necessary, reasonable, customary, and directly related to the design, engineering, financing, construction, startup, commissioning and shake down of an Eligible Project. Conversely, costs excluded from the definition of Project Costs included initial research and development costs, the Credit Subsidy Costs, any administrative fees paid by the Project Sponsors, and operating costs after the facility has been placed in service.

Public Comments: As noted above, the Department intends to implement Title XVII through the ''self-pay'' authority provided in the Act. Thus, DOE has no current intention to seek appropriations to pay for the Credit Subsidy Costs of any Title XVII loan guarantees, but rather project sponsors will be required to pay those costs before DOE enters into a loan guarantee agreement. Pursuant to FCRA, the Credit Subsidy Cost reflects the net present value of the estimated payments to or from the Government. It is impossible to tell at this point what the Credit Subsidy Cost will be for any particular project.

Most commenters argued that Credit Subsidy Costs and Title XVII administrative fees that are paid by a project sponsor should be treated as Project Costs. These commenters maintain that the exclusion of Credit Subsidy Costs and administrative fees from Project Cost is inconsistent with the treatment of similar costs in commercial project financing and in other Federal programs. These commenters also state that there is no provision in either FCRA or in OMB Circular No. A–129 that prohibits the inclusion of these costs in a project's financing package. They contend that the inclusion of such fees or costs in the financing package neither increases project risk, nor diminishes the reasonable prospect of repayment of the loan. (See e.g. NEI at pp. 18–19; Nuclear Utilities, at p. 18; and FES at p. 2)

TXU similarly supported the inclusion of Credit Subsidy Costs and administrative fees in total Project Costs and supported making them eligible, at least in part, for the federal loan guarantee. TXU added that total project costs should include 100 percent of the costs to bring a plant into commercial operation, including all financing and start-up costs. (TXU at 7).

S&P, however, took a different position from most commenters, and asserted that DOE's proposed definition of the project's total costs is consistent with general market practice, except that, if projects obtain a guarantee from a monoline insurer, the premium paid for such a wrap is generally included in the total cost of the project to be financed. However, its exclusion here appears consistent with the intent of [Title XVII], namely to prevent the subsidy fee itself from potentially becoming a taxpayer liability in the event of default. (S&P at 2).

USEC also asserted that Credit Subsidy Costs and administrative fees should be counted as Project Costs. USEC's comments also identified other costs that should be specifically considered to be Project Costs. These include: general and administrative costs; performance incentives paid to employees or officers working on the project (because the project is benefiting from the increased performance); research, development, and demonstration costs that are directly related to the project; and expenses incurred after start-up. USEC said that by excluding potentially large, post-start-up costs, DOE would essentially be requiring an additional equity investment by the project sponsor. USEC argued that DOE should allow these costs as part of Project Costs and evaluate them on a case by case basis when reviewing the economics of a project. (USEC at 6–7).

Beacon recommended that the final rule allow ''as an option'' the inclusion of Credit Subsidy Costs and administrative fees in the definition of Project Costs. Beacon said that such costs could pose a substantial burden on small businesses and development stage companies unless they are included in Project Costs. (Beacon at 1). Goldman Sachs also recommended that Project Costs be defined to include Credit Subsidy Costs and the administrative cost of issuing a loan guarantee.

Goldman Sachs further recommended that Project Costs be defined to include the costs of administrative services provided by affiliates; development expenses; pre-completion operation and maintenance costs; and costs of procurement and testing. Project financings, according to Goldman Sachs, customarily cover all costs associated with the construction of the project, including fees and expenses. To require the project sponsor to cover these costs, in Goldman Sachs' view, would either eliminate the non-recourse nature of the financing or mean that the lenders would have to cover these amounts with a non-guaranteed loan. Moreover, whereas the proposed rule states that the loan guarantee will cover only principal and interest, Goldman Sachs asserted that the loan guarantee should cover all borrower obligations, including without limitation default interest and post-petition interest, reimbursement of letter of credit drawings, prepayment premiums, payments under interest rate hedging agreements, fees, expenses, and indemnification payments. Goldman Sachs said this would be consistent with the definition of ''obligations'' in project finance loan agreements. (Goldman Sachs at 6). Ameren too opposed the NOPR's exclusion of certain categories of costs from the definition of Project Costs. The NOPR, in Ameren's view, does not explain why the excluded categories are less suitable for a guarantee and Ameren said that the exclusions are ''not conducive to encouraging innovation.'' (Ameren at 3–4).

DOE Response: For any project that is granted a Title XVII loan guarantee, the Credit Subsidy Cost and administrative costs charged by DOE, are costs that must be paid by the borrower and are necessary terms and conditions of receiving the guarantee. As stated in the S&P comments, the DOE position is consistent with the intent of Congress to require such costs be paid by the borrower. Allowing these fees to be included in the Project Costs would increase the amount of debt that could be supported by a Title XVII loan guarantee. As funding is fungible, allowing the Credit Subsidy and Administrative Costs to be financed with the Title XVII loan guarantee could in effect transfer these costs to the taxpayer in the event of default. Furthermore, consistent with the requirements of Public Law 110–5 and as in the NOPR, the final regulations prohibit a Borrower from paying any Title XVII Credit Subsidy Cost with funds obtained from the Federal government, or from a federally guaranteed loan.

While some commenters asserted that other Federal agencies permit items such as Credit Subsidy Costs or similar expenses and administrative fees to be covered by the Federal guarantee issued pursuant to their loan guarantee programs, the Credit Subsidy Cost under Title XVII reflects the subsidy cost of the loan guarantee, as defined in FCRA. It is important to note that this is not comparable to the fees cited in comments which may offset, but do not reflect the explicit subsidy cost for the individual loan guarantee.

To the extent commenters recommended other costs that are not specifically listed in the final regulations for inclusion in the definition of eligible Project Costs, the Department rejects those comments. The Department sees no adequate basis for further revising the rule's definition of Project Costs except as otherwise provided in the final rule.

However, DOE again stresses, just as it did in the NOPR, that the purpose of the Title XVII Loan Guarantee Program is to foster the deployment of qualified innovative technologies that would reduce or sequester air pollutants or anthropogenic greenhouse gas emissions; it is not to assist or support high-risk research into or development of new technologies. Nor is it to assist in the ongoing commercial operations of successful projects. Therefore, costs related to the initial research and development of a new technology or to operating costs will not be accepted as Project Costs for purposes of such guarantees.

D. Solicitation

Section 609.3 of the proposed regulations required DOE to issue a solicitation to start the process of accepting, reviewing, and ultimately granting applications for Title XVII loan guarantees. This section also set forth certain minimum requirements for each solicitation, including the fees that would be required of persons invited to submit Applications and the criteria that the Department would use to weigh competing Pre-Applications and Applications and to make ultimate selections for loan guarantees. The proposed regulations set forth programmatic, technical, and financial factors, including the percentage of the loan guarantee requested, to be used by DOE to select projects for loan guarantees.

Public Comments: Several commenters stated that DOE should use a ''rolling'' or ''open'' application process, as opposed to only accepting Applications for a limited time in response to a particular solicitation. Commenters from the nuclear industry supported this recommendation by pointing to difficulties that may be faced by nuclear project sponsors with a project development timetable that does not match a DOE solicitation. These commenters also noted that DOE is not in a position to assess with precision the market forces that will govern the number of new projects potentially eligible for loan guarantees, or when those projects will need loan guarantees, and contended that other major federal loan guarantee programs—including TIFIA, Ex-Im Bank and OPIC—operate with an open or ongoing (rolling) application process. (NEI at pp. 28–29; Nuclear Utilities at p. 17)

The Nuclear Utilities ask that DOE adopt a flexible ''open'' application process for large multi-year projects involving more than $2 billion and/or 1,000 MW of generating capacity. (Nuclear Utilities at p. 17) Citi stated that ''[b]y accepting applications only in response to a particular solicitation, the DOE loan guarantee process would be unduly prejudicial to projects that happened to have matured to produce the required pre-application materials in the narrow timeframe of a solicitation.'' Citi requested clarification that DOE will accept and review applications for eligible projects at any time when sponsors believe that the markets are ready for their investment. This allegedly would not preclude DOE from opening or closing the program for specific technologies at various times. (Citi at 5). Goldman Sachs, Bechtel and USEC likewise recommended an open application process but also supported a simplified three-step process (application, followed by a conditional commitment, followed by negotiation and execution of a loan guarantee agreement). (Goldman Sachs at 8, Bechtel at 7, and USEC at 6) (Bechtel at 6–7). Bechtel indicated that this three-step process is used by other federal agencies. (Bechtel at 7)

Beacon further recommended that language in proposed § 609.4 stating that the Pre-Application must meet all requirements in the solicitation and in the final rule should be modified by changing ''must'' to ''should'' or ''is expected to.'' This change would prevent pre-applications from automatic disqualification if they are missing one item, and would make § 609.4 consistent with § 609.5. (Beacon at 3)

DOE Response: While DOE agrees that an ''open'' or ''rolling'' process for Title XVII loan guarantee program applications would give applicants greater flexibility in deciding when, or

if, to submit an application to DOE, adopting such a structure at this time would interfere with the Department's ability to select which of the technologies that Title XVII makes statutorily eligible for loan guarantees should be the focus of any such authority made available by Congress. If DOE were to adopt the ''window is always open'' and ''first come first served'' approach to Title XVII, as some commenters appear to advocate, then it is possible that all loan guarantee authority provided by Congress at any particular time could be absorbed by only one or a few very large projects, to the exclusion of smaller projects. This could have the result of the program focusing heavily on only certain eligible technologies merely through operation of the rule itself. Moreover, there is no certainty that the projects first through the application door would be in the areas that either the Department or Congress wished to promote at the particular time. DOE should be able to tailor loan guarantee availability to particular technologies and particular projects that are the most promising and that in the Department's judgment will most benefit the Nation. Finally, adopting the open application approach could eliminate the Department's ability to have projects compete against one another for the available loan guarantee authority. Especially in the situation where available authority is likely to be insufficient to satisfy all loan guarantee requests, DOE believes it is desirable for there to be competition among projects for the available loan guarantees, rather than for the authority to be used up on a first come first served basis regardless of the relative merits of potentially eligible projects.

At some future time, after substantial experience has been gained in the administration of the Title XVII program, it may be appropriate and possible for the Department to reconsider this position. In the meantime, however, DOE believes it is appropriate to implement the program by requiring the Department to issue a solicitation for projects, tailored broadly or narrowly as the Department sees fit at the time and in light of programmatic objectives.

The Department thus has decided to adopt a solicitation-based approach to the implementation of Title XVII, as was proposed in the NOPR. The rule provides that each solicitation must set forth relative weighting criteria specifying the factors that will be used to evaluate applications and the relative weighting assigned to each criterion. DOE has considered, but has decided not to require by rule, competitive procedures or requirements to be employed when the Department evaluates applications for loan guarantees. As a practical matter, loan guarantee applications submitted in response to solicitations will be competing against each other for available loan guarantee authority. This enables and indeed requires competition to take place by requiring that each solicitation set forth relative weighting criteria by which applications for loan guarantees will be judged. In that manner, applications will not necessarily be ''competed'' one against the other, but the evaluation process nonetheless will result in the applications being ranked in such a manner that the applications that best fulfill statutory and solicitation criteria from the Department's perspective will receive higher scores.

DOE is mindful that certain projects, *e.g.* nuclear power plants, require long lead times prior to the submission of a loan guarantee application, but believes that solicitations can be devised and tailored to particular technologies that accommodate such long lead time requirements consistent with the overarching legislative purpose of promoting technologies that further Title XVII policy goals. Additionally, DOE does not believe it is appropriate to make the language change requested by Beacon to section 609.4 of the final regulations. The listed items to be included with Pre-Application submissions are intended to be mandatory. However, the Department clarifies that a Pre-Application will not necessarily be rejected simply because one or even a few items are not in final form when they are submitted with the initial Pre-Application submission. The Department will exercise reasonable discretion in giving Applicants an opportunity to complete their Pre-Application submissions in a timely manner within the open period provided by a solicitation. DOE, of course, may reject any Pre-Application or Application that it considers incomplete.

E. Payment of the Credit Subsidy Cost

Section 1702(b) of the Act states that: ''No guarantee shall be made unless (1) an appropriation for the cost has been made; or (2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury.'' (42 U.S.C. 16512) Section 20320(a) of P.L. 110–5, however, only authorized DOE to accept Credit Subsidy Cost payments from Borrowers to pay the full Credit Subsidy Costs of loan guarantees with respect to the $4 billion in loan guarantee authority authorized by the CR. Moreover, DOE's intent continues to be to implement the Title XVII program only through the self-pay authority of section 1702(b)(2). As stated in the NOPR, DOE interprets section 1702(b) as authorizing either an appropriation or payment of the credit subsidy cost in full by the Borrower, but Title XVII does not allow and DOE will not allow partial payment of the Credit Subsidy Cost by the Borrower with the remainder covered by a Congressional appropriation.

Public Comments: Several commenters recommended a transparent formula for the calculation of each project's Credit Subsidy Cost. They contend that project sponsors need a reasonably accurate estimate of the subsidy cost early in the development process in order to support multi-billion dollar investment decisions. Otherwise, project sponsors will be forced to engage in lengthy negotiations before they know the amount of the Credit Subsidy Costs they will be required to pay, and before they can properly assess their interest in the Title XVII program. (*e.g.*, Dominion at 9; Southern at 2) For regulated electric companies in particular, negotiation with state regulatory bodies concerning recovery of project costs arguably will be impossible without some reasonable estimate of the Credit Subsidy Cost.

NEI suggested that DOE develop written guidance providing the specific considerations that will enter into the determination of the Credit Subsidy Cost for a project and modify the proposed rule to: (1) Provide for early disclosure to an applicant of how DOE expects to apply those considerations in determining the Credit Subsidy Cost for the applicant's project; and (2) afford the applicant an opportunity to respond in writing for the purpose of allowing DOE to determine whether additional considerations and analysis warrant a re-estimate. (NEI at 17–18).

Other commenters seek clarification that when determining subsidy costs, DOE and OMB will evaluate the entire risk profile of the project, including but not limited to creditworthiness of the project and, to the extent of the equity contribution, the project sponsor; the Borrower's exposure to market and commodity risks; and the Borrower's exposure to vendor cost increases or construction delays. According to these commenters, the Department should consider that the more creditworthy the project is, the lower the subsidy cost should be. They ask that the final regulations recognize that greater equity investment, liquidity, and management experience reduce default risk and,

therefore, should result in lower subsidy cost. (NEI at 17–18; and Southern at 2)

JP Morgan maintained that the magnitude of the subsidy cost could have a significant impact on a borrower's interest in a loan and a lender's willingness to provide the financing. Given the uncertainty of the Credit Subsidy Cost calculation, JP Morgan recommended that DOE provide borrowers with an option to withdraw their applications upon DOE's notification to the borrower of the subsidy cost to be charged. Similarly, JP Morgan asserted that lenders should be permitted to withdraw any commitments upon notification of the subsidy cost, and that DOE's interpretation of § 1702(b) in the NOPR should be reconsidered in order to permit borrowers to pay part of the Credit Subsidy Costs where there has been a congressional appropriation. (JP Morgan at 2)

USEC asserted that the Credit Subsidy Cost should be small in order to ensure repayment (commensurate with other federal loan guarantees). Apparently in order to keep the Applicant's share of Credit Subsidy Costs small, USEC recommended that DOE seek appropriations for credit subsidy costs because the overall purpose of the Title XVII program is to foster commercial deployment of new and innovative technologies. (USEC at 5). Beacon also maintained that § 609.9(d)(1) of the proposed rule should be modified to permit partial self-funding/partial appropriation of the Credit Subsidy Cost. Specifically, Beacon recommended that DOE should change the parenthetical ''(but not from a combination)'' in § 609.9(d)(1) to ''(including a combination)''. (Beacon at 6). Ameren, too, contended that the NOPR should be revised to allow for the possibility that Congress will appropriate money for payment of the Credit Subsidy Cost. Ameren stated that the regulations should not always require applicants to pay the Credit Subsidy Costs for a guaranteed loan, and encouraged DOE to follow the flexible approach used by Ex-Im Bank. (Ameren at 4–5).

DOE Response: The Department has decided not to alter the proposed regulation dealing with the calculation of Credit Subsidy Costs. With respect to the issue of transparency, the Department certainly understands the need for and importance of a mechanism to allow potential participants in the Title XVII program to calculate an approximate Credit Subsidy Cost for the loan guarantee they are seeking from DOE. The Department currently is working to develop a methodology that can be used to calculate the Credit Subsidy Cost for individual projects under this program. With respect to the comment indicating that the credit subsidy cost should be small, DOE must calculate the Credit Subsidy Cost in accordance with the Federal Credit Reform Act. DOE will calculate the Credit Subsidy Cost of any loan guarantee on a case-by-case basis in accordance with FCRA and OMB Circular A–11. Per the definition in FCRA, the credit subsidy cost reflects the net present value of estimated payments from the government (*e.g.* default claim payments) and to the government (*e.g.*, recoveries), discounted to the point of disbursement. For any project, the terms and conditions of the guaranteed debt, the risks associated with the project, and any other factor that affects the amount and timing of such cash flows will affect the credit subsidy cost calculation. Factors that mitigate risks will generally lower the credit subsidy cost. We note that the approach used by Ex-Im and recommended by Ameren does not apply here because the fees charged by Ex-Im do not reflect the subsidy cost for the loan guarantee.

The Department and the Office of Management and Budget (OMB) recognize the value to project sponsors and lenders of knowing the earliest reasonable time the appropriate credit subsidy cost for the sponsor's desired loan guarantee. The Department and OMB further recognize that the two agencies must work together to produce any preliminary credit subsidy cost estimate. Accordingly, the Department and OMB are committed to making every effort to agree upon and provide to project sponsors, at the time a Term Sheet is provided, a preliminary credit subsidy cost estimate for the desired loan guarantee, based on information available to the Department and OMB at that time. The final credit subsidy cost determination can only be made at the time of the Loan Guarantee Agreement, and may be different from the preliminary credit subsidy cost estimate, depending on project-specific and other relevant factors including final structure, the terms and conditions of the debt supported by the Title XVII guarantee, and risk characteristics of the project.

We note that Applicants are free to withdraw their Applications at any time if they find that the Credit Subsidy Cost is more than the Applicant is willing to pay. The right of an Applicant to withdraw its application does not relieve the Applicant of any obligations to DOE at the time of the withdrawal (including, for example, the payment of outstanding or accrued administrative fees).

On the other hand, we do not agree that lenders in all circumstances should similarly be permitted to withdraw their commitments upon notification of the Credit Subsidy Cost, as recommended by some commenters. The rights of lenders to withdraw will turn on the nature of the commitment that the lender has given to the Borrower.

We also reject the recommendation that Applicants should be able to make partial payment of the Credit Subsidy Cost and rely on appropriations for the remainder of the Credit Subsidy Cost for a particular project. As indicated in the NOPR, DOE interprets section 1702(b)(2) of the Act as not permitting partial payment of the Credit Subsidy Cost by the Borrower, with the remainder coming from an appropriation. DOE believes the statutory language is clear in that regard, but even if it were determined to be ambiguous, DOE would exercise its policy discretion to interpret the statutory provision in the manner set forth herein. Consequently, DOE adheres to the interpretation of this provision set forth in the NOPR, and retains in the final rule the all or none principle with respect to the payment of Credit Subsidy Costs, unless otherwise provided by statute. The Department notes that the final rule does not prohibit the use of appropriations to pay for those Credit Subsidy Costs—indeed, Title XVII explicitly allows that. But DOE has no current intention to seek appropriations to pay Credit Subsidy Costs for any projects.

F. Assessment of Fees

Section 1702(h) of the Act requires DOE to ''charge and collect fees for guarantees'' to cover the administrative cost of issuing a Loan Guarantee. Proposed sections 609.6, 609.8, and 609.10 provided that DOE would collect fees for administrative expenses covering all phases of an Eligible Project. As defined in proposed section 609.2, these fees consist of the administrative expenses that DOE incurs during: (1) The evaluation of both the Pre-Application, if a Pre-Application is requested in a solicitation, and the Application for a loan guarantee; (2) the offering of a Conditional Commitment, the execution of the Term Sheet, and the negotiation and closing of a Loan Guarantee Agreement; and (3) the servicing and monitoring of the Loan Guarantee Agreement, including during construction, start-up, commissioning, shakedown, and the operational phases of an Eligible Project.

Public Comments: Several commenters stated that administrative fees should be known, quantified, and/or fixed at the time an application is submitted to DOE. Beacon, for example, recommended that all fees should be quantified in advance as a percentage of the loan amount or in a formula based on the loan amount, and said DOE should make a conforming change to the proposed rule. Beacon commented that knowing the basis of fee amounts arguably would facilitate the calculation of project costs and alleviate the burden of cost uncertainties on small businesses and development stage companies. (Beacon at 1). Ameren sought clarification as to how DOE anticipates recovering the costs associated with evaluation of Pre-Applications that progress no farther in the process. Ameren asserted that the costs should be borne by DOE rather than from funds made available for the issuance of loan guarantees. Ameren stated that ''[i]t would be inappropriate to reduce funds specifically appropriated for loan guarantees to cover Department administrative expenses that the Department has chosen to bear.'' (Ameren at 5–6).

DOE Response: DOE recognizes the concern of several commenters on the advantages of a well-understood formula for calculating administrative fees. The Department may at some future time take action with respect to administrative fees but is not doing so now. The fees are intended to recover only DOE's administrative costs in managing the Loan Guarantee Program. A fee schedule will be published by DOE in the near future.

We reject Ameren's recommendation that the costs of administering the Loan Guarantee Program should be borne by DOE. Section 1702(h) of the Act calls for DOE to ''charge and collect fees * * * sufficient to cover applicable administrative expenses'' of the Title XVII program. Therefore, while DOE does have discretion to determine which administrative expenses should be properly deemed ''applicable'' to this program and/or to particular applications and thus recovered from program applicants or participants, the Department certainly is not free to determine that it will recover none of its administrative costs from applicants or participants and, instead, fund the costs of the program through appropriations from Congress.

G. Eligible Lenders and Servicing Requirements

The NOPR stated that participating Eligible Lenders or other servicers must meet certain eligibility, monitoring, and performance requirements. These requirements, which were set forth in sections 609.2 and 609.11 of the proposed regulations, were intended to ensure that the Eligible Lender or other servicer had the financial wherewithal and appropriate experience and expertise to meet its fiduciary obligations in connection with the debt guaranteed by DOE. Section 609.10(g) of the proposed regulations also provided that a lender must provide written notification to DOE prior to the assignment or transfer of any portion of a Guaranteed Obligation.

Public Comments: TXU stated that ''[a]ny lender providing debt capital to a project on a limited recourse basis would be performing an exhaustive due-diligence process, using appropriate expertise to analyze the risks.'' TXU asserted, therefore, that the duty of care specified in the regulations is unnecessarily duplicative of the process that the lender will use irrespective of the Department's involvement as guarantor. Additionally, TXU contended that any specific duties such as notice requirements should be assigned to an Administrative Agent or Lending Agent and that debt held by other lenders should be freely marketable without administrative burden on all lenders. (TXU at 8). WMPI Pty., LLC (WMPI) recommended that DOE revise the requirements proposed for lenders to take into account that eligible projects are more likely to be financed in capital markets by a group of bondholders through a public offering than by a single lender. Specifically, WMPI pointed out that a commitment letter would not be issued where there is a bond issuance and recommended that DOE recognize this fact in the final rule. WMPI also asserted that the final regulations should be revised to take account of the fact that interest charges and repayment schedules are not known in advance of a bond sale and, therefore, regulations calling for copies of loan documents containing all of the terms and conditions of the loan, including interest charges and principal repayment schedules, will be inapplicable if the financing is done through a bond public offering. (WMPI at 11–13).

Beacon recommended that the language ''including a qualified retirement plan, or governmental plan'' be deleted from the definition of Eligible Lender in proposed section 609.11(a)(1) because small businesses and development stage companies may need to approach financial institutions that may not have the specified plans. Beacon also recommended the entirety of proposed section 609.11(a)(6) be deleted. That language would require eligible lenders to have experience as the lead lender or underwriter by presenting evidence of its participation in other energy-related projects. Beacon maintains that this requirement is unduly restrictive because not many lenders have such experience and it is also generally irrelevant since the loan guarantee program is limited to new or significantly improved technologies. (Beacon at 7).

Goldman Sachs asserted that, except for certain critical requirements (*e.g.*, eligible lenders are disqualified if they have been disbarred from participation in a Federal government contract), the provisions in the NOPR regarding the eligible lender should apply only to the lead lender. This is necessary, Goldman Sachs argued, because only a small number of lenders will be able to meet the standards set forth in the NOPR, *e.g.*, will have the experience originating and servicing loans similar in size and scope to the projects that will be the subject of loan guarantee applications; or be able to demonstrate experience as the lead lender in other energy-related projects. Particularly as regards the expected financing needs of nuclear power projects, Goldman Sachs maintained that the potential lending pool should be kept as large as possible. (Goldman Sachs at 8).

DOE Response: The Department endorses the idea of maximizing the pool of Eligible Lenders and of allowing the use of loan servicers that may not be Eligible Lenders but that otherwise meet all applicable standards.

In addition, in response to comments that DOE finds persuasive, the Department has eliminated proposed section 609.11(a)(1) from the final rule. Furthermore, while DOE rejects Beacon's suggestion that the Department delete the entirety of section 609.11(a)(6) of the proposed regulations, we did expand the definition. While it is arguably true that the pool of servicers might be increased even further if section 609.11(a)(6) were completely eliminated, deletion of this provision altogether would not be consistent with DOE's desire to establish a program where there was a reasonable assurance of repayment in connection with guaranteed loans. We note, however, that in the final rule, section 609.11(a) and (b) do not apply to a loan servicer unless the servicer is also the Eligible Lender.

In response to WMPI's comments, DOE believes that today's final rule is flexible enough to support bond financing. Among other things, the definition of ''Holder'' is sufficiently

broad to cover the issuers of that type of debt.

H. Federal Credit Reform Act of 1990 (FCRA)

FCRA provides that for any federal credit program, new direct loans and loan guarantees may not be made unless authority has been provided in advance in appropriations act(s). See 2 U.S.C. 661c(b). Title XVII authorizes the issuance of loan guarantees where the credit subsidy cost, calculated in accordance with FCRA, is paid either through appropriations or by the borrower receiving the loan guarantee from the Department. On February 15, 2007, Public Law 110–5 was enacted. That statute provides DOE with the necessary authority, consistent with FCRA and section 1702, to guarantee in the aggregate up to $4 billion in loans for Title XVII projects. The authority to issue guarantees, however, was limited to Borrowers who pay the applicable Credit Subsidy Cost. No general funds are available to pay Credit Subsidy Costs.

Public Comments: A number of commenters questioned DOE's view that authority in an appropriations act is needed for the issuance of Title XVII loan guarantees. These commenters pointed to a statement by the Government Accountability Office (GAO) that Title XVII itself provides adequate authority for DOE to issue loan guarantees without the need for any additional authority in an appropriations act, provided DOE employs the Title XVII ''self-pay'' authority. Specifically, by letter dated April 20, 2007, GAO indicated its belief that because Title XVII allows for Credit Subsidy Costs to be covered by appropriations *or* by a payment from the borrower, where the recipient of a loan guarantee fully funds the Credit Subsidy Cost for its loan guarantee, no appropriations act authority should be required. Some commenters added that if DOE plans to adhere to the view that appropriations act authority is required for all Title XVII loan guarantees, it must seek and obtain an amendment to Title XVII or sufficient appropriations act authority to allow the Title XVII loan guarantee program to succeed.

DOE Response: The Department does not interpret section 1702(b) of the Act as providing either budget authority or other authority to make any individual loan guarantee, as is required by FCRA. Instead, DOE reads the Act and FCRA in harmony, which means that while Title XVII authorizes DOE to carry out the loan guarantee program, the Department may not issue any loan guarantees until it has received budget authority or is otherwise provided authority to make guarantees in an appropriations act. While the Act authorizes payment from a borrower as an alternative source of funding, any such alternative source of funding does not relieve DOE from the necessity of obtaining authority in an appropriations act for the issuance of any loan guarantees, even in cases where the Credit Subsidy Cost will be paid by the borrower or project sponsor and no appropriations are used to pay such costs. Congress acted consistent with this interpretation of Title XVII and section 504 of FCRA when, in section 20320 of Public Law 110–5, it authorized a $4 billion loan guarantee limitation and required the use of the self-pay authority of Title XVII for the loan guarantee authority provided by Public Law 110–5.

In the absence of the Title XVII authorization for DOE to receive borrower-paid funds to pay for the Credit Subsidy Cost of a particular loan guarantee, DOE would not have the ability to defray the Credit Subsidy Costs for loan guarantees in that manner. Title XVII clearly authorizes those costs to be covered either with appropriated funds or with borrower paid funds. Furthermore, Title XVII and FCRA, read together, require DOE to obtain authority in an appropriations act to issue loan guarantees, even when employing the Title XVII self-pay authority.

Section 20320 of Public Law 110–5 does three things: (1) It provides a loan guarantee volume limitation of $4 billion; (2) it requires that borrower self-pay the Credit Subsidy Cost; and (3) it prohibits the use of general fund appropriations for such costs. In enacting Public Law 110–5, Congress acted consistently with the Administration's view that authority in appropriations acts is required in advance before a loan guarantee can be issued. Therefore, for the $4 billion authorized by Public Law 110–5, DOE will implement the program with self-pay authority. Furthermore, DOE intends to continue to implement the Title XVII program through the self-pay authority provided by the Act and has no current intention to seek appropriations to pay Credit Subsidy Costs for any project.

I. Default and Audit Provisions

Title XVII, sections 1702(g) and 1702(i), require DOE to promulgate regulations to address default and audit requirements (42 U.S.C. 16512(g), (i)). Sections 609.15 and 609.17 of DOE's regulations, respectively, address these requirements. These provisions will apply to all loan guarantees issued under the Title XVII program.

Public Comments: USEC expressed concern that the Department's assertion of audit authority could be interpreted as requiring application of the Federal Acquisition Regulations (FAR). (USEC at 6) Other parties were concerned that after-the-fact audits could reduce the amount of project costs and the extent of the guarantee coverage. According to Bechtel, in particular, such a requirement would make the guarantee a conditional commitment. (Bechtel at 5–6) These parties pointed out that in project financing, an independent engineer is customarily used to review and certify costs prior to each loan disbursement and they recommended this approach be adopted in DOE's regulations. In Bechtel's view, once a disbursement is made, the guarantee should be unconditional and not subject to reduction in a post-disbursement audit. (Bechtel at 5–6).

Goldman Sachs recommended that the final rule clearly provide for the guarantee to be available in the case of defaults other than non-payment of principal and interest without the need for a DOE determination of material effect. Goldman Sachs maintained that as proposed, the rule would prevent lenders from making a demand on the guarantee in the case of defaults other than non-payment of principal and interest unless DOE agrees, and would potentially decrease the pool of lenders willing to participate. Goldman Sachs also recommended the adoption of a ''well-defined, market-based, and court-tested'' mechanism for handling default and suggested that DOE look to the monoline insurance market which provides credit enhancement to capital markets transactions. (Goldman Sachs at 4–5)

DOE Response: DOE clarifies that the final rule and the Title XVII loan guarantee program are not subject to the FAR. The Department also clarifies that the audit provisions do not render the loan guarantees conditional, but that the need to retain audit authority is necessary to prevent fraud and abuse and should in no way be construed as limiting the enforceability of the Title XVII Loan Guarantee.

DOE does not accept Goldman Sachs' recommendation that DOE give up its right to approve claims on the guarantees in the event of defaults for circumstances other than non-payment of principal and interest. Inasmuch as DOE likely will be the largest risk taker in any project receiving a Title XVII guarantee, the Department is not being unreasonable in insisting that it have a say about what event can accelerate

payments under the Loan Guarantee Agreement.

However, the Department has revised section 609.15(e), which requires lenders to provide supporting documentation to justify a payment demand, to specify that requirements will be provided in the Loan Guarantee Agreement. Also, DOE clarifies that proposed section 609.15(b) is not intended and should not be read to preclude demands for failure to pay principal and interest where there has been a default other than a payment default. A non-payment default can become a payment default if such default is not cured within the time specified in the Loan Guarantee Agreement and the debt is accelerated and thus causes the entire amount of the loan to become immediately due and payable. DOE will retain the audit provision in section 609.17(b) which permits DOE, in the course of conducting an audit, to exclude from or reduce project costs that are determined to be unnecessary or excessive. As indicated above, such an audit provision is necessary in order to protect the Federal government against the possibility of fraud or abuse.

J. Tax Exempt Debt

Section 103(a) of the Internal Revenue Code (IRC), 26 U.S.C. 103(a), provides that ''gross income'' does not include interest on any state or local bond, with certain exceptions. Section 149(b) of the IRC, 26 U.S.C. 149(b), provides that the section 103(a) exclusion from gross income ''shall not apply to a state or local bond if such bond is federally guaranteed.'' Section 149(b) in effect converts tax exempt debt to taxable debt when such debt is guaranteed by the Federal government. Accordingly, DOE proposed in section 609.10 of the NOPR to prohibit the Department from directly or indirectly guaranteeing tax exempt obligations.

Public Comments: The Nuclear Utilities stated that section 609.10's prohibition against issuing any loan guarantees that finance directly or indirectly any tax exempt debt is unnecessarily broad, and appears to establish new policy that negates provisions of current law on tax exempt financing. The Nuclear Utilities focused on several exceptions in 26 U.S.C. 149(b)(3)(A), which permit loan guarantees to apply to tax exempt debt obligations under certain conditions, and request that the final rule provide that loan guarantees may be issued for debt obligations if they qualify under such a statutory exception in existence at the time of loan guarantee agreement is executed. Specifically, they request that the prohibition in section 609.10(d)(7) of the NOPR should be amended by adding the proviso, ''unless such debt obligations fall within one of the exceptions enumerated in 26 U.S.C. 149(b)(3)(A), or other similar law.'' (Nuclear Utilities at 15).

Bechtel recommended the deletion of the proposed requirement that prior to the execution of the loan, DOE must ensure that the guarantee does not finance tax exempt debt because it might exclude many municipal and cooperative electric utility companies that rely heavily on tax exempt financing. (Bechtel at 6). CPS sought elimination of the prohibition on grounds that it is duplicative of IRC section 149(b). (CPS at 3)

DOE Response: The prohibition on municipalities issuing tax-exempt obligations that are also guaranteed by the Federal government is set forth in Federal law, and DOE cannot change the statutory prohibition, regardless of whether or not a similar prohibition is expressed in Title XVII regulations. DOE believes, however, that in the interests of clarity and completeness, the rule should contain such a prohibition. Nonetheless, we are persuaded that the prohibition in the final rule should be expressly coextensive with the statutory prohibition such that any statutory exceptions in effect at the time that a guarantee is issued will also be deemed exceptions from the regulation, because it is not DOE's intent to prohibit by rule, except to the extent prohibited by statute, loan guarantees from being issued for projects employing tax exempt debt. We have modified section 609.10(d)(7) of the final rule accordingly.

K. Full Faith and Credit

Section 609.14 of the proposed regulations provided that the full faith and credit of the United States would be pledged to the payment of all Guaranteed Obligations. It further provided that the guarantee shall be conclusive evidence that it has been properly obtained, that the underlying loan qualified for the guarantee, and that but for fraud or material misrepresentation by the Holder, is presumed to be valid, legal, and enforceable. DOE stated that it maintains a strong interest in ensuring that the debt incurred in order to finance innovative projects can be financed and sold in secondary markets.

Public Comments: The commenters addressing this issue stressed the need to ensure that the guarantees issued by the Department are completely unconditional and obtain a ''AAA'' credit rating. The Investment Bankers focused on several provisions that appear to weaken the unconditional nature of the guarantee. For example, the NOPR sought to impose on Eligible Lenders a duty of care and other duties that are arguably more onerous than is required in commercial markets and in other Federal loan guarantee programs. According to the Investment Bankers, these provisions make the guarantee conditional and put lenders at risk disproportionate to any potential returns, especially in the case of collateral agents or other agents who receive minimal fees for such functions. The Investment Bankers contend that these provisions will further reduce interest in the lender community in this program and, therefore, the availability of financing. (Investment Bankers at 2). Citi, in addressing the need for a ''AAA'' credit rating, argued that the exception for fraud or material misrepresentation by the holder of the guarantee, as proposed in the NOPR, is not necessary. (Citi at 4).

DOE Response: Subject only to fraud or material misrepresentation by the Holder, the guarantee is absolute. For the reasons discussed elsewhere in this preamble in connection with the Department's authority to conduct audits, we reject the argument of Citi and the Investment Bankers that the right to audit for fraud or abuse is unnecessary or would compromise the unconditional nature of Title XVII loan guarantees. The right to audit is vital to the Department's effort to protect against fraud or abuse and to protect the government and the taxpayer; in any event, Title XVII requires the Department to have regulations addressing audit requirements. DOE also does not agree that the duty of care required of Eligible Lenders is too strict. These standards and the duty of care required of Eligible Lenders, as proposed in the NOPR, do not compromise the unconditional nature of the guarantees but are intended to support the government's need to assure a reasonable prospect of repayment. So, these requirements should not in any sense restrict or reduce the viability of the Title XVII program.

L. Responses to August 2006 Solicitation

In the NOPR, DOE proposed that in order to ensure that the Department complies with Public Law 110–5 but does not prejudice Pre-Applicants that responded to the First Solicitation, the Title XVII regulations should specify that they do not apply to the Pre-Applications, Applications, Conditional Commitments, and Loan Guarantee Agreements issued or entered into pursuant to the First Solicitation. The

only exceptions would be with respect to the default, recordkeeping, and audit requirements in proposed sections 609.15 and 609.17, which Title XVII requires be established by rule. The NOPR also proposed to permit DOE and an Applicant to agree in a Loan Guarantee Agreement entered into pursuant to the First Solicitation that additional provisions of DOE's regulations would apply to the particular project.

Public Comments: Synergistic Dynamics, Inc. (Synergistic) submits that DOE's proposed waiver of regulatory requirements for the Pre-Applications received in response to the First Solicitation will prejudice subsequent applicants who fully comply with the final regulations. The only other comment DOE received on this aspect of the NOPR was a letter submitted by two members of Congress, which asserted that DOE's proposal was not consistent with Congress's intent in Public Law 110–5, which required that DOE promulgate final regulations before issuing any loan guarantees under the Title XVII program. (Synergistic at 3)

DOE Response: The final rule generally adopts the approach set forth in the NOPR, but specifies additional provisions of the regulations that will be applicable to all pre-applications, applications, and loan guarantees, including those under the First Solicitation. The Department still believes it is important not to prejudice Pre-Applicants who responded to the First Solicitation. For example, the final rule establishes requirements for Title XVII solicitations that are not consistent with the content of the August 2006 First Solicitation issued by DOE, and if all provisions of the final rule were made to apply to the First Solicitation and the submissions in response to it, it is difficult to see how DOE could proceed other than to reject all of the Pre-Applications that were submitted and start the program over from scratch. The Department and the Pre-Applicants have spent too much time responding to the First Solicitation to throw that work away and start over.

At the same time, many portions of the final rule can be fairly applied to those entities that responded to the First Solicitation, and the process of considering those responses is at a stage where many of the final rule's requirements can and should be made to apply to them. In fact, the Department believes that it will benefit both Pre-Applicants and the Department to make additional provisions of this rule applicable to them. Because, as DOE noted in the NOPR, section 20320 of Public Law 110–5 does not state whether or to what extent the final rules that Public Law 110–5 requires to be issued must apply to any matters in connection with the First Solicitation, DOE therefore must make a policy judgment about the extent to which this final rule should be so applicable.

In section 609.1 of the final rule, DOE specifies which sections of the regulations are *not* applicable to Pre-Applicants and projects being considered in response to the First Solicitation. Except as specified in that section, these regulations apply to all projects and loan guarantees pursuant to Title XVII, including those pursuant to the First Solicitation.

M. Other Issues Raised in the Public Comments

1. Non-Recourse Financing.

The NOPR proposed to require the borrower to pledge all project assets and other collateral to obtain a loan guarantee. (609.10(d)(10)). Some commenters sought clarification that in the event of default, the loan guarantee is non-recourse, *i.e.*, liquidation or sale of assets after default is limited to project assets pledged as collateral. The commenters noted that a sponsor may, at its discretion, offer other collateral to reduce the cost of the subsidy and that this is the substance of the collateral pool that lenders would and will require in a limited-recourse financing. However, one commenter observed that in such a collateral pool, the government would be in a second lien position until it paid, in part or in whole, the project loans—at which time the government would subrogate to a first lien position. (TXU at 6).

Pursuant to the final rule and Title XVII itself, loan guarantees will be secured by all project assets, including, contracts, agreements, and other pledged collateral. Other than pledged project assets and other pledged collateral, however, the loan guarantee is non-recourse as to all persons and entities. The issue of lien position is discussed elsewhere in this preamble.

2. Timeline for Processing Application.

P&W recommended that in order for an Applicant to effectively plan its project development life cycle, DOE should clearly define a timeline for application processing and loan awards. P&W said there are sensitivities around time to market that might preclude engagement with the loan guarantee program if the timeline moves too slowly. (P&W at 3). Dominion asked DOE to consider offering priority processing to applicants that wish to enter into loan guarantees of shorter terms than the statutorily allowed maximum, because a reduced loan guarantee term reduces risk to the government, and contended that priority processing of such lower risk projects would further the President's Advanced Energy Initiative. (Dominion at 4).

The Department believes that given the breadth, diversity, and innovative nature of the technologies that are potentially eligible for Title XVII loan guarantees and for which loan guarantees will be sought, it is not feasible at this point to establish by rule firm timelines for the processing of applications. This issue may be revisited at some point in the future, after DOE and participants have gained more experience with the program. The Department may, in the context of a particular solicitation, establish specific timelines for various phases of the application and consideration process for that solicitation. DOE also is not persuaded that it should attempt, in these regulations, to provide a sort of higher priority in the processing or granting of loan guarantees for potentially lower risk or reduced loan term applications. Such a rule might be inconsistent with particular Departmental objectives if DOE wished to focus a particular solicitation on high-risk technologies. Moreover, it likely would be difficult, early in the process of reviewing an application, to determine with any certainty which applications presented lower risk than others.

As for the issue of shorter-term loans—for example, loans that only have a five-year term, or on which the DOE guarantee expires after five years, the term may or may not weigh into the consideration of the application. DOE does not believe it is appropriate to provide by rule for priority processing of requests for shorter-term guarantees. In individual solicitations, the Department may set forth priorities for processing applications, consistent with the final rule.

3. Conditional Commitment

Section 609.8(c) of the NOPR provided in part that ''[w]hen and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement, *but neither party is legally obligated to do so*.'' (emphasis added) The Nuclear Utilities stated that DOE should allow flexibility in the type of ''commitment'' provided by the Department in advance of the planned financial close of guaranteed debt. (Nuclear Utilities at 18). On the other hand, TXU stated that once the Sponsor submits the

Application package, DOE should issue a Conditional Commitment and, as long as the sponsor meets all of the conditions set forth in the Commitment, the sponsor should be assured that the federal loan guarantee will be forthcoming. According to TXU, the need for assurance that a guarantee will be issued where all conditions are met is essential because the costs of securing a guarantee, providing all the necessary documents, licenses and permits, *etc.,* could cost in the hundreds of millions of dollars, especially in the case of nuclear plants or other capital intensive projects. TXU maintained that following the preliminary application stage, a sponsor should not have to be concerned about making these expenditures and not receiving a federal guarantee unless the sponsor fails to fulfill all the conditions precedent to the loan program. (TXU at 8–9).

DOE agrees with the concerns expressed, and therefore has revised sections 609.2 and 609.8 to indicate that a Conditional Commitment is an agreement to pursue the execution of a Loan Guarantee Agreement. The Secretary may terminate a Conditional Commitment for any reason at any time prior to execution of the Loan Guarantee Agreement. To ensure that no Conditional Commitment binds DOE to enter into a Loan Guarantee Agreement without both adequate legal authority to do so and payment into the Treasury of required fees and costs, the final rule provides that DOE's obligations under each Conditional Commitment are conditional upon Congress having provided in advance of the execution of the loan guarantee sufficient authority under FCRA and Title XVII for DOE to execute the Loan Guarantee Agreement, and either an appropriation has been made or a borrower has paid into the Treasury sufficient funds to cover the full Credit Subsidy Cost for the loan guarantee that is the subject of the Conditional Commitment. These conditions are made applicable by rule to each Conditional Commitment, and are applicable whether or not they are specifically stated in the text of a Conditional Commitment.

4. Restrictions on the Transferability of Guaranteed Obligations

Goldman Sachs recommended that the final rule not include restrictions on transferability of guaranteed loans, and that DOE clarify that the provisions regarding the eligible lender apply only to the lead lender. Goldman Sachs said that section 609.10(g)(1) of the proposed rule, which would have required the eligible lender to provide written notification of any assignment, transfer, pledge, or use of a guaranteed obligation, renders such actions subject to DOE consent are not practical because the lead lender will need to assign and/or participate the loans to a large number of institutions very quickly. This flexibility is particularly important, according to Goldman Sachs, given the significant capital needed for construction of a nuclear power facility and the need for lenders in the secondary market for the ability to freely trade their loans. Bank of America Securities, LLC (BOA) also objected to this section. (BOA at 8)

The Department has an interest in ensuring that any Guaranteed Obligation presented to it for payment is valid. Accordingly, revised section 609.10(g) states that DOE will provide in the Loan Guarantee Agreement and related documents, procedures for identifying Holders of the Guaranteed Obligations, including for the purpose of payments pursuant to the guarantee in the event of default.

III. Regulatory Review

A. Executive Order 12866

Today's final rule has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs at Office of Management and Budget (OMB).

B. National Environmental Policy Act of 1969

Through the issuance of this rule, DOE is making no decision relative to the approval of a loan guarantee for a particular proposed project. DOE has, therefore, determined that publication of the final rule is covered under the Categorical Exclusion found at paragraph A.6 of Appendix A to Subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required at this time. However, appropriate NEPA project review will be conducted prior to execution of a Loan Guarantee Agreement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://www.gc.doe.gov.*

DOE is not obliged to prepare a regulatory flexibility analysis for this rulemaking because there is no requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (5 U.S.C. 553).

D. Paperwork Reduction Act

Sections 609.4 and 609.6 of this rule provide that Pre-Applications and Applications for loan guarantees submitted to DOE in response to a solicitation must contain certain information. This information will be used by DOE to determine if a project sponsor who submits a Pre-Application will be invited to submit an Application for a loan guarantee; to determine if a project is eligible for a loan guarantee; and to evaluate Applications under criteria specified in the rule. Section 609.17 provides that borrowers must submit to DOE annual project performance reports and audited financial statements along with other information. DOE will use this information to evaluate the progress of projects for which loan guarantees are issued. DOE submitted this collection of information to OMB for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* OMB approved this collection of information and assigned it OMB Control No. 1910–5134.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Act) (2 U.S.C. 1531 *et seq.*) requires each federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any federal mandate in an agency rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of State,

tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments.

The term ''federal mandate'' is defined in the Act to mean a federal intergovernmental mandate or a federal private sector mandate (2 U.S.C. 658(6)). Although the rule will impose certain requirements on non-federal governmental and private sector applicants for loan guarantees, the Act's definitions of the terms ''federal intergovernmental mandate'' and ''federal private sector mandate'' exclude, among other things, any provision in legislation, statute, or regulation that is a condition of Federal assistance or a duty arising from participation in a voluntary program (2 U.S.C. 658(5) and (7), respectively). Today's rule establishes requirements that persons voluntarily seeking loan guarantees for projects that would use certain new and improved energy technologies must satisfy as a condition of a federal loan guarantee. Thus, the rule falls under the exceptions in the definitions of ''federal intergovernmental mandate'' and ''federal private sector mandate'' for requirements that are a condition of Federal assistance or a duty arising from participation in a voluntary program. The Act does not apply to this rulemaking.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved the issuance of this final rule.

List of Subjects in 10 CFR Part 609

Administrative practice and procedure, Energy, Loan programs, and Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 12, 2007.

Steve Isakowitz,

Chief Financial Officer.

■ For the reasons stated in the Preamble, chapter II of title 10 of the Code of Federal Regulations is amended by

adding a new part 609 as set forth below.

PART 609—LOAN GUARANTEES FOR PROJECTS THAT EMPLOY INNOVATIVE TECHNOLOGIES

Sec.
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Authority: 42 U.S.C. 7254, 16511–16514.

§ 609.1 Purpose and scope.

(a) This part sets forth the policies and procedures that DOE uses for receiving, evaluating, and, after consultation with the Department of the Treasury, approving applications for loan guarantees to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

(b) Except as set forth in paragraph (c) of this section, this part applies to all Pre-Applications, Applications, Conditional Commitments and Loan Guarantee Agreements to support Eligible Projects under Title XVII of the Energy Policy Act of 2005.

(c) (1) Sections 609.3, 609.4 and 609.5 of this part shall not apply to any Pre-Applications, Applications, Conditional Commitments or Loan Guarantee Agreements under the Guidelines issued by DOE on August 8, 2006, which were published in the **Federal Register** on August 14, 2006 (71 FR 46451) and the solicitation issued on August 8, 2006 under Title XVII of the Energy Policy Act of 2005, provided the Pre-Application is accepted under the Guidelines and an Application is invited pursuant to such Pre-Application no later than December 31, 2007.

(2) Except as provided in paragraph (c)(1) of this section, DOE and any Applicant who submitted an Application under the August 8, 2006 solicitation may agree to make additional provisions of this part applicable to the particular project.

(d) Part 1024 of chapter X of title 10 of the Code of Federal Regulations shall not apply to actions taken under this part.

§ 609.2 Definitions.

Act means Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511–16514).

Administrative Cost of Issuing a Loan Guarantee means the total of all administrative expenses that DOE incurs during:

(1) The evaluation of a Pre-Application, if a Pre-Application is requested in a solicitation, and an Application for a loan guarantee;

(2) The offering of a Term Sheet, executing the Conditional Commitment, negotiation, and closing of a Loan Guarantee Agreement; and

(3) The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

Applicant means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-Federal entity that has submitted an Application to DOE and has the authority to enter into a Loan Guarantee Agreement with DOE under the Act.

Application means a comprehensive written submission in response to a solicitation or a written invitation from DOE to apply for a loan guarantee pursuant to § 609.6 of this part.

Borrower means any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

Commercial Technology means a technology in general use in the commercial marketplace in the United States at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three or more commercial projects in the United States in the same general application as in the proposed project, and has been in operation in each such commercial project for a period of at least five years. The five year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology. For purposes of this section, commercial projects include projects that have been the recipients of a loan guarantee from DOE under this part.

Conditional Commitment means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual, statutory and regulatory requirements, or other requirements, DOE and the Applicant will execute a Loan Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and Provided further that the Secretary may not delegate this authority to terminate a Conditional Commitment.

Contracting Officer means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

Credit Subsidy Cost has the same meaning as ''cost of a loan guarantee'' in section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

(1) Payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; less

(2) Payments to the Government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

DOE means the United States Department of Energy.

Eligible Lender means:

(1) Any person or legal entity formed for the purpose of, or engaged in the business of, lending money, including, but not limited to, commercial banks, savings and loan institutions, insurance companies, factoring companies, investment banks, institutional investors, venture capital investment companies, trusts, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders; and

(2) Any person or legal entity that meets the requirements of § 609.11 of this part, as determined by DOE; or

(3) The Federal Financing Bank.

Eligible Project means a project located in the United States that employs a New or Significantly Improved Technology that is not a Commercial Technology, and that meets all applicable requirements of section

1703 of the Act (42 U.S.C. 16513), the applicable solicitation and this part.

Equity means cash contributed by the Borrowers and other principals. Equity does not include proceeds from the non-guaranteed portion of Title XVII loans, proceeds from any other non-guaranteed loans, or the value of any form of government assistance or support.

Federal Financing Bank means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 *et seq.*). The Bank is under the general supervision of the Secretary of the Treasury.

Guaranteed Obligation means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to the Act.

Holder means any person or legal entity that owns a Guaranteed Obligation or has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation, including any nominee or trustee empowered to act for the Holder or Holders.

Loan Agreement means a written agreement between a Borrower and an Eligible Lender or other Holder containing the terms and conditions under which the Eligible Lender or other Holder will make loans to the Borrower to start and complete an Eligible Project.

Loan Guarantee Agreement means a written agreement that, when entered into by DOE and a Borrower, an Eligible Lender or other Holder, pursuant to the Act, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal and interest on specified Guaranteed Obligations of a Borrower to Eligible Lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement.

New or Significantly Improved Technology means a technology concerned with the production, consumption or transportation of energy and that is not a Commercial Technology, and that has either only recently been developed, discovered or learned; or involves or constitutes one or more meaningful and important improvements in productivity or value, in comparison to Commercial Technologies in use in the United States at the time the Term Sheet is issued.

OMB means the Office of Management and Budget in the Executive Office of the President.

Pre-Application means a written submission in response to a DOE solicitation that broadly describes the project proposal, including the proposed role of a DOE loan guarantee in the project, and the eligibility of the project to receive a loan guarantee under the applicable solicitation, the Act and this part.

Project Costs means those costs, including escalation and contingencies, that are to be expended or accrued by Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project, as specified in § 609.12 of this part. Project costs do not include costs for the items set forth in § 609.12(c) of this part.

Project Sponsor means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

Secretary means the Secretary of Energy or a duly authorized designee or successor in interest.

Term Sheet means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

United States means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

§ 609.3 Solicitations.

(a) DOE may issue solicitations to invite the submission of Pre-Applications or Applications for loan guarantees for Eligible Projects. DOE must issue a solicitation before proceeding with other steps in the loan guarantee process including issuance of a loan guarantee. A Project Sponsor or Applicant may only submit one Pre-Application or Application for one project using a particular technology. A Project Sponsor or Applicant, in other words, may not submit a Pre-Application or Application for multiple projects using the same technology.

(b) Each solicitation must include, at a minimum, the following information:

(1) The dollar amount of loan guarantee authority potentially being made available by DOE in that solicitation;

(2) The place and time for response submission;

(3) The name and address of the DOE representative whom a potential Project Sponsor may contact to receive further information and a copy of the solicitation;

(4) The form, format, and page limits applicable to the response submission;

(5) The amount of the application fee (First Fee), if any, that will be required;

(6) The programmatic, technical, financial and other factors the Secretary will use to evaluate response submissions, including the loan guarantee percentage requested by the Applicant and the relative weightings that DOE will use when evaluating those factors; and

(7) Such other information as DOE may deem appropriate.

§ 609.4 Submission of pre-applications.

In response to a solicitation requesting the submission of Pre-Applications, either Project Sponsors or Applicants may submit Pre-Applications to DOE. Pre-Applications must meet all requirements specified in the solicitation and this part. At a minimum, each Pre-Application must contain all of the following:

(a) A cover page signed by an individual with full authority to bind the Project Sponsor or Applicant that attests to the accuracy of the information in the Pre-Application, and that binds the Project Sponsor(s) or Applicant to the commitments made in the Pre-Application. In addition, the information requested in paragraphs (b) and (c) of this section should be submitted in a volume one and the information requested in paragraphs (d) through (h) of this section should be submitted in a volume two, to expedite the DOE review process.

(b) An executive summary briefly encapsulating the key project features and attributes of the proposed project;

(c) A business plan which includes an overview of the proposed project, including:

(1) A description of the Project Sponsor, including all entities involved, and its experience in project investment, development, construction, operation and maintenance;

(2) A description of the new or significantly improved technology to be employed in the project, including:

(i) A report detailing its successes and failures during the pilot and demonstration phases;

(ii) The technology's commercial applications;

(iii) The significance of the technology to energy use or emission control;

(iv) How and why the technology is ''new'' or ''significantly improved'' compared to technology already in general use in the commercial marketplace in the United States;

(v) Why the technology to be employed in the project is not in ''general use;''

(vi) The owners or controllers of the intellectual property incorporated in and utilized by such technologies; and

(vii) The manufacturer(s) and licensee(s), if any, authorized to make the technology available in the United States, the potential for replication of commercial use of the technology in the United States, and whether and how the technology is or will be made available in the United States for further commercial use;

(3) The estimated amount, in reasonable detail, of the total Project Costs;

(4) The timeframe required for construction and commissioning of the project;

(5) A description of any primary off-take or other revenue-generating agreements that will provide the primary sources of revenues for the project, including repayment of the debt obligations for which a guarantee is sought.

(6) An overview of how the project complies with the eligibility requirements in section 1703 of the Act (42 U.S.C. 16513);

(7) An outline of the potential environmental impacts of the project and how these impacts will be mitigated;

(8) A description of the anticipated air pollution and/or anthropogenic greenhouse gas reduction benefits and how these benefits will be measured and validated; and

(9) A list of all of the requirements contained in this part and the solicitation and where in the Pre-Application these requirements are addressed;

(d) A financing plan overview describing:

(1) The amount of equity to be invested and the sources of such equity;

(2) The amount of the total debt obligations to be incurred and the funding sources of all such debt if available;

(3) The amount of the Guaranteed Obligation as a percentage of total project debt; and as a percentage of total project cost; and

(4) A financial model detailing the investments in and the cash flows generated and anticipated from the project over the project's expected life-cycle, including a complete explanation of the facts, assumptions, and methodologies in the financial model;

(e) An explanation of what estimated impact the loan guarantee will have on the interest rate, debt term, and overall financial structure of the project;

(f) Where the Federal Financing Bank is not the lender, a copy of a letter from an Eligible Lender or other Holder(s) expressing its commitment to provide, or interest in providing, the required debt financing necessary to construct and fully commission the project;

(g) A copy of the equity commitment letter(s) from each of the Project Sponsors and a description of the sources for such equity; and

(h) A commitment to pay the Application fee (First Fee), if invited to submit an Application.

§ 609.5 Evaluation of pre-applications.

(a) Where Pre-Applications are requested in a solicitation, DOE will conduct an initial review of the Pre-Application to determine whether:

(1) The proposal is for an Eligible Project;

(2) The submission contains the information required by § 609.4 of this part; and

(3) The submission meets all other requirements of the applicable solicitation.

(b) If a Pre-Application fails to meet the requirements of paragraph (a) of this section, DOE may deem it non-responsive and eliminate it from further review.

(c) If DOE deems a Pre-Application responsive, DOE will evaluate:

(1) The commercial viability of the proposed project;

(2) The technology to be employed in the project;

(3) The relevant experience of the principal(s); and

(4) The financial capability of the Project Sponsor (including personal and/or business credit information of the principal(s)).

(d) After the evaluation described in paragraph (c) of this section, DOE will determine if there is sufficient information in the Pre-Application to assess the technical and commercial viability of the proposed project and/or the financial capability of the Project Sponsor and to assess other aspects of the Pre-Application. DOE may ask for additional information from the Project Sponsor during the review process and may request one or more meetings with the Project Sponsor.

(e) After reviewing a Pre-Application and other information acquired under paragraph (c) of this section, DOE may provide a written response to the Project Sponsor or Applicant either inviting the Applicant to submit an Application for a loan guarantee and specifying the amount of the Application filing fee (First Fee) or advising the Project Sponsor that the project proposal will not receive further consideration. Neither the Pre-Application nor any written or other feedback that DOE may provide in response to the Pre-Application eliminates the requirement for an Application.

(f) No response by DOE to, or communication by DOE with, a Project Sponsor, or an Applicant submitting a Pre-Application or subsequent Application shall impose any obligation on DOE to enter into a Loan Guarantee Agreement.

§ 609.6 Submission of applications.

(a) In response to a solicitation or written invitation to submit an Application, an Applicant submitting an Application must meet all requirements and provide all information specified in the solicitation and/or invitation and this part.

(b) An Application must include, at a minimum, the following information and materials:

(1) A completed Application form signed by an individual with full authority to bind the Applicant and the Project Sponsors;

(2) Payment of the Application filing fee (First Fee) for the Pre-Application, if any, and Application phase;

(3) A detailed description of all material amendments, modifications, and additions made to the information and documentation provided in the Pre-Application, if a Pre-Application was requested in the solicitation, including any changes in the proposed project's financing structure or other terms;

(4) A description of how and to what measurable extent the project avoids, reduces, or sequesters air pollutants and/or anthropogenic emissions of greenhouse gases, including how to measure and verify those benefits;

(5) A description of the nature and scope of the proposed project, including:

(i) Key milestones;

(ii) Location of the project;

(iii) Identification and commercial feasibility of the new or significantly improved technology(ies) to be employed in the project;

(iv) How the Applicant intends to employ such technology(ies) in the project; and

(v) How the Applicant intends to assure, to the extent possible, the further commercial availability of the technology(ies) in the United States;

(6) A detailed explanation of how the proposed project qualifies as an Eligible Project;

(7) A detailed estimate of the total Project Costs together with a description of the methodology and assumptions used;

(8) A detailed description of the engineering and design contractor(s), construction contractor(s), equipment supplier(s), and construction schedules for the project, including major activity and cost milestones as well as the performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided;

(9) A detailed description of the operations and maintenance provider(s), the plant operating plan, estimated staffing requirements, parts inventory, major maintenance schedule, estimated annual downtime, and performance guarantees and related liquidated damage provisions, if any;

(10) A description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project;

(11) A detailed description of the project decommissioning, deconstruction, and disposal plan, and the anticipated costs associated therewith;

(12) An analysis of the market for any product to be produced by the project, including relevant economics justifying the analysis, and copies of any contractual agreements for the sale of these products or assurance of the revenues to be generated from sale of these products;

(13) A detailed description of the overall financial plan for the proposed project, including all sources and uses of funding, equity and debt, and the liability of parties associated with the project over the term of the Loan Guarantee Agreement;

(14) A copy of all material agreements, whether entered into or proposed, relevant to the investment, design, engineering, financing, construction, startup commissioning, shakedown, operations and maintenance of the project;

(15) A copy of the financial closing checklist for the equity and debt to the extent available;

(16) Applicant's business plan on which the project is based and Applicant's financial model presenting project *pro forma* statements for the proposed term of the Guaranteed Obligations including income statements, balance sheets, and cash flows. All such information and data must include assumptions made in their preparation and the range of revenue, operating cost, and credit assumptions considered;

(17) Financial statements for the past three years, or less if the Applicant has been in operation less than three years, that have been audited by an independent certified public accountant, including all associated notes, as well as interim financial statements and notes for the current fiscal year, of Applicant and parties providing Applicant's financial backing, together with business and financial interests of controlling or commonly controlled organizations or persons, including parent, subsidiary and other affiliated corporations or partners of the Applicant;

(18) A copy of all legal opinions, and other material reports, analyses, and reviews related to the project;

(19) An independent engineering report prepared by an engineer with experience in the industry and familiarity with similar projects. The report should address: the project's siting and permitting, engineering and design, contractual requirements, environmental compliance, testing and commissioning and operations and maintenance;

(20) Credit history of the Applicant and, if appropriate, any party who owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the project or the Applicant;

(21) A preliminary credit assessment for the project without a loan guarantee from a nationally recognized rating agency for projects where the estimated total Project Costs exceed $25 million. For projects where the total estimated Project Costs are less than $25 million and where conditions justify, in the sole discretion of the Secretary, DOE may require such an assessment;

(22) A list showing the status of and estimated completion date of Applicant's required project-related applications or approvals for Federal, state, and local permits and authorizations to site, construct, and operate the project;

(23) A report containing an analysis of the potential environmental impacts of the project that will enable DOE to assess whether the project will comply with all applicable environmental requirements, and that will enable DOE to undertake and complete any necessary reviews under the National Environmental Policy Act of 1969;

(24) A listing and description of assets associated, or to be associated, with the project and any other asset that will serve as collateral for the Guaranteed Obligations, including appropriate data as to the value of the assets and the useful life of any physical assets. With respect to real property assets listed, an appraisal that is consistent with the ''Uniform Standards of Professional Appraisal Practice,'' promulgated by the Appraisal Standards Board of the Appraisal Foundation, and performed by licensed or certified appraisers, is required;

(25) An analysis demonstrating that, at the time of the Application, there is a reasonable prospect that Borrower will be able to repay the Guaranteed Obligations (including interest) according to their terms, and a complete description of the operational and financial assumptions and methodologies on which this demonstration is based;

(26) Written affirmation from an officer of the Eligible Lender or other Holder confirming that it is in good standing with DOE's and other Federal agencies' loan guarantee programs;

(27) A list of all of the requirements contained in this part and the solicitation and where in the Application these requirements are addressed;

(28) A statement from the Applicant that it believes that there is ''reasonable prospect'' that the Guaranteed Obligations will be fully paid from project revenue; and

(29) Any other information requested in the invitation to submit an Application or requests from DOE in order to clarify an Application;

(c) DOE will not consider any Application complete unless the Applicant has paid the First Fee and the Application is signed by the appropriate entity or entities with the authority to bind the Applicant to the commitments and representations made in the Application.

§ 609.7 Programmatic, technical and financial evaluation of applications.

(a) In reviewing completed Applications, and in prioritizing and selecting those to whom a Term Sheet should be offered, DOE will apply the criteria set forth in the Act, the applicable solicitation, and this part. Applications will be considered in a competitive process, i.e. each Application will be evaluated against other Applications responsive to the Solicitation. Greater weight will be given to applications that rely upon a smaller guarantee percentage, all else being equal. Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of the potential

loan guarantee. Applications will be denied if:

(1) The project will be built or operated outside the United States;

(2) The project is not ready to be employed commercially in the United States, cannot yield a commercially viable product or service in the use proposed in the project, does not have the potential to be employed in other commercial projects in the United States, and is not or will not be available for further commercial use in the United States;

(3) The entity or person issuing the loan or other debt obligations subject to the loan guarantee is not an Eligible Lender or other Holder, as defined in § 609.11 of this part;

(4) The project is for demonstration, research, or development.

(5) The project does not avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases; or

(6) The Applicant will not provide an equity contribution.

(b) In evaluating Applications, DOE will consider the following factors:

(1) To what measurable extent the project avoids, reduces, or sequesters air pollutants or anthropogenic emissions of greenhouses gases;

(2) To what extent the new or significantly improved technology to be employed in the project, as compared to Commercial Technology in general use in the United States, is ready to be employed commercially in the United States, can be replicated, yields a commercial viable project or service in the use proposed in the project, has potential to be employed in other commercial projects in the United States, and is or will be available for further commercial use in the United States;

(3) To the extent that the new or significantly improved technology used in the project constitutes an important improvement in technology, as compared to Commercial Technology, used to avoid, reduce or sequester air pollutants or anthropogenic emissions of greenhouse gases, and the Applicant has a plan to advance or assist in the advancement of that technology into the commercial marketplace;

(4) The extent to which the requested amount of the loan guarantee, and requested amount of Guaranteed Obligations are reasonable relative to the nature and scope of the project;

(5) The total amount and nature of the Eligible Project Costs and the extent to which Project Costs are funded by Guaranteed Obligations;

(6) The likelihood that the project will be ready for full commercial operations in the time frame stated in the Application;

(7) The amount of equity commitment to the project by the Applicant and other principals involved in the project;

(8) Whether there is sufficient evidence that the Applicant will diligently pursue the project, including initiating and completing the project in a timely manner;

(9) Whether and to what extent the Applicant will rely upon other Federal and non-Federal governmental assistance such as grants, tax credits, or other loan guarantees to support the financing, construction, and operation of the project and how such assistance will impact the project;

(10) The feasibility of the project and likelihood that the project will produce sufficient revenues to service the project's debt obligations over the life of the loan guarantee and assure timely repayment of Guaranteed Obligations;

(11) The levels of safeguards provided to the Federal government in the event of default through collateral, warranties, and other assurance of repayment described in the Application;

(12) The Applicant's capacity and expertise to successfully operate the project, based on factors such as financial soundness, management organization, and the nature and extent of corporate and personal experience;

(13) The ability of the applicant to ensure that the project will comply with all applicable laws and regulations, including all applicable environmental statutes and regulations;

(14) The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;

(15) Whether the Application contains sufficient information, including a detailed description of the nature and scope of the project and the nature, scope, and risk coverage of the loan guarantee sought to enable DOE to perform a thorough assessment of the project; and

(16) Such other criteria that DOE deems relevant in evaluating the merits of an Application.

(c) During the Application review process DOE may raise issues or concerns that were not raised during the Pre-Application review process where a Pre-Application was requested in the applicable solicitation.

(d) If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant and Eligible Lender or other Holder in writing and provide them with a Term Sheet. If DOE reviews an Application and decides not to proceed further with the issuance of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial.

§ 609.8 Term sheets and conditional commitments.

(a) DOE, after review and evaluation of the Application, additional information requested and received by DOE, potentially including a preliminary credit rating or credit assessment, and information obtained as the result of meeting with the Applicant and the Eligible Lender or other Holder, may offer to an Applicant and the Eligible Lender or other Holder detailed terms and conditions that must be met, including terms and conditions that must be met by the Applicant and the Eligible Lender or other Holder.

(b) The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant and the Eligible Lender or other Holder, where appropriate. The Term Sheet will request that the Project Sponsor and the Eligible Lender or other Holder express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. Each person signing the Term Sheet must be a duly authorized official or officer of the Applicant and Eligible Lender or other Holder. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date.

(c) The Applicant and/or the Eligible Lender or other Holder may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE, the Applicant, and the Eligible Lender or other Holder agree on all of the final terms and conditions and all parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

(d) DOE's obligations under each Conditional Commitment are conditional upon statutory authority having been provided in advance of the execution of the Loan Guarantee Agreement sufficient under FCRA and Title XVII for DOE to execute the Loan Guarantee Agreement, and either an appropriation has been made or a borrower has paid into the Treasury sufficient funds to cover the full Credit Subsidy Cost for the loan guarantee that

is the subject of the Conditional Commitment.

(e) The Applicant is required to pay fees to DOE to cover the Administrative Cost of Issuing a Loan Guarantee for the period of the Term Sheet through the closing of the Loan Guarantee Agreement (Second Fee).

§ 609.9 Closing on the loan guarantee agreement.

(a) Subsequent to entering into a Conditional Commitment with an Applicant, DOE, after consultation with the Applicant, will set a closing date for execution of Loan Guarantee Agreement.

(b) By the closing date, the Applicant and the Eligible Lender or other Holder must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and all other contractual, statutory, and regulatory requirements. If the Applicant and the Eligible Lender or other Holder has not satisfied all such terms and conditions by the closing date, the Secretary may, in his/her sole discretion, set a new closing date or terminate the Conditional Commitment.

(c) In order to enter into a Loan Guarantee Agreement at closing:

(1) DOE must have received authority in an appropriations act for the loan guarantee; and

(2) All other applicable statutory, regulatory, or other requirements must be fulfilled.

(d) Prior to, or on, the closing date, DOE will ensure that:

(1) Pursuant to section 1702(b) of the Act, DOE has received payment of the Credit Subsidy Cost of the loan guarantee, as defined in § 609.2 of this part from *either* (but not from a combination) of the following:

(i) A Congressional appropriation of funds; or

(ii) A payment from the Borrower.

(2) Pursuant to section 1702(h) of the Act, DOE has received from the Borrower the First and Second Fees and, if applicable, the Third fee, or portions thereof, for the Administrative Cost of Issuing the Loan Guarantee, as specified in the Loan Guarantee Agreement;

(3) OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the loan guarantee.;

(4) The Department of the Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;

(5) The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and

(6) All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.

(e) Not later than the period approved in writing by the Contracting Officer, which may not be less than 30 days prior to the closing date, the Applicant must provide in writing updated project financing information if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date. The Conditional Commitment must be updated to reflect the revised terms and conditions.

(f) Where the total Project Costs for an Eligible Project are projected to exceed $25 million, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a Federal guarantee. Where total Project Costs are projected to be less than $25 million, the Secretary may, on a case-by-case basis, require a credit rating. If a rating is required, an updated rating must be provided to the Secretary not later than 30 days prior to closing.

(g) Changes in the terms and conditions of the financing arrangements will affect the Credit Subsidy Cost for the Loan Guarantee Agreement. DOE may postpone the expected closing date pursuant to any changes submitted under paragraph (e) and (f) of this section. In addition, DOE may choose to terminate the Conditional Commitment.

§ 609.10 Loan Guarantee Agreement.

(a) Only a Loan Guarantee Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.

(b) DOE is not bound by oral representations made during the Pre-Application stage, if Pre-Applications were solicited, or Application stage, or during any negotiation process.

(c) Except if explicitly authorized by an Act of Congress, no funds obtained from the Federal Government, or from a loan or other instrument guaranteed by the Federal Government, may be used to pay for Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee there under.

(d) Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions, which must be specified in the Loan Guarantee Agreement, are satisfied:

(1) The project qualifies as an Eligible Project under the Act and is not a research, development, or demonstration project or a project that employs Commercial Technologies in service in the United States;

(2) The project will be constructed and operated in the United States, the employment of the new or significantly improved technology in the project has the potential to be replicated in other commercial projects in the United States, and this technology is or is likely to be available in the United States for further commercial application;

(3) The face value of the debt guaranteed by DOE is limited to no more than 80 percent of total Project Costs.

(4) (i) Where DOE guarantees 100 percent of the Guaranteed Obligation, the loan shall be funded by the Federal Financing Bank;

(ii) Where DOE guarantees more than 90 percent of the Guaranteed Obligation, the guaranteed portion cannot be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation if the loan is participated, syndicated or otherwise resold in the secondary market;

(iii) Where DOE guarantees 90 percent or less of the Guaranteed Obligation, the guaranteed portion may be separated from or ''stripped'' from the non-guaranteed portion of the Guaranteed Obligation, if the loan is participated, syndicated or otherwise resold in the secondary debt market;

(5) The Borrower and other principals involved in the project have made or will make a significant equity investment in the project;

(6) The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other project debt over a period of up to the lesser of 30 years or 90 percent of the projected useful life of the project's major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion;

(7) The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;

(8) The amount of the loan guaranteed, when combined with other funds committed to the project, will be sufficient to carry out the project, including adequate contingency funds;

(9) There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other project debt;

(10) The Borrower has pledged project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;

(11) The Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and physical assets necessary for any person or entity, including DOE, to complete, operate, convey, and dispose of the defaulted project;

(12) The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with the Treasury Department, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the Federal government;

(13) Any Guaranteed Obligation is not subordinate to any loan or other debt obligation and is in a first lien position on all assets of the project and all additional collateral pledged as security for the Guaranteed Obligations and other project debt;

(14) There is satisfactory evidence that Borrower and Eligible Lenders or other Holders are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the Loan Guarantee Agreement, and will diligently pursue the project;

(15) The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing a Loan Guarantee for the construction and operational phases of the project (Third Fee), as specified in the Conditional Commitment;

(16) The Eligible Lender, other Holder or servicer has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;

(17) If Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of the Act, such payment must be received by DOE prior to, or at the time of, closing;

(18) DOE or its representatives have access to the project site at all reasonable times in order to monitor the performance of the project;

(19) DOE, the Eligible Lender, or other Holder and Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;

(20) The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project and is in compliance, or promptly will be in compliance, where appropriate, with all Federal, state, and local regulatory requirements;

(21) Borrower has no delinquent Federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate Federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

(22) The Loan Guarantee Agreement contains such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; and

(23) (i) The Lender is an Eligible Lender, as defined in § 609.2 of this part, and meets DOE's lender eligibility and performance requirement contained in §§ 609.11 (a) and (b) of this part; and

(ii) The servicer meets the servicing performance requirements of § 609.11(c) of this part.

(e) The Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:

(1) Interest accrues on the Guaranteed Obligations at the rate stated in the Loan Guarantee Agreement or Loan Agreement, until DOE makes full payment of the defaulted Guaranteed Obligations and, except when debt is funded through the Federal Financing Bank, DOE is not required to pay any premium, default penalties, or prepayment penalties;

(2) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in § 609.15 of this part.

(3) The Eligible Lender or other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations.

(4) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations.

(f) The Loan Guarantee Agreement must contain audit provisions which provide, in substance, as follows:

(1) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project as are necessary to facilitate an effective and accurate audit and performance evaluation of the project as required in § 609.17 of this part.

(2) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in § 609.17 of this part.

(g)(1) An Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Eligible Lender that meets the requirements of § 609.11 of this part. Such Eligible Lender to which a Guaranteed Obligation is assigned or transferred, is required to fulfill all servicing, monitoring, and reporting requirements contained in the Loan Guarantee Agreement and these regulations if the transferring Eligible Lender was performing these functions and transfer such functions to the new Eligible Lender. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

(2) The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

§ 609.11 Lender eligibility and servicing requirements.

(a) An Eligible Lender shall meet the following requirements:

(1) Not be debarred or suspended from participation in a Federal government contract (under 48 CFR part

9.4) or participation in a non-procurement activity (under a set of uniform regulations implemented for numerous agencies, such as DOE, at 2 CFR part 180);

(2) Not be delinquent on any Federal debt or loan;

(3) Be legally authorized to enter into loan guarantee transactions authorized by the Act and these regulations and is in good standing with DOE and other Federal agency loan guarantee programs;

(4) Be able to demonstrate, or has access to, experience in originating and servicing loans for commercial projects similar in size and scope to the project under consideration; and

(5) Be able to demonstrate experience or capability as the lead lender or underwriter by presenting evidence of its participation in large commercial projects or energy-related projects or other relevant experience; or

(6) Be the Federal Financing Bank.

(b) When performing its duties to review and evaluate a proposed Eligible Project prior to the submission of a Pre-Application or Application, as appropriate, by the Project Sponsor through the execution of a Loan Guarantee Agreement, the Eligible Lender or DOE if loans are funded by the Federal Financing Bank, shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when reviewing, evaluating and disbursing a loan made by it without a Federal guarantee.

(c) The servicing duties shall be performed by the Eligible Lender, DOE or other servicer if approved by the Secretary. When performing the servicing duties the Eligible Lender, DOE or other servicer shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

(1) During the construction period, enforcing all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement and related documents;

(2) During the operational phase, monitoring and servicing the Debt Obligations and collection of the outstanding principal and accrued interest as well as ensuring that the collateral package securing the Guaranteed Obligations remains uncompromised; and

(3) As specified by DOE, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or other debt obligations.

(d) With regard to partial guarantees, even though DOE may in part rely on the Eligible Lender or other servicer to service and monitor the Guaranteed Obligation, DOE will also conduct its own independent monitoring and review of the Eligible Project.

§ 609.12 Project costs.

(a) Before entering into a Loan Guarantee Agreement, DOE shall determine the estimated Project Costs for the project that is the subject of the agreement. To assist the Department in making that determination, the Applicant must estimate, calculate and record all such costs incurred in the design, engineering, financing, construction, startup, commissioning and shakedown of the project in accordance with generally accepted accounting principles and practices. Among other things, the Applicant must calculate the sum of necessary, reasonable and customary costs that it has paid and expects to pay, which are directly related to the project, including costs for escalation and contingencies, to estimate the total Project Costs.

(b) Project Costs include:

(1) Costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

(2) Costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility design, construction, startup, commissioning and shakedown;

(3) Costs of equipment purchases;

(4) Costs to provide equipment, facilities, and services related to safety and environmental protection;

(5) Financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;

(6) The cost of issuing project debt, such as fees, transaction and legal costs and other normal charges imposed by Eligible Lenders and other Holders;

(7) Costs of necessary and appropriate insurance and bonds of all types;

(8) Costs of design, engineering, startup, commissioning and shakedown;

(9) Costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project;

(10) A reasonable contingency reserve for cost overruns during construction; and

(11) Capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and

(12) Other necessary and reasonable costs.

(c) Project Costs do not include:

(1) Fees and commissions charged to Borrower, including finder's fees, for obtaining Federal or other funds;

(2) Parent corporation or other affiliated entity's general and administrative expenses, and non-project related parent corporation or affiliated entity assessments, including organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Research, development, and demonstration costs of readying the innovative energy or environmental technology for employment in a commercial project;

(6) Costs that are excessive or are not directly required to carry out the project, as determined by DOE, including but not limited to the cost of hedging instruments;

(7) Expenses incurred after startup, commissioning, and shakedown before the facility has been placed in service;

(8) Borrower-paid Credit Subsidy Costs and Administrative Costs of Issuing a Loan Guarantee; and

(9) Operating costs.

§ 609.13 Principal and interest assistance contract.

With respect to the guaranteed portion of any Guaranteed Obligation, and subject to the availability of appropriations, DOE may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

(a) The Borrower:

(1) Is unable to make the payments and is not in default; and

(2) Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project, or an agreement, approved by DOE, has otherwise been reached in order to

avoid a payment default on non-guaranteed debt.

(b) It is in the public interest to permit Borrower to continue to pursue the purposes of the project;

(c) In paying the principal and interest, the Federal government expects a probable net benefit to the Government will be greater than that which would result in the event of a default;

(d) The payment authorized is no greater than the amount of principal and interest that Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and

(e) Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

§ 609.14 Full faith and credit and incontestability.

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with this part with respect to principal and interest. Such guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

§ 609.15 Default, demand, payment, and collateral liquidation.

(a) In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as ''Holder''), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.

(b) In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower's obligation to pay principal or interest on the Guaranteed Obligation, as provided in paragraph (a) of this section, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.

(c) In the event that the Borrower has defaulted as described in paragraph (a) of this section and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations). In the event the Borrower is in default as described in paragraph (b) of this section, where the Secretary determines in writing that such a default has materially affected the rights of the parties, the Borrower shall be given the period of grace provided in the Loan Guarantee Agreement to cure such default. If the default is not cured during the period of grace, the Secretary may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without any need for consent or other action on the part of the Holders of the Guaranteed Obligations).

(d) No provision of this regulation shall be construed to preclude forbearance by the Holder with the consent of the Secretary for the benefit of the Borrower.

(e) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the Holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, the supporting documentation specified in the Loan Guarantee Agreement and any other supporting documentation as may reasonably be required to justify such demand.

(f) Payment as required by the Loan Guarantee Agreement of the Guaranteed Obligation shall be made 60 days after receipt by the Secretary of written demand for payment, provided that the demand complies with the terms of the Loan Guarantee Agreement. The Loan Guarantee Agreement shall provide that interest shall accrue to the Holder at the rate stated in the Loan Guarantee Agreement until the Guaranteed Obligation has been fully paid by the Federal government.

(g) The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders and shall have superior rights in and to the property acquired from the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights to the extent held by the Holder.

(h) Where the Loan Guarantee Agreement so provides, the Eligible Lender or other Holder, or other servicer, as appropriate, and the Secretary may jointly agree to a plan of liquidation of the assets pledged to secure the Guaranteed Obligation.

(i) Where payment of the Guaranteed Obligation has been made and the Eligible Lender or other Holder or other servicer has not undertaken a plan of liquidation, the Secretary, in accordance with the rights received through subrogation and acting through the U.S. Attorney General, may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the Government.

(j) If the Secretary is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or otherwise dispose of any property acquired pursuant to the Loan Guarantee Agreement or take any other necessary action which the Secretary deems appropriate, in order that the original goals and objectives of the project will, to the extent possible, be realized.

(k) In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Loan Guarantee Agreement to recover costs incurred by the Government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the Government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other

lawful claims held by the Government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.

(l) If there was a partial guarantee of the Guaranteed Obligation by DOE, the remaining funds received as a result of the liquidation of project assets may, if so agreed in advance, be applied as follows:

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation; and

(2) Second, distributed among the Holders of the debt on no greater than a pro rata share basis.

(m) No action taken by the Eligible Lender or other Holder or other servicer in the liquidation of any pledged assets will affect the rights of any party, including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.

(n) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(o) Nothing in this part precludes the Secretary from purchasing the Holder's interest in the project upon liquidation.

§ 609.16 Perfection of liens and preservation of collateral.

(a) The Loan Guarantee Agreement and other documents related thereto shall provide that:

(1) The Eligible Lender or, or DOE in conjunction with the Federal Financing Bank where the loan is funded by the Federal Financing Bank, or other Holder or other servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the guaranteed portion of the loan; and

(2) Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and appropriate expenses incurred in taking actions required by the Secretary. Except as provided in § 609.15, no party may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

(b) In the event of a default, the Secretary may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

§ 609.17 Audit and access to records.

(a) The Loan Guarantee Agreement and related documents shall provide that:

(1) The Eligible Lender, or DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project as is necessary, including the Pre-Application, Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Credit Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project; and

(2) The Secretary and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

(b) The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to Project Costs, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other Federal agencies, independent accountants, or other persons.

§ 609.18 Deviations.

To the extent that such requirements are not specified by the Act or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this part upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the Government. DOE will consult with OMB and the Secretary of the Treasury before DOE grants any deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents. Any deviation, however, that was not captured in the Credit Subsidy Cost will require either additional fees or discretionary appropriations. A recommendation for any deviation shall be submitted in writing to DOE. Such recommendation must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof.

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Federal Register

Tuesday,
October 23, 2007

Part IV

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2007, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION: C. Penn, Group Manager, Executive Resources Services Group, (202) 606–2246.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires The U.S. Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Executive Resources Services Group, Center for Human Resources, Human Capital Leadership and Merit System Accountability Division, Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415, or by calling (202) 606–2246.

The following exceptions were current on June 30, 2007:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) (Reserved).

(g) (Reserved).

(h) (Reserved).

(i) Temporary and less-than-full time positions for which examining is impracticable.

These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in Sec. 213.104.

(2) Positions for which a critical hiring need exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) Eligible employees.

(i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under Sec. 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under Sec. 353.110, but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under Sec. 353.110.

(2) Employees excluded. Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) Position to which appointed. Employees who are entitled to placement under Sec. 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) Conditions of appointment.

(i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under Sec. 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) (Reserved)

(u) *Appointment of Persons with Mental Retardation, Severe Physical Disabilities, or Psychiatric Disabilities.*

(1) *Purpose.* An agency may appoint, on a permanent, time-limited, or temporary basis, a person with mental retardation, a severe physical disability according to the provisions proscribed below.

(2) *Proof of disability.* (i) An agency must require proof of an applicant's mental retardation, severe physical disability, or psychiatric disability prior to making an appointment under this section.

(ii) An agency may accept, as proof of an individual's mental retardation, severe physical disability, or psychiatric disability, appropriate documentation (e.g., records, statements, or other appropriate information) issued from a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory that issues or provides disability benefits).

(3) *Certification of job readiness.* (i) An agency may accept certification that the individual is likely to succeed in the performance of the duties of the position for which he or she is applying. Certification of job readiness may be provided by any entity specified in paragraph (u)(2)(ii) of this section.

(ii) In cases where certification has not been provided, the hiring agency may give the individual a temporary appointment under this authority to determine the individual's job readiness. The agency may also accept, at the agency's discretion, service under another type of temporary appointment in the competitive or excepted services as proof of job readiness.

(4) *Permanent or time-limited employment options.* (i) An agency may make a permanent or time-limited appointment based upon:

(A) Proof of disability; and

(B) A certification of job readiness, or demonstration of job readiness through a temporary appointment.

(5) *Temporary employment options.* An agency may make a temporary appointment based upon proof of disability specified in paragraph (u)(2) of this section when:

(i) It is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position. When the agency uses this option to determine and individual's job readiness, the hiring agency may convert the individual to a permanent appointment whenever the agency determines the individual is able to perform the duties of the position; or

(ii) The individual has a certification of job readiness and the work is of a temporary nature.

(6) *Noncompetitive conversion to the competitive service.* (i) An agency may noncompetitively convert to the competitive service an employee who has completed 2 years of satisfactory service in a nontemporary appointment under this authority in accordance with the provision of Executive Order 12125 as amended by Executive Order 13124 and § 315.709 of this chapter.

(ii) An agency may credit the time spent on a temporary appointment specified in paragraph (u)5) of this section in paragraph towards the 2-year requirement.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Fellows in the Presidential Management Fellows Program. Initial appointments of Fellows are made at either the GS–9, GS–11, or GS–12 level (or their equivalents), depending on the candidate's qualifications. Appointments are made under this

authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the appointment for up to 1 additional year. Upon the Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERG) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in Sec. 315.708 and part 362 of this chapter.

(jj) Positions of Senior Fellows in the Presidential Management Fellows Program. Initial appointments are made at either the GS–13, GS–14, or GS–15 level (or their equivalents), depending on the candidate's qualifications. Appointments may be made under this authority for 2 years; however, upon approval of OPM, the head of the department, agency, or component within the Executive Office of the President may extend the Senior Fellow's appointment for up to 1 additional year. Upon the Senior Fellow's satisfactory completion of the Program, as certified by the employing agency's Executive Resources Board (ERB) or equivalent, the employing agency must noncompetitively appoint the Fellow to a full-time, permanent position in the competitive service as prescribed in Sec. 315.708 and part 362 of this chapter. If a Senior Fellow successfully completes the Program, as certified by the appointing agency's ERB or equivalent, he/she may, at the agency's discretion, be appointed to a position in the Senior Executive Service (SES) (or equivalent) without further competition and only one time, in the same manner, and subject to the same Qualifications Review Board review, as an individual who has successfully completed an OPM-approved SES candidate development program under parts 317 and 412 of this chapter.

(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) Office of Administration.

(1) Not to exceed 75 positions to provide administrative services and support to the White House Office.

(b) Office of Management and Budget.

(1) Not to exceed 15 positions at grades GS–5/15.

(c) Council on Environmental Quality.

(1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) National Security Council.

(1) All positions on the staff of the Council.

(h) Office of Science and Technology Policy.

(1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) Office of National Drug Control Policy.

(1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) Office of the Secretary.

(1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) American Embassy, Paris, France.

(1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) Bureau of Population, Refugees, and Migration.

(1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) Bureau of Administration.

(1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

(3) Up to 250 time-limited positions within the Department of State in support of the June 2004 Economic Summit of Industrial Nations. No new appointments may be made under this authority after June 30, 2004.

Section 213.3105 Department of the Treasury

(a) Office of the Secretary.

(1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) U.S. Customs Service.

(1) Positions in foreign countries designated as ''interpreter-translator'' and ''special employees,'' when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) Office of Thrift Supervision.

(1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) Internal Revenue Service.

(1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) Bureau of Alcohol, Tobacco, and Firearms.

(1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

Section 213.3106 Department of Defense

(a) Office of the Secretary.

(1)–(5) (Reserved).

(6) One Executive Secretary, U.S.–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).

(1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the DOD when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: Provided, that

(i) A school employee may be permitted to complete the school year; and

(ii) An employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(9) Positions engaged in the reconstruction of Iraq for hiring non-U.S. citizens when there is a severe shortage of candidates with U.S. citizenship. This authority is limited to appointments made on or before July 1, 2004, and is subject to any restrictions set forth in the Department of Defense FY 2002 Appropriations Act.

(10) Temporary or time-limited positions in direct support of U.S. Government efforts to rebuild and create an independent, free and secure Iraq and Afghanistan, when no other appropriate appointing authority applies. Positions will generally be located in Iraq or Afghanistan, but may be in other locations, including the United States, when directly supporting operations in Iraq or in Afghanistan. No new appointments may be made under this authority after March 31, 2009.

(c) (Reserved).

(d) General.

(1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) Uniformed Services University of the Health Sciences.

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) National Defense University.

(1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) Defense Communications Agency.

(1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) Defense Acquisitions University.

(1) The Provost and professors.

(i) George C. Marshall European Center for Security Studies, Garmisch, Germany.

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) Asia-Pacific Center for Security Studies, Honolulu, Hawaii.

(1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

(k) Business Transformation Agency.

(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS–11–15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS–343: Logistics Management, GS–346; Financial Management Programs, GS–501; Accounting, GS–510; Computer Engineering, GS–854; Business and Industry, GS–1101; Operations Research, GS–1515; Computer Science, GS–1550; General Supply, GS–2001; Supply Program Management, GS–2003; Inventory Management, GS–2010; and Information Technology, GS–2210.

Section 213.3107 Department of the Army

(a)–(c) (Reserved).

(d) U.S. Military Academy, West Point, New York.

(1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building

Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) Defense Language Institute.

(1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) Army War College, Carlisle Barracks, PA.

(1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.

(1) Positions of Academic Director, Department Head, and Instructor.

(k) U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.

(1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) General.

(1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) Naval Academy, Naval Postgraduate School, and Naval War College.

(1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) Chief of Naval Operations.

(1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) Military Sealift Command.

(1) All positions on vessels operated by the Military Sealift Command.

(e) Pacific Missile Range Facility, Barking Sands, Hawaii.

(1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) Office of Naval Research.

(1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) Office of the Secretary.

(1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) General.

(1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) U.S. Air Force Academy, Colorado.

(1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) Air Force Office of Special Investigations.

(1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) Air University, Maxwell Air Force Base, Alabama.

(1) Positions of Professor, Instructor, or Lecturer.

(i) Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.

(1) Civilian deans and professors.

(j) Air Force Logistics Command.

(1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) General.

(1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in one-year increments for the duration of the in-country program.

(b) Immigration and Naturalization Service.

(1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) Drug Enforcement Administration.

(1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) National Drug Intelligence Center. All positions.

Section 213.3111 Department of Homeland Security

(a) Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2005.

(b)(1) Ten positions for over site policy and direction of sensitive law enforcement activities.

(c) Up to 15 Senior Level and General Schedule (or equivalent) positions within the Homeland Security Labor Relations Board and the Homeland Security Mandatory Removal Board.

Section 213.3112 Department of the Interior

(a) General.

(1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: Provided, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term ''Indian.''

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) Indian Arts and Crafts Board. (1) The Executive Director.

(d) (Reserved).

(e) Office of the Assistant Secretary, Territorial and International Affairs.

(1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) National Park Service.

(1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) Bureau of Reclamation.

(1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: Provided, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) Office of the Deputy Assistant Secretary for Territorial Affairs.

(1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) General.

(1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service:

Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: Provided, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of Sec. 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved).

(b)–(c) (Reserved).

(d) Farm Service Agency.

(1) (Reserved).

(2) Members of State Committees: Provided, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) Rural Development.

(1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) Agricultural Marketing Service.

(1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) Food Safety and Inspection Service.

(1)–(2) (Reserved).

(3) Positions of Meat and Poultry Inspectors (Veterinarians at GS–11 and below and non-Veterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) Grain Inspection, Packers and Stockyards Administration.

(1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) Alternative Agricultural Research and Commercialization Corporation.

(1) Executive Director.

Section 213.3114 Department of Commerce

(a) General.

(1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) Bureau of the Census.

(1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) Office of the Under Secretary for International Trade.

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) National Oceanic and Atmospheric Administration.

(1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying

operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) National Telecommunication and Information Administration.

(1) Thirty-eight professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) Office of the Secretary.

(1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) Employment and Training Administration.

(1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) General.

(1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) Public Health Service.

(1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term ''Indian.''

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) The President's Council on Physical Fitness.

(1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) Construction Division.

(1) Temporary construction workers paid from ''purchase and hire'' funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) Board of Veterans' Appeals.

(1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 Broadcasting Board of Governors

(a) International Broadcasting Bureau.

(1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office of Personnel Management approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the

institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) (Reserved).

(b) Seven positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after October 15, 2002, or until the seventh person (who was given an offer of employment on September 13, 2002, and is waiting a physical examination clearance) is appointed, whichever is later.

Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after March 31, 2004.

Section 213.3170 Millennium Challenge Corporation

(a) All positions established to create the Millennium Challenge Corporation. No new appointments may be made under this authority after September 30, 2007.

Section 213.3174 Smithsonian Institution

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, two Social Science Program Administrators, and one Middle East Studies Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) National Endowment for the Arts.

(1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3190 African Development Foundation

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office of Personnel Management.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) U.S. Coast Guard.

(1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) Maritime Administration.

(1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion

Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) Student Educational Employment Program—Student Temporary Employment Program.

(1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) Student Educational Employment Program—Student Career Experience Program.

(1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

* * * * *

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k)–(l) (Reserved).

(m) Positions when filled under any of the following conditions:

(1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance, or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

(o) The Federal Career Intern Program—

(1) Appointments. Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) Extensions.

(i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

* * * * *

[The remaining text of provisions pertaining to the Federal Career Intern Program can be found in 5 CFR 213.3202(o).]

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) Office of the Special Representative for Trade Negotiations.

(1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)(1) One non-permanent senior level position to serve as Science and Technology Advisor to the Secretary.

(b)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM.

Service under this authority may not exceed:

(1) A total of 4 years; or

(2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

Section 213.3206 Department of Defense

(a) Office of the Secretary.

(1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) Interdepartmental activities.

(1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) National Defense University.

(1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) General.

(1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) Office of the Inspector General.

(1) Positions of Criminal Investigator, GS–1811–5/15.

(f) Department of Defense Polygraph Institute, Fort McClellan, Alabama.

(1) One Director, GM–15.

(g) Defense Security Assistance Agency. All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) U.S. Army Command and General Staff College.

(1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) Naval Underwater Systems Center, New London, Connecticut.

(1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to

conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) Foreign Agricultural Service.

(1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) General.

(1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service, Economic Research Service, and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Human Resources Officer for the Research, Education, and Economics Mission Area, or the Human Resources Officer, Forest Service, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) Bureau of the Census.

(1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) (Reserved).

(b)–(c) (Reserved).

(d) National Telecommunications and Information Administration.

(1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chair and a maximum of four additional Members, Administrative Review Board.

(b) (Reserved).

(c) Bureau of International Labor Affairs.

(1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not to exceed GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in mid-career development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3255 Social Security Administration

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) Freer Gallery of Art.

(1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) Naval Home, Gulfport, Mississippi.

(1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) National Endowment for the Humanities.

(1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require in-depth knowledge of a discipline of the humanities.

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one

Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council on Economic Advisors

CEGS60001 Confidential Assistant to the Chairman, Council of Economic Advisers
CEGS60004 Confidential Assistant to the Chairman, Council of Economic Advisers
CEGS60005 Administrative Operations Assistant to the Member (Council for Economic Advisers)

Council on Environmental Quality

EQGS00018 Associate Director for Congressional Affairs to the Chairman (Council on Environmental Quality)
EQGS60019 Associate Director for Agriculture, Lands and Wildlife to the Chairman (Council on Environmental Quality)

Office of Management and Budget

BOGS00039 Legislative Analyst to the Associate Director for Legislative Affairs
BOGS00151 Deputy Press Secretary to the Press Secretary
BOGS00152 Portfolio Manager to the Administrator, E-Government and Information Technology
BOGS60011 Deputy General Counsel to the General Counsel
BOGS60026 Confidential Assistant to the Associate Director for General Government Programs
BOGS60027 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
BOGS60035 Confidential Assistant to the Counselor to the Deputy Director for Management
BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate) to the Executive Associate Director
BOGS60153 Confidential Assistant to the Associate Director for National Security Programs
BOGS60155 Special Assistant to the Director Office of Management and Budget
BOGS60157 Confidential Assistant to the Administrator, E-Government and Information Technology
BOGS60158 Special Assistant to the Director Office of Management and Budget
BOGS60906 Special Assistant to the Deputy Director for Management to the Deputy Director for Management
BOGS60907 Confidential Assistant to the Associate Director for Natural Resource Programs
BOGS70001 Associate General Counsel to the General Counsel and Senior Policy Advisor
BOGS70002 Press Secretary to the Associate Director for Communications
BOGS70004 Special Assistant and Counselor to the Controller, Office of Federal Financial Management
BOGS70005 Confidential Assistant to the Associate Director for Legislative Affairs
BOGS70007 Press Assistant to the Associate Director for Communications
BOGS70008 Deputy to the Associate Director for Legislative Affairs House)
BOGS70009 Confidential Assistant to the Deputy Director for Management
BOGS70010 Confidential Assistant to the Deputy Director Office of Management and Budget

Office of National Drug Control Policy

QQGS00028 White House Liaison and Intergovernmental Affairs Specialist to the Chief of Staff
QQGS00035 Policy Analyst and Intergovernmental Affairs Liaison to the Associate Deputy Director, State and Local Affairs
QQGS60089 Associate Director Office of Legislative Affairs to the Chief of Staff
QQGS60093 Special Assistant to the Associate Director Office of Legislative Affairs
QQGS60094 Policy Analyst to the Associate Deputy Director, State and Local Affairs
QQGS60095 Confidential Assistant to the Associate Director Office of Legislative Affairs
QQGS60097 Public Affairs Specialist to the Counselor to the Deputy Director
QQGS60098 Special Assistant to the Associate Director for Legislative Affairs
QQGS60099 Project Manager to the Deputy Director for Demand Reduction
QQGS60100 Confidential Assistant to the Deputy Chief of Staff
QQGS70000 Special Assistant to the Deputy Director for Demand Reduction
QQGS70001 Public Affairs Specialist to the Associate Director for Public Affairs
QQGS70002 Confidential Assistant to the Associate Director for Public Affairs
QQGS70003 Deputy Chief of Staff
QQGS70004 Public Affairs Specialist (Media Campaign) to the Associate Director for Public Affairs
QQGS70005 Confidential Assistant to the Deputy Director for Supply Reduction
QQGS70006 Counselor to the Deputy Director for Demand Reduction
QQGS70009 Special Assistant to the Director to the Chief of Staff
QQGS70010 Legislative Analyst to the Associate Director Office of Legislative Affairs
QQGS70011 Confidential Assistant to the Director

Office of the United States Trade Representative

TNGS00019 Confidential Assistant to the Deputy United States Trade Representative
TNGS60023 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public and Media Affairs
TNGS60024 Director of Scheduling and Advance to the United States Trade Representative
TNGS60025 Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representative for Congressional Affairs
TNGS60048 Staff Assistant to the Chief of Staff
TNGS70001 Confidential Assistant to the Chief of Staff
TNGS70002 Special Assistant to Deputy United States Representative
TNGS70003 Confidential Assistant to the Deputy United States Trade Representative

Official Residence of the Vice President

RVGS00005 Deputy Social Secretary and Residence Manager to the Assistant to the Vice President and Deputy Chief of Staff

Office of Science and Technology Policy

TSGS60042 Deputy to the Associate Director, Technology
TSGS60043 Program Management Specialist to the Chief of Staff and General Counsel
TSGS60044 Assistant to the Director for Communications and Public Affairs to the Chief of Staff and General Counsel
TSGS60045 Assistant to the Director for Legislative Affairs to the Chief of Staff and General Counsel
TSGS60046 Assistant Director for Telecommunications and Information Technology to the Chief of Staff and General Counsel
TSGS60047 Deputy Chief of Staff and Associate General Counsel to the Chief of Staff and General Counsel

Section 213.3304 Department of State

DSGS60152 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60156 Confidential Assistant to the Secretary of State
DSGS60194 Senior Advisor to the Under Secretary for Arms Control and Security Affairs
DSGS60201 Staff Assistant to the Under Secretary for Global Affairs
DSGS60267 Foreign Affairs Officer to the Principal Deputy Assistant Secretary
DSGS60389 Senior Advisor to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS60394 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60395 Director, Art in Embassies Program to the Deputy Assistant Secretary
DSGS60417 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60567 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60723 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60724 Special Assistant to the Director Office Resource Management Office of Foreign Buildings Operations
DSGS60734 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60749 Special Assistant to the Deputy Assistant Secretary
DSGS60762 Special Assistant to the Assistant Secretary for Public Affairs
DSGS60763 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60765 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60769 Special Assistant to the Under Secretary for Management
DSGS60771 Coordinator for Intergovernmental Affairs to the Assistant Secretary for Public Affairs
DSGS60773 Special Assistant to the Assistant Secretary, Bureau of Verification, Compliance and Verification
DSGS60774 Special Assistant to the Coordinator, Office of the Secretary
DSGS60778 Foreign Affairs Officer to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60782 Special Assistant to the Assistant Secretary for Western Affairs to the Assistant Secretary for African Affairs
DSGS60793 Chief, Voluntary Visitors Division to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS60795 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60817 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60947 Staff Assistant (Visits) to the Supervisory Protocol Officer (Visits)
DSGS60950 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS60951 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs
DSGS60965 Foreign Affairs Officer to the Deputy Assistant Secretary
DSGS60971 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60973 Chief of Staff to the Director, Policy Planning Staff
DSGS60978 Director, New Partner Outreach to the HIV/AIDS Coordinator
DSGS60984 Special Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60986 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60990 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60994 Senior Advisor to the Under Secretary for Management
DSGS61000 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS61005 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61006 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61011 Special Assistant to the Assistant Secretary for African Affairs
DSGS61013 Senior Advisor to the Assistant Secretary
DSGS61014 Assistant Manager, President's Guest House to the Deputy Chief of Protocol
DSGS61019 Senior Advisor to the Under Secretary for Global Affairs
DSGS61022 Special Assistant to the Deputy Assistant Secretary
DSGS61023 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS61026 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61038 Special Assistant to the Chief of Protocol
DSGS61042 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
DSGS61043 Coordinator for Intergovernmental Affairs to the Deputy Assistant Secretary
DSGS61045 Special Assistant to the Assistant Secretary for Democracy Human Rights and Labor
DSGS61047 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61052 Special Assistant to the HIV/Aids Coordinator
DSGS61061 Protocol Officer (Gifts) to the Chief of Protocol
DSGS61071 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61077 Special Assistant to the Coordinator for Counter-Terrorism
DSGS61078 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS61081 Foreign Affairs Officer to the Director
DSGS61083 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61084 Staff Assistant to the Director, Policy Planning Staff
DSGS61085 Senior Advisor to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61087 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61088 Special Assistant to the Chief Financial Officer
DSGS61089 Supervisory Protocol Officer (Visits) to the Chief of Protocol
DSGS61091 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61092 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61093 Public Affairs Officer to the Chief of Protocol
DSGS61094 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61095 Special Assistant to the Deputy Assistant Secretary
DSGS61096 Senior Advisor to the Director, Policy Planning Staff
DSGS61097 Foreign Affairs Officer (Ceremonials) to the Chief of Protocol
DSGS61098 Legislative Analyst to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61099 Special Assistant to the Chief of Staff
DSGS61102 Special Assistant to the Senior Advisor to the Secretary and White House Liaison

DSGS61103 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS61104 Special Assistant to the Director, Policy Planning Staff
DSGS61105 Senior Advisor to the Ambassador-At-Large (War Crimes)
DSGS61106 Staff Assistant to the Assistant Secretary for Economic and Business Affairs
DSGS61108 Special Assistant to the Under Secretary for Global Affairs
DSGS61109 Public Affairs Specialist to the Assistant Secretary for Western Hemispheric Affairs
DSGS61110 Special Assistant to the Assistant Secretary for East Asian and Pacific Affairs
DSGS61111 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61112 Senior Advisor to the Assistant Secretary for International Organizational Affairs
DSGS61114 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS61115 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs
DSGS61116 Special Assistant to the Deputy Assistant Secretary
DSGS61118 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS61119 Staff Assistant to the Assistant Secretary for International Organizational Affairs
DSGS61120 Staff Assistant to the Director, Office of International Visitors
DSGS61122 Public Affairs Specialist (Speechwriter) to the Assistant Secretary for European Affairs
DSGS61123 Staff Assistant to the Assistant Secretary for Western Hemispheric Affairs
DSGS61125 Protocol Officer (Visits) to the Chief of Protocol
DSGS61126 Staff Assistant to the Director, Policy Planning Staff
DSGS61127 Special Assistant to the Assistant Secretary for International Organizational Affairs
DSGS61128 Special Assistant to the Under Secretary for Global Affairs
DSGS61190 Staff Assistant to the Under Secretary for International Security Affairs
DSGS61191 Staff Assistant to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs
DSGS61192 Staff Assistant to the Assistant Secretary Bureau of International Narcotics and Law Enforcement Affairs
DSGS61193 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61194 Director to the Assistant Secretary for Democracy Human Rights and Labor
DSGS61195 Writer-Editor to the Assistant Secretary Bureau of Political-Military Affairs
DSGS61196 Special Assistant to the Under Secretary for Arms Control and Security Affairs
SGS61197 Assistant Chief of Protocol to the Chief of Protocol
DSGS61198 Director of Communications to the HIV/Aids Coordinator
DSGS61199 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61200 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS61201 Public Affairs Specialist to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS61203 Special Assistant to the Deputy Assistant Secretary
DSGS61205 Protocol Officer (Visits) to the Chief of Protocol
DSGS61207 Special Assistant (Senior Advisor) to the Assistant Secretary for Democracy Human Rights and Labor
DSGS61208 Legislative Management Officer (Staff Director) to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS61209 Staff Assistant to the Ambassador-At-Large (War Crimes)
DSGS61211 Protocol Officer (Visits) to the Chief of Protocol
DSGS61212 Special Assistant to the Women's Human Rights Coordinator
DSGS61214 Staff Assistant to the Director, Policy Planning Staff
DSGS61217 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61218 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61219 Foreign Affairs Officer to the Assistant Secretary, Bureau of Verification, Compliance and Implementation
DSGS61220 Senior Advisor to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS61221 Senior Advisor to the Assistant Secretary for Economic and Business Affairs
DSGS61222 Special Assistant to the Principal Deputy Assistant Secretary, Bureau International Narcotics and Law Enforcement Affairs
DSGS61223 Special Assistant to the Assistant Secretary for Public Affairs
DSGS61226 Staff Assistant to the Assistant Secretary for Public Affairs
DSGS61228 Special Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61229 Protocol Assistant to the Deputy Chief of Protocol
DSGS61230 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs
DSGS61231 Special Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS61233 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS61235 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS61237 Deputy Chief of Staff to the Secretary of State
DSGS61300 Staff Assistant to the Under Secretary for Management
DSGS69721 Staff Assistant to the Director, Policy Planning Staff
DSGS69722 Senior Advisor to the Assistant Secretary for Democracy Human Rights and Labor

Section 213.3305 Department of the Treasury

DYGS00230 Public Affairs Specialist to the Director, Public Affairs
DYGS00250 Director, Public Affairs to the Deputy Assistant Secretary for Public Affairs
DYGS00356 Director, Critical Infrastructure Protection and Compliance Policy to the Deputy Assistant Secretary (Critical Infrastructure Protection and Compliance Policy)
DYGS00375 Director of Legislative and Governmental Affairs to the Director of the Mint
DYGS00380 Deputy to the Assistant Secretary (Legislative Affairs) to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS00407 Senior Advisor to the Assistant Secretary for Financial Markets
DYGS00424 Senior Advisor to the Assistant Secretary (Economic Policy)
DYGS00429 Executive Assistant to the Secretary
DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance
DYGS00441 Director of Outreach to the Deputy Assistant Secretary Financial Education)
DYGS00453 Media Coordinator to the Assistant Secretary (Public Affairs) and Director of Policy Planning
DYGS00455 Special Assistant to the Deputy Assistant Secretary (Financial Education)
DYGS00459 Special Assistant to Director of Legislative and Intergovernmental Affairs

DYGS00460 Senior Advisor and Chief of Staff to the Under Secretary for Terrorism and Financial Crimes
DYGS00464 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS00467 Deputy White House Liaison to the White House Liaison
DYGS00468 Public Affairs Specialist to the Director, Public Affairs
DYGS00471 Public and Legislative Affairs Manager to the Director Community Development Financial Institutions
DYGS00473 Director of Protocol to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00474 Scheduler to the Chief of Staff
DYGS00476 Director of Operations to the Chief of Staff
DYGS00478 Senior Writer to the Treasurer of the United States
DYGS00479 Speechwriter to the Senior Speechwriter
DYGS00480 Policy Advisor to the Assistant Secretary (Public Affairs) and Director of Policy Planning
DYGS00481 Senior Counselor to the Assistant Secretary (Terrorist Financing)
DYGS00482 Deputy Executive Secretary to the Executive Secretary
DYGS00483 Senior Advisor to the Assistant Secretary (Terrorist Financing)
DYGS00484 Executive Secretary Officer to the Executive Secretary
DYGS00485 Executive Secretary Officer to the Executive Secretary
DYGS00486 Special Assistant for Advance to the Director of Scheduling
DYGS00487 Deputy Executive Secretary to the Executive Secretary
DYGS00488 Executive Assistant to the Special Envoy for China and the Strategic Economic Dialogue
DYGS00489 Operations Coordinator to the Director of Operations
DYGS00490 Special Advisor to the Special Envoy for China and the Strategic Economic Dialogue
DYGS00491 Senior Advisor to the Assistant Secretary (Deputy Under Secretary) International Affairs
DYGS00492 Special Advisor (Legislative Affairs) to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS00493 Executive Secretary Officer to the Executive Secretary
DYGS00494 Special Assistant to the Director of the Mint
DYGS00495 Associate Director of Operations for Advance to the Director of Operations
DYGS00496 Special Advisor for Business Affairs and Public Liaison to the Deputy Assistant Secretary for Business Affairs and Public Liaison
DYGS00844 Public Affairs Specialist to the Director, Public Affairs
DYGS60277 Senior Speechwriter to the Assistant Secretary (Public Affairs) and Director of Policy Planning
DYGS60307 Senior Advisor to the Treasurer of the United States
DYGS60351 Senior Advisor to the Assistant Secretary (Public Affairs) and Director of Policy Planning
DYGS60381 Special Assistant to the Assistant Secretary (Deputy Under Secretary) for Legislative Affairs
DYGS60391 Deputy Scheduler to the Chief of Staff
DYGS60395 Deputy Executive Secretary to the Executive Secretary
DYGS60396 Senior Advisor to the Deputy Assistant Secretary for Business Affairs and Public Liaison
DYGS60401 Special Assistant for Advance to the Director of Scheduling
DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions)
DYGS60414 Executive Assistant to the Deputy Secretary of the Treasury
DYGS60421 Special Assistant to the Deputy Assistant Secretary for Legislative Affairs

Section 213.3306 Department of Defense

DDGS00673 Staff Assistant to the Deputy Under Secretary of Defense (Near East/South Asian Affairs)
DDGS00682 Staff Assistant to the Deputy Assistant Secretary of Defense (Asia and Pacific)
DDGS00714 Special Assistant to the Under Secretary of Defense (Policy)
DDGS00771 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS00779 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Affairs)
DDGS16660 Director of Assessments to the Deputy Under Secretary of Defense (International Technology Security)
DDGS16692 Confidential Assistant to the Secretary of Defense
DDGS16709 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16796 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS16811 Special Assistant to the Director, Small Business Programs
DDGS16823 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS16836 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16839 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Internal Communications)
DDGS16874 Confidential Assistant to the Assistant Secretary of Defense (Reserve Affairs)
DDGS16888 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)
DDGS16890 Special Assistant, DUSD (Budget and Appropriations Affairs) to the Deputy Under Secretary of Defense (Resource Planning/ Management)
DDGS16908 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16909 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16913 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16914 Personal and Confidential Assistant to the Deputy Secretary of Defense
DDGS16915 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16917 Confidential Assistant to the Director of Defense Research and Engineering
DDGS16918 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16920 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16929 Assistant for Research, Analysis and Special Projects to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS16933 Special Assistant to the Deputy Under Secretary of Defense (Acquisition and Technology)
DDGS16940 Research Assistant to the Speechwriter
DDGS16941 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16942 Staff Assistant to the Deputy Assistant Secretary of Defense (Negotiations Policy)
DDGS16948 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller)
DDGS16949 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16958 Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16959 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)

DDGS16962 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16963 Protocol Specialist to the Special Assistant to the Secretary of Defense for Protocol
DDGS16965 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16970 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16971 Staff Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs)
DDGS16972 Staff Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities)
DDGS16979 Personal and Confidential Assistant to the General Counsel
DDGS16980 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Secretary Policy)
DDGS16982 Staff Specialist to the Deputy Assistant Secretary of Defense for Strategy, Plans and Resources
DDGS16983 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16984 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16985 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16987 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS16988 Executive Assistant to the Director, Operational Test and Evaluation
DDGS16991 Confidential Assistant to the Under Secretary of Defense (Comptroller)
DDGS16993 Deputy, White House Liaison Office to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16995 Special Assistant to the Under Secretary of Defense (Acquisition, Technology, and Logistics)
DDGS16996 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS16998 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS16999 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS17000 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)
DDGS17001 Speechwriter to the Assistant Secretary of Defense Public Affairs
DDGS17002 Confidential Assistant to the Under Secretary of Defense Personnel and Readiness to the Under Secretary of Defense (Personnel and Readiness)
DDGS17004 Speechwriter to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DDGS17008 Special Events Coordinator to the Assistant Secretary of Defense Public Affairs
DDGS17010 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17012 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17013 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17015 Staff Assistant to the Deputy Assistant Secretary of Defense (Detainee Affairs)
DDGS17016 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17017 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17019 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17021 Public Affairs Analyst to the Assistant Secretary of Defense Public Affairs
DDGS17022 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17023 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17024 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17025 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics)
DDGS17026 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17027 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17028 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17029 Administrative Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17030 Staff Assistant to the Deputy Assistant Secretary of Defense (North Atlantic Treaty Organization and Europe)
DDGS17031 Special Assistant to the Deputy Under Secretary of Defense (Asian and Pacific Security Affairs)
DDGS17032 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17033 New Media Development Account Assistant to the Assistant Secretary of Defense Public Affairs
DDGS17034 Administrative Assistant to the Director, Department of Defense Office of Legislative Counsel
DDGS17035 Staff Assistant to the Deputy Assistant Secretary of Defense (Near East and South Asian Affairs)
DDGS17036 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS17038 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17039 Confidential Assistant to the Secretary of Defense
DDGS17040 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS17041 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17043 Special Assistant to the Under Secretary of Defense (Comptroller)
DDGS17044 Special Assistant to the Under Secretary of Defense (Comptroller)
DDGS17046 Public Affairs Analyst to the Assistant Secretary of Defense Public Affairs
DDGS17047 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS17048 Staff Assistant to the Principal Deputy Under Secretary of Defense for Policy
DDGS17049 Confidential Assistant to the Deputy Under Secretary of Defense (Acquisition and Technology)
DDGS60033 Personal Secretary to the Deputy Secretary of Defense
DDGS60312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (International Secretary Policy)
DDGS60314 Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DDGS60319 Confidential Assistant to the Deputy Secretary of Defense
DDGS60368 Personal and Confidential Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS60369 Executive Assistant to the Director of Force Transformation
DDGS60454 Special Assistant to the Director of Net Assessment
DDGS60475 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)

DDGS60520 Special Assistant to the Deputy Assistant Secretary 0f Defense (Prisoners of War/Military Police) Director, Prisoners of War Missing Persons Office

Section 213.3307 Department of the Army

DWGS00065 Special Assistant to the Deputy Assistant Secretary of the Army for Privatization and Partnerships (I and E)
DWGS00077 Confidential Assistant to the Assistant Secretary of the Army (Civil Works)
DWGS60002 Special Assistant to the Secretary of the Army
DWGS60016 Confidential Assistant to the Secretary of the Army
DWGS60019 Business Transformation Initiatives Analyst to the Special Assistant to the Secretary of Army for Business Transformation Initiatives
DWGS60021 Special Assistant to the Assistant Secretary of Army (Installations and Environment)
DWGS60022 Personal and Confidential Assistant to the Executive Director, Strategy and Performance Planning
DWGS60024 Personal and Confidential Assistant to the Under Secretary of the Army
DWGS60028 Personal and Confidential Assistant to the Assistant Secretary of the Army (Installations and Environment)
DWGS60029 Special Assistant to the Army General Counsel
DWGS60030 Confidential Assistant to the Deputy Under Secretary of the Army
DWGS60031 Personal and Confidential Assistant to the General Counsel
DWGS60032 Special Assistant to the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) to the General Counsel
DWGS60033 Special Assistant to the Army General Counsel
DWGS60076 Special Assistant to the Assistant Secretary of the Army (Civil Works)

Section 213.3308 Department of the Navy

DNGS06113 Staff Assistant to the Secretary of the Navy
DNGS06413 Confidential Assistant to the Assistant Secretary of Navy (Installations and Environment)
DNGS06414 Staff Assistant to the Under Secretary of the Navy
DNGS07110 Confidential Assistant to the Deputy Assistant Secretary of the Navy (Littoral and Mine Warfare Systems)
DNGS07152 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition)
DNGS07166 Residence Manager and Social Secretary to the Vice President to the Secretary of the Navy
DNGS07194 Attorney Advisor (General) to the General Counsel
DNGS07259 Special Assistant to the Secretary of the Navy
DNGS60074 Confidential Staff Assistant to the Deputy Assistant Secretary of the Navy (Financial Management and Comptroller)

Section 213.3309 Department of the Air Force

DFGS00003 Secretary to the Principal Deputy Assistant Secretary (Financial Management)
DFGS01060 Special Assistant to the Principal Deputy Assistant Secretary (Financial Management)
DFGS07001 Special Assistant to the Assistant Secretary of the Air Force (Acquisition) for Industrial Relations
DFGS08001 Special Assistant to the Deputy Assistant Secretary (Force Management Integration)
DFGS60011 Personal and Confidential Assistant to the General Counsel
DFGS60013 Special Counsel and Special Assistant to the General Counsel
DFGS60019 Special Assistant to the Assistant Secretary (Installations, Environment and Logistics)
DFGS60046 Budget Analyst to the Assistant Secretary (Financial Management and Comptroller)

Section 213.3310 Department of Justice

DJGS00027 Counselor to the Assistant Attorney General Environment and Natural Resources
DJGS00028 Director of Congressional Affairs to the Administrator, Drug Enforcement Administration
DJGS00033 Counsel to the Assistant Attorney General
DJGS00039 Special Assistant to the Chairman
DJGS00043 Confidential Assistant to the Assistant Attorney General (Legislative Affairs)
DJGS00048 Congressional Liaison Specialist to the Administrator, Drug Enforcement Administration
DJGS00054 Counsel to the Assistant Attorney General (Legal Policy)
DJGS00062 Chief of Staff to the Administrator of Juvenile Justice and Delinquency Prevention
DJGS00064 Principal Deputy Director to the Associate Attorney General
DJGS00066 Special Assistant to the Assistant Attorney General for Administration
DJGS00067 Chief of Staff to the Assistant Attorney General, Office of Justice Programs
DJGS00076 Public Affairs Specialist to the United States Attorney, Texas, Western District
DJGS00085 Speech Writer to the Director, Office of Public Affairs
DJGS00105 Counsel to the Special Counsel
DJGS00108 Special Assistant to the Director
DJGS00110 Senior Counsel to the Director, Office of Public Affairs
DJGS00114 Special Assistant to the Attorney General
DJGS00117 Deputy Director, Office of Faith-Based and Community Initiatives to the Director, Office of Faith-Based and Community Initiatives
DJGS00118 Special Assistant to the Director
DJGS00121 Senior Counsel to the Assistant Attorney General
DJGS00124 Senior Counsel to the Director, Office of Public Affairs
DJGS00125 Special Assistant to the Assistant Attorney General
DJGS00127 Chief of Staff and Counsel to the Assistant Attorney General
DJGS00130 Counsel to the Assistant Attorney General
DJGS00145 Executive Assistant to the Solicitor General
DJGS00155 Speechwriter to the Director, Office of Public Affairs
DJGS00162 Counsel to the Assistant Attorney General
DJGS00177 Counsel to the Associate Attorney General
DJGS00183 Counsel to the Counselor and Chief of Staff
DJGS00185 Senior Counsel to the Deputy Attorney General
DJGS00187 Counsel to the Assistant Attorney General Civil Division
DJGS00201 Counselor to the Assistant Attorney General Criminal Division
DJGS00202 Counsel to the Assistant Attorney General Criminal Division
DJGS00203 Counsel to the Assistant Attorney General Criminal Division
DJGS00221 Chief of Staff to the Assistant Attorney General, Office of Justice Programs
DJGS00226 Senior Advisor to the Director of Justice Assistance to the Director, Bureau of Justice Assistance
DJGS00228 Counsel to the Chief of Staff
DJGS00231 Counsel to the Associate Attorney General
DJGS00237 Press Assistant to the Director, Office of Public Affairs
DJGS00238 Press Assistant to the Director, Office of Public Affairs
DJGS00244 Confidential Assistant to the Assistant Attorney General

DJGS00246 Counsel to the Assistant Attorney General Environment and Natural Resources
DJGS00252 Director of Advance to the Attorney General
DJGS00262 Special Counsel on Voting Matters to the Assistant Attorney General
DJGS00279 Deputy Director to the Director
DJGS00292 Deputy Privacy and Civil Liberties Officer to the Counselor and Chief of Staff
DJGS00295 Special Assistant to the United States Attorney, Massachusetts
DJGS00302 Associate Director to the Deputy Director
DJGS00307 Associate Director to the Director, Office of Intergovernmental and Public Liaison to the Director
DJGS00313 Special Assistant to the Assistant Attorney General (Legal Policy)
DJGS00314 Counsel to the Assistant Attorney General
DJGS00325 Staff Assistant to the Assistant Attorney General (Legislative Affairs)
DJGS00328 Associate Director to the Director
DJGS00332 Counsel to the Assistant Attorney General
DJGS00336 Special Assistant to the Assistant Attorney General to the Chief of Staff
DJGS00338 Special Assistant to the Assistant Attorney General
DJGS00346 Deputy Director to the Director, Office of Public Affairs
DJGS00364 Senior Press Assistant to the Director, Office of Public Affairs
DJGS00369 Deputy White House Liaison to the White House Liaison
DJGS00370 Confidential Assistant to the Attorney General
DJGS00374 Staff Assistant to the Director, Office of Public Affairs
DJGS00378 Special Assistant to the Director, Office of Public Affairs
DJGS00386 Deputy Director of Scheduling to the Director of Scheduling and Advance
DJGS00392 Policy Coordinator and Special Assistant to the Director
DJGS00398 Media Affairs Specialist to the Director, Office of Public Affairs
DJGS00406 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00413 Executive Assistant to the United States Attorney
DJGS00440 Confidential Assistant to the Assistant Attorney General Tax Division
DJGS60023 Special Assistant for International Protocol to the Director, Office of International Affairs
DJGS60173 Secretary (Office Automation) to the United States Attorney, Oklahoma, Northern District
DJGS60267 Counsel to the Assistant Attorney General
DJGS60277 Director of Scheduling and Advance to the Attorney General
DJGS60418 Secretary (Office Automation) to the United States Attorney, Nebraska
DJGS60420 Secretary (Office Automation) to the United States Attorney, Pennsylvania, Eastern District
DJGS60423 Secretary (Office Automation) to the United States Attorney, New Mexico
DJGS60427 Secretary (Office Automation) to the United States Attorney, New Hampshire
DJGS60430 Secretary (Office Automation) to the United States Attorney, Kansas
DJGS60436 Secretary (Office Automation) to the United States Attorney, Alabama, Southern District
DJGS60437 Secretary (Office Automation) to the United States Attorney, Delaware

Section 213.3311 Department of Homeland Security

DMGS00051 Business Analyst to the Special Assistant
DMGS00122 Director of Legislative Affairs for Science and Technology to the Assistant Secretary for Legislative Affairs
DMGS00151 Business Liaison to the Special Assistant
DMGS00239 Director of Intergovernmental Affairs for Emergency Preparedness and Response to the Disaster Fund Financial Manager
DMGS00253 Assistant Director of Legislative Affairs for Secretarial Offices to the Director of Legislative Affairs for Secretarial Offices
DMGS00259 Counter Narcotics Liaison to the Counter Narcotics Officer
DMGS00329 Senior Policy Advisor to the Deputy Assistant Secretary for Mission Integration
DMGS00349 Senior Advisor to the Assistant Secretary for Infrastructure Protection to the Deputy Assistant Secretary for Mission Integration
DMGS00395 Senior Advisor to the Chief Medical Officer
DMGS00411 Special Assistant to the Deputy Assistant Secretary for Infrastructure Protection
DMGS00413 Senior Legislative Policy Advisor to the Deputy Assistant Secretary for Border and Transportation Security Policy
DMGS00415 Public Affairs Specialist to the Assistant Commissioner for Public Affairs
DMGS00428 Advisor to the Chief of Staff
DMGS00437 Advisor to the Director to the Chief of Staff for Citizenship and Immigration Services
DMGS00446 Senior Advisor for Civil Rights and Civil Liberties to the Officer of Civil Rights and Civil Liberties
DMGS00449 Director of Legislative Affairs, Federal Emergency Management Agency to the Under Secretary for Federal Emergency Management
DMGS00454 Special Advisor for Refugee and Asylum Affairs to the Assistant Secretary for Policy
DMGS00458 Associate Executive Secretary for Internal Coordination to the Executive Secretary
DMGS00459 Assistant Director of Legislative Affairs for Information Analysis and Operations to the Assistant Secretary for Legislative Affairs
DMGS00468 Public Liaison Officer to the Director of Strategic Communications
DMGS00479 Chief Technology and Process Manager to the Executive Secretary
DMGS00490 Director of Faith-Based and Community Initiatives to the Under Secretary for National Protection and Programs
DMGS00497 Deputy Executive Director, Homeland Security Advisory Committees to the Executive Director
DMGS00500 White House Liaison and Advisor to the Chief of Staff
DMGS00503 Director of Strategic Communications to the Assistant Secretary for Public Affairs
DMGS00515 Assistant Director of Legislative Affairs for Miscellaneous Offices to the Assistant Secretary for Legislative Affairs
DMGS00516 Confidential Assistant to the Executive Secretary
DMGS00532 Advisor to the Director for Policy to the Director, Domestic Nuclear Detection Office
DMGS00537 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy
DMGS00538 Scheduler and Protocol Coordinator to the Director of Scheduling and Advance
DMGS00541 Director/Executive Secretariat, Private Sector Advisory Committee to the Executive Director, Homeland Security Advisory Committees
DMGS00542 Advisor for Intelligence to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00543 Advance Representative to the Director of Scheduling and Advance

DMGS00544 Advance Representative to the Director of Scheduling and Advance
DMGS00545 Special Assistant to the Executive Director, Homeland Security Advisory Committees
DMGS00546 Coordinator of State and Local Affairs to the Chief of Staff
DMGS00549 Special Assistant to the Assistant Secretary for Infrastructure Protection
DMGS00550 Confidential Assistant to the Deputy Secretary of the Department of Homeland Security
DMGS00551 Confidential Assistant to the Chief of Staff
DMGS00552 Confidential Assistant to the General Counsel
DMGS00553 Director of Policy and Plans, Customs and Border Protection to the Commissioner, Customs and Border Protection
DMGS00554 Special Assistant to the Chief of Staff
DMGS00556 Deputy Chief of Staff to the Director of Information Integration and Special Assistant to the Secretary
DMGS00560 Associate Director of Communications for Intelligence and Analysis to the Deputy Assistant Secretary for Public Affairs
DMGS00564 Staff Assistant to the White House Liaison to the White House Liaison and Advisor
DMGS00568 Senior Media Affairs and Communication Specialist to the Chief of Staff
DMGS00570 Confidential Assistant to the Director, National Capital Region Coordination
DMGS00572 Confidential Assistant to the Director, Office of Screening Coordination
DMGS00573 Deputy Director of Secretarial Briefing Book to the Executive Secretary
DMGS00577 Deputy Director of the Center for Faith Based and Community Initiatives to the Director of Faith-Based and Community Initiatives
DMGS00578 Business Liaison Director to the Assistant Secretary for Private Sector
DMGS00579 Associate Director for Latin American Affairs to the Assistant Secretary for International Affairs
DMGS00580 Associate Director of Strategic Communications for Policy to the Director of Strategic Communications
DMGS00581 Associate Director of Legislative Affairs to the Assistant Secretary for Legislative Affairs
DMGS00582 Associate Director of Legislative Affairs to the Assistant Secretary for Legislative Affairs
DMGS00583 Policy Advisor to the Chief of Staff
DMGS00586 Counselor to the Administrator and Deputy Administrator to the Administrator for Federal Emergency Management Agency
DMGS00587 Deputy Director of Scheduling and Advance to the Director of Scheduling and Advance
DMGS00589 Senior Advisor to the Under Secretary for Science and Technology
DMGS00591 Correspondence Analyst to the Executive Secretary
DMGS00593 Director of Scheduling and Advance to the Chief of Staff
DMGS00595 Director of Homeland Security Council/National Security Council/White House Actions and Interagency Coordinator to the Executive Secretary
DMGS00597 Director of Communications, United States Citizenship and Immigration Services to the Director, Bureau of Citizenship and Immigration Services
DMGS00598 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00599 Legislative Assistant to the Assistant Secretary for Legislative Affairs
DMGS00600 Confidential Assistant to the Under Secretary for Protocol and Advance Briefings to the Under Secretary for Science and Technology
DMGS00603 International Policy Analyst to the Under Secretary for Science and Technology
DMGS00604 Special Assistant to the Secretary for Stakeholder Affairs and Information Integration to the Chief of Staff
DMGS00605 Special Assistant for Strategic Communications and Public Relations to the Under Secretary for Science and Technology
DMGS00607 Business Liaison to the Assistant Secretary for Private Sector
DMGS00608 International Policy Analyst to the Under Secretary for Science and Technology
DMGS00609 Associate Director of White House Actions and Policy Coordinating Committee Coordinator to the Executive Secretary
DMGS00610 Public Affairs and Press Assistant to the Assistant Secretary for Public Affairs
DMGS00611 Special Assistant to the White House Liaison to the White House Liaison and Advisor
DMGS00613 Junior Writer and Researcher to the Director of Strategic Communications
DMGS00614 Confidential Assistant to the Chief Medical Officer
DMGS00615 Chief of Staff to the Assistant Secretary for Policy
DMGS00616 Senior Legislative Assistant to the Assistant Secretaries and Deputy Assistant Secretaries to the Assistant Secretary for Legislative Affairs
DMGS00617 Director of Legislative Affairs for Policy to the Assistant Secretary for Legislative Affairs
DMGS00619 Director of Legislative Affairs for Border Security and Immigration to the Assistant Secretary for Legislative Affairs
DMGS00620 Principal Associate Director of White House Actions and Policy Coordinating Committee Coordinator to the Executive Secretary
DMGS00621 Special Assistant to the Chief Intelligence Officer to the Assistant Secretary for Intelligence and Analysis
DMGS00622 Associate Director of Communications and Speechwriter to the Director of Communications
DMGS00623 Associate Director of Strategic Communications for Outreach to the Director of Strategic Communications
DMGS00624 Component Liaison and Correspondence Analyst to the Executive Secretary
DMGS00626 Deputy Secretary Briefing Book Coordinator to the Executive Secretary
DMGS00627 Counselor to the Director to the Director, Office of Counter Narcotics Enforcement
DMGS00628 Director, Homeland Security Information Network to the Deputy Chief of Staff
DMGS00629 Confidential Assistant to the General Counsel to the Chief of Staff, Office of General Counsel
DMGS00631 Advisor to the Administrator and Deputy Administrator to the Administrator for Federal Emergency Management Agency
DMGS00632 Component Liaison and Correspondence Analyst to the Executive Secretary
DMGS00633 Counselor to the Secretary to the Chief of Staff
DMGS00636 Coordinator for Senior Executive Actions to the Executive Secretary
DMGS00637 Special Assistant to the Chief of Staff, Office of General Counsel
DMGS00638 Special Assistant and Travel Aide to the Administrator for Federal Emergency Management Agency
DMGS00639 Advisor to the Under Secretary for Management to the Chief Human Capital Officer
DMGS00640 Director of External Affairs and Communications to the Administrator for Federal Emergency Management Agency
DMGS00641 Special Assistant to the Chief Medical Officer

DMGS00642 Special Assistant to the Assistant Commissioner, Congressional Affairs
DMGS00643 Supervisory Management and Program Analyst to the Executive Secretary
DMGS00645 Special Assistant to the Chief Privacy Officer
DMGS00646 Assistant Press Secretary to the Press Secretary
DMGS00647 Special Assistant to the Administrator and Deputy Administrator for Federal Emergency Management Agency
DMGS00648 Press Secretary to the Director of External Affairs and Communications
DMGS00649 Deputy White House Liaison to the White House Liaison and Advisor
DMGS00650 Special Assistant to the Assistant Secretary, Immigration and Customs Enforcement
DMGS00651 Press Assistant to the Press Secretary
DMGS00652 Director, Ready Campaign to the Assistant Secretary for Public Affairs
DMGS00653 Assistant Director to the Assistant Secretary for Legislative Affairs
DMGS00654 Associate Director, Ready Campaign to the Assistant Secretary for Public Affairs
DMGS00655 Coordinator for Local Affairs to the Director, Office of State and Local Government Coordination
DMGS00656 Director of Speechwriting to the Assistant Secretary for Public Affairs
DMGS00657 Special Assistant to the Chief of Staff
DMGS00658 Deputy Press Secretary to the Press Secretary
DMGS00663 Director, Transition and Transformation to the Director of Policy and Program Analysis
DMGS00664 Advance Representative to the Director of Scheduling and Advance
DMGS00668 Program Director to the Assistant Secretary for Intergovernmental Programs
DMGS00670 Advisor to the Deputy Administrator, Federal Emergency Management Agency
DMGS00673 Special Assistant for Faith Based and Community Initiatives to the Director of Faith-Based and Community Initiatives
DMGS00674 Special Assistant, Office of International Affairs to the Chief of Staff
DMGS00678 Advisor to the Director for Congressional and Intergovernmental Affairs to the Director, Bureau of Citizenship and Immigration Services
DMOT00679 Special Assistant to the Assistant Secretary, Transportation Security Administration

Section 213.3312 Department of the Interior

DIGS01046 Special Assistant—Advance to the Director—Scheduling and Advance
DIGS01053 Chief of Staff to the Assistant Secretary Policy Management and Budget
DIGS01059 Special Assistant—Historic Preservation to the Chief of Staff
DIGS01064 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS01068 Special Assistant to the Secretary for Alaska to the Senior Adviser to the Secretary for Alaskan Affairs
DIGS01069 Special Assistant to the Chief of Staff
DIGS01072 Special Assistant—Scheduling and Advance to the Director—Scheduling and Advance
DIGS01075 Associate Director—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs
DIGS01076 Special Assistant to the Deputy Chief of Staff
DIGS01077 Special Assistant to the Solicitor to the Deputy Solicitor
DIGS01078 Counselor to the Assistant Secretary—Water and Science
DIGS01081 Associate Director to the Director, Congressional and Legislative Affairs
DIGS01084 Special Assistant to the Director—Scheduling and Advance
DIGS01086 Special Assistant (Scheduling and Advance) to the Director—Scheduling and Advance
DIGS01087 Special Assistant to the Senior Adviser to the Secretary for Alaskan Affairs
DIGS01088 Confidential Assistant to the Solicitor
DIGS01089 Special Assistant to the Deputy Chief of Staff
DIGS01090 Special Assistant (Scheduling and Advance) to the Director—Scheduling and Advance
DIGS01091 Special Assistant—Scheduling and Advance to the Director—Scheduling and Advance
DIGS01092 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks
DIGS01093 White House Liaison to the Chief of Staff
DIGS01095 Special Assistant to the White House Liaison
DIGS01096 Press Secretary to the Director, Office of Communications
DIGS01097 Director, Take Pride in America to the Director, External and Intergovernmental Affairs
DIGS01098 Deputy Press Secretary to the Director, Office of Communications
DIGS01100 Special Assistant to the Deputy Assistant Secretary—Land and Minerals Management
DIGS01102 Special Assistant to the Assistant Secretary for Water and Science
DIGS01103 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS05001 Special Assistant to the Director Bureau of Land Management
DIGS60025 Special Assistant to the Secretary
DIGS60525 Special Assistant to the Assistant Secretary—Land and Minerals Management
DIGS61025 Director—Scheduling and Advance to the Chief of Staff
DIGS61027 Special Assistant to the Associate Deputy Secretary
DIGS61035 Special Assistant to the Director to the Director Office of Surface Mining Reclamation and Enforcement
DIGS61038 Special Assistant to the Director Minerals Management Service
DIGS70011 Special Assistant (Communication) to the Director, External and Intergovernmental Affairs
DIGS79003 Special Assistant (Communication) to the Director, External and Intergovernmental Affairs

Section 213.3313 Department of Agriculture

DAGS00158 Director of Constituent Affairs to the Deputy Chief of Staff
DAGS00164 Director of Web Design to the Deputy Chief of Staff
DAGS00179 Director of External Affairs to the Administrator for Risk Management
DAGS00200 Special Assistant to the Secretary
DAGS00609 Special Assistant to the Associate Assistant Secretary for Civil Rights
DAGS00611 Director to the Administrator, Food and Nutrition Service
DAGS00717 Special Assistant to the Administrator, Food and Nutrition Service
DAGS00718 Special Assistant to the Administrator, Farm Service Agency
DAGS00721 Confidential Assistant to the Administrator for Risk Management
DAGS00728 Confidential Assistant to the Under Secretary for Rural Development
DAGS00731 Special Assistant to the Chief, Natural Resources Conservation Service

DAGS00739 Staff Assistant to the Administrator for Risk Management
DAGS00741 Special Assistant to the Administrator
DAGS00768 Special Assistant to the Administrator
DAGS00773 Special Assistant to the Secretary
DAGS00778 Director of Faith-Based and Community Initiatives to the Secretary
DAGS00785 Special Assistant to the Administrator to the Under Secretary for Marketing and Regulatory Programs
DAGS00787 Director of Advance to the Director of Communications
DAGS00789 Staff Assistant to the Secretary
DAGS00796 Congressional Liaison to the Deputy Assistant Secretary
DAGS00798 Confidential Assistant to the Administrator, Rural Housing Service
DAGS00801 Confidential Assistant to the Secretary
DAGS00807 White House Liaison to the Secretary
DAGS00809 Special Assistant to the Deputy Administrator-Program Operations
DAGS00814 Special Assistant to the Special Assistant to the Chief of Staff, Office of the Secretary
DAGS00822 Special Assistant to the Associate Administrator, Programs
DAGS00826 Special Assistant to the Administrator, Agricultural Marketing Service
DAGS00828 Special Assistant to the Under Secretary for Rural Development
DAGS00829 Special Assistant to the Chief Information Officer
DAGS00830 Special Assistant to the Administrator
DAGS00836 Speech Writer to the Director of Communications
DAGS00837 Confidential Assistant to the Under Secretary for Rural Development
DAGS00839 Chief of Staff to the Administrator, Rural Housing Service
DAGS00842 Special Assistant to the Deputy Assistant Secretary for Administration
DAGS00843 Confidential Assistant to the Chief Financial Officer
DAGS00846 Deputy Director of Communications to the Director of Communications
DAGS00847 Confidential Assistant to the Associate Administrator
DAGS00850 Special Assistant to the Under Secretary for Rural Development
DAGS00851 Special Assistant to the Under Secretary for Research, Education and Economics
DAGS00852 Special Assistant to the Under Secretary for Rural Development
DAGS00853 Director, Native American Programs to the Assistant Secretary for Congressional Relations
DAGS00854 Staff Assistant to the Assistant Secretary for Congressional Relations
DAGS00855 Special Assistant to the Deputy Administrator for Field Operations
DAGS00858 Staff Assistant to the Administrator, Farm Service Agency
DAGS00861 Deputy Director, Office of Faith-Based and Community Initiatives to the Director of Faith-Based and Community Initiatives
DAGS00862 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00863 Director of External Affairs to the Administrator, Farm Service Agency
DAGS00864 Confidential Assistant to the Administrator, Rural Housing Service
DAGS00867 Associate Administrator to the Administrator
DAGS00868 Confidential Assistant to the Administrator, Rural Housing Service
DAGS00869 Press Secretary to the Director of Communications
DAGS00871 Staff Assistant to the Administrator, Farm Service Agency
DAGS00872 Confidential Assistant to the Director of Communications
DAGS00873 Staff Assistant to the Assistant Secretary for Administration
DAGS00874 Director of Speechwriting to the Director of Communications
DAGS00875 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00877 Confidential Assistant to the Deputy Assistant Secretary
DAGS00878 Staff Assistant to the Deputy Under Secretary, Research, Education and Economics
DAGS00879 Confidential Assistant to the Deputy Under Secretary for Marketing and Regulatory Programs
DAGS00880 Confidential Assistant to the Administrator, Farm Service Agency
DAGS00881 Legislative Analyst to the Under Secretary for Food Nutrition and Consumer Services
DAGS00882 Chief of Staff to the Chief, Natural Resources Conservation Service
DAGS00883 Special Assistant to the Chief, Natural Resources Conservation Service
DAGS00884 Confidential Assistant to the Under Secretary for Marketing and Regulatory Programs
DAGS00885 Confidential Assistant to the Administrator, Food and Nutrition Service
DAGS00886 Special Assistant to the Administrator
DAGS00887 Special Assistant to the Under Secretary for Farm and Foreign Agricultural Services
DAGS00889 Senior Counsel to the General Counsel
DAGS00891 Special Assistant to the Assistant Secretary for Congressional Relations
DAGS00892 Confidential Assistant to the Chief, Natural Resources Conservation Service
DAGS00895 Special Assistant to the Under Secretary for Rural Development
DAGS00896 Special Assistant to the Under Secretary for Rural Development
DAGS00897 Deputy Director of Intergovernmental Affairs to the Assistant Secretary for Congressional Relations
DAGS00899 Staff Assistant to the Under Secretary for Natural Resources and Environment
DAGS00902 Deputy White House Liaison to the Secretary
DAGS00904 Director of Legislative Affairs to the Administrator, Foreign Agricultural Service
DAGS00905 Special Assistant to the Administrator to the Under Secretary for Marketing and Regulatory Programs
DAGS00906 Press Assistant to the Director of Communications
DAGS00907 Staff Assistant to the Administrator
DAGS60114 Confidential Assistant to the Deputy Secretary
DAGS60116 Confidential Assistant to the Under Secretary for Rural Development
DAGS60129 Special Assistant to the Administrator for Risk Management
DAGS60135 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS60138 Special Assistant to the Administrator
DAGS60263 Special Assistant to the Chief, Natural Resources Conservation Service
DAGS60384 Confidential Assistant to the Secretary
DAGS60436 Confidential Assistant to the Administrator

Section 213.3314 Department of Commerce

DCGS00048 Confidential Assistant to the Deputy Under Secretary and Deputy Director of U.S. Patent and Trademark Office

DCGS00074 Director of Public Affairs to the Deputy Assistant Secretary for External Affairs and Communication
DCGS00162 Senior Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00184 Confidential Assistant to the Assistant Secretary for Telecommunications and Information
DCGS00191 Special Assistant to the General Counsel
DCGS00199 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00202 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00237 Special Assistant to the Deputy Assistant Secretary for Industry Analysis
DCGS00264 Special Assistant to the Assistant Secretary for Economic Development
DCGS00288 Confidential Assistant to the Director, Office of Business Liaison
DCGS00298 Senior Advisor to the Assistant Secretary for Telecommunications and Information
DCGS00311 Confidential Assistant to the Director Office of White House Liaison
DCGS00328 Special Assistant to the Director, Advocacy Center
DCGS00330 Special Assistant to the Director Advocacy Center
DCGS00339 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00342 Deputy Director to the Director, Office of Liaison to the Director Office of White House Liaison
DCGS00344 Public Affairs Specialist to the Director of Public Affairs
DCGS00351 Confidential Assistant to the Deputy General Counsel
DCGS00361 Chief of Congressional Affairs to the Associate Director for Communications
DCGS00367 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS00368 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS00380 Confidential Assistant to the Chief of Staff to the Under Secretary, International Trade Administration
DCGS00382 Confidential Assistant to the Coordinator for International Intellectual Property Enforcement
DCGS00385 Special Assistant to the Associate Under Secretary for Economic Affairs
DCGS00386 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS00389 Senior Advisor to the Assistant Secretary for Import Administration
DCGS00395 Confidential Assistant to the Director of Global Trade Programs
DCGS00409 Special Assistant to the Secretary
DCGS00412 Special Assistant to the Assistant Secretary for Import Administration
DCGS00425 Director of Public Affairs to the Under Secretary for International Trade
DCGS00427 Senior Advisor to the Assistant Secretary for Export Enforcement
DCGS00431 Special Assistant to the Assistant Secretary for Export Administration
DCGS00432 Confidential Assistant to the Director of Advance
DCGS00433 Senior Policy Advisor to the Chief of Staff for National Oceanic and Atmospheric Administration
DCGS00442 Director of Public Affairs to the Assistant Secretary for Telecommunications and Information
DCGS00447 Confidential Assistant to the Director of Scheduling
DCGS00457 Confidential Assistant to the Director of Scheduling
DCGS00460 Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00467 Confidential Assistant to the Deputy Assistant Secretary for Economic Development
DCGS00485 Special Assistant to the Director, Office of External Affairs
DCGS00502 Deputy Director of Advance to the Director of Advance
DCGS00506 Public Affairs Specialist to the Director of Public Affairs
DCGS00517 Director, Congressional and Public Affairs to the Under Secretary of Commerce for Industry and Security
DCGS00520 Special Assistant to the Executive Director for Trade Promotion and Outreach
DCGS00521 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations
DCGS00526 Confidential Assistant to the Director, Advocacy Center
DCGS00531 Confidential Assistant to the Deputy Assistant Secretary for Services
DCGS00534 Confidential Assistant to the Deputy Assistant Secretary for Transportation and Machinery
DCGS00540 Confidential Assistant to the Chief of Staff
DCGS00541 Confidential Assistant to the Director, Advocacy Center
DCGS00546 Special Assistant to the Deputy Secretary
DCGS00547 Confidential Assistant to the Deputy Under Secretary and Deputy Director of U.S. Patent and Trademark Office
DCGS00560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00570 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00579 Director for Legislative and Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00582 Confidential Assistant to the Assistant Secretary for Export Enforcement
DCGS00587 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
DCGS00590 Confidential Assistant to the Director, Executive Secretariat
DCGS00592 Legislative Affairs Specialist to the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office
DCGS00593 Senior Advisor to the Coordinator for International Intellectual Property Enforcement
DCGS00608 Confidential Assistant to the Under Secretary for International Trade
DCGS00612 Director of Advisory Committees to the Assistant Secretary for Manufacturing and Services
DCGS00614 Special Assistant to the Executive Director for Trade Promotion and Outreach
DCGS00620 Director, Office of Legislative Affairs to the Under Secretary for International Trade
DCGS00623 Public Affairs Specialist to the Assistant Secretary for Manufacturing and Services
DCGS00628 Confidential Assistant to the Director of Speechwriting
DCGS00631 Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator, National Oceanic and Atmospheric Administration)
DCGS00639 Press Secretary to the Director of Public Affairs
DCGS00642 Protocol Officer to the Chief of Staff
DCGS00652 Confidential Assistant to the Director of Public Affairs
DCGS00655 Senior Advisor to the Deputy Assistant Secretary for Domestic Operations
DCGS00657 Confidential Assistant to the Director, Executive Secretariat
DCGS00658 Confidential Assistant to the Director, Office of Legislative Affairs

DCGS00669 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00672 Senior Advisor to the Deputy Secretary
DCGS00686 Director of Advance to the Chief of Staff
DCGS00687 Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00696 Deputy Director of Public Affair to the Director of Public Affairs
DCGS06017 Senior Legislative Counsel to the General Counsel
DCGS60001 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
DCGS60004 Deputy Director, Executive Secretariat to the Director, Executive Secretariat
DCGS60006 Confidential Assistant to the Director of Advance
DCGS60072 Director of Congressional Affairs to the Deputy Assistant Secretary for External Affairs and Communication
DCGS60136 Special Assistant to the Under Secretary of Commerce for Industry and Security
DCGS60160 Confidential Assistant to the Director, Advocacy Center
DCGS60163 Executive Assistant to the Deputy Secretary to the Deputy Secretary
DCGS60205 Policy Advisor to the Chief of Staff for National Oceanic and Atmospheric Administration
DCGS60262 Deputy Director of Advisor Committees to the Director of Advisory Committees
DCGS60263 Special Assistant to the Executive Director for Trade Promotion and Outreach
DCGS60272 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60276 Executive Assistant to the Under Secretary for Economic Affairs
DCGS60290 Special Assistant to the Deputy Assistant Secretary for Domestic Operations
DCGS60302 Director of External Affairs to the Director of Communications
DCGS60312 Senior Advisor to the Deputy Assistant Secretary for Domestic Operations
DCGS60394 Deputy Director, Office of Public Affairs to the Director of Public Affairs
DCGS60395 Confidential Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60396 Legislative Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60462 Director of Operations to the Deputy Under Secretary and Deputy Director of U.S. Patent and Trademark Office
DCGS60471 Confidential Assistant to the Chief of Staff to the Deputy Secretary
DCGS60490 Director of Scheduling to the Chief of Staff
DCGS60512 Senior Advisor to the Under Secretary of Commerce for Industry and Security
DCGS60532 Senior Counsel to the General Counsel
DCGS60536 Speechwriter to the Director for Speechwriting
DCGS60573 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60574 Confidential Assistant to the Director, Office of Business Liaison
DCGS60583 Special Assistant to the Assistant Secretary for Administrator and Chief Financial Officer
DCGS60609 Confidential Assistant to the Chief of Staff
DCGS60618 Special Assistant to the Deputy Under Secretary and Deputy Director of U.S. Patent and Trademark Office
DCGS60651 Public Affairs Specialist to the Director of Public Affairs
DCGS60664 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60670 Director Office of Business Liaison to the Chief of Staff for National Oceanic and Atmospheric Administration
DCGS60677 Director, Office of Energy, Environment and Materials to the Deputy Assistant Secretary for Manufacturing
DCGS60681 Speechwriter to the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office
DCGS60684 Director of Speechwriting to the Director of Public Affairs
DCGS60694 Senior Advisor to the Director, Bureau of the Census to the Director

Section 213.3315 Department of Labor

DLGS60003 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60007 Special Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60015 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60025 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60045 Staff Assistant to the Special Assistant
DLGS60055 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60066 Staff Assistant to the Deputy Assistant Secretary for Federal Contract Compliance
DLGS60076 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60078 Staff Assistant to the Assistant Secretary for Policy
DLGS60084 Special Assistant to the Associate Deputy Secretary
DLGS60086 Senior Advisor to the Wage and Hour Administrator
DLGS60092 Senior Attorney Adviser to the Solicitor of Labor
DLGS60094 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60096 Chief of Staff to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60099 Special Assistant to the Deputy Assistant Secretary for Employment and Training
DLGS60104 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60105 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60107 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60109 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60110 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60111 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60112 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60116 Special Assistant to the Chief Financial Officer
DLGS60119 Staff Assistant to the Chief of Staff
DLGS60120 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60121 Special Assistant to the Deputy Chief of Staff

DLGS60123 Special Assistant to the Deputy Assistant Secretary
DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60132 Special Assistant to the Chief of Staff
DLGS60133 Chief of Staff to the Director of the Women's Bureau
DLGS60135 Special Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health
DLGS60141 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60142 Special Assistant to the Chief of Staff
DLGS60144 Staff Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60145 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60146 Attorney Advisor to the Solicitor of Labor
DLGS60147 Attorney Adviser to the Solicitor of Labor
DLGS60153 Special Assistant to the Deputy Under Secretary for International Affairs
DLGS60160 Speechwriter to the Assistant Secretary for Public Affairs
DLGS60168 Senior Intergovernmental Affairs Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60169 Deputy Director, Executive Secretariat to the Executive Secretary
DLGS60170 Special Assistant to the Secretary of Labor
DLGS60172 Special Assistant to the Associate Deputy Secretary
DLGS60174 Special Assistant to the Director of Operations
DLGS60175 Senior Advisor to the Deputy Assistant Secretary for Policy
DLGS60176 Special Assistant to the Associate Deputy Secretary
DLGS60178 Staff Assistant to the Executive Secretary
DLGS60179 Senior Advisor to the Assistant Secretary for Employment Standards
DLGS60180 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60181 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60182 Staff Assistant to the White House Liaison
DLGS60183 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60187 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60189 Special Assistant to the Chief Financial Officer
DLGS60190 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60192 Chief of Staff to the Assistant Secretary for Employee Benefits Security
DLGS60195 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60196 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60199 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60201 Special Assistant to the Secretary of Labor
DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60205 Deputy Director, 21st Century Workforce to the Director, 21st Century Workforce
DLGS60209 Chief of Staff to the Assistant Secretary for Veterans Employment and Training
DLGS60211 Special Assistant to the Director of Scheduling
DLGS60212 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60214 Staff Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60215 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60218 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60220 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60222 Special Assistant to the Assistant Secretary for Disability Employment Policy
DLGS60225 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60226 Special Assistant to the Assistant Secretary for Employee Benefits Security
DLGS60228 Chief of Staff to the Assistant Secretary for Occupational Safety and Health
DLGS60229 Chief of Staff to the Assistant Secretary for Disability Employment Policy
DLGS60230 Staff Assistant to the Associate Deputy Secretary
DLGS60231 Staff Assistant to the Director of Scheduling
DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60233 Senior Advisor to the Assistant Secretary for Employment Standards
DLGS60234 Chief of Staff to the Assistant Secretary for Policy
DLGS60235 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60236 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60237 Special Assistant to the Secretary of Labor
DLGS60238 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60239 Staff Assistant to the Director of Operations
DLGS60240 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60244 Special Assistant to the Executive Assistant to the Secretary
DLGS60245 Staff Assistant to the Executive Assistant to the Secretary
DLGS60247 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60248 Special Assistant to the Director of Public Liaison
DLGS60250 Deputy Director of Scheduling to the Director of Scheduling
DLGS60251 Director of Scheduling to the Chief of Staff
DLGS60252 Special Assistant to the Director, 21st Century Office and Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60255 Special Assistant to the Executive Assistant to the Secretary
DLGS60256 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60257 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60260 Staff Assistant to the Deputy Chief of Staff
DLGS60261 Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health
DLGS60262 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60264 Chief of Staff to the Wage and Hour Administrator
DLGS60267 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60269 Special Assistant to the Director of Scheduling
DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60272 Special Assistant to the Director, 21st Century Office and

Deputy Assistant Secretary for Intergovernmental Affairs
DLGS60273 Special Assistant to the Chief Information Officer to the Assistant Secretary for Administration and Management
DLGS60277 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60278 Staff Assistant to the Chief Financial Officer

Section 213.3316 Department of Health and Human Services

DHGS00268 Special Assistant to the Executive Secretary to the Department
DHGS00269 Chief Acquisitions Officer to the Assistant Secretary for Administration and Management
DHGS60005 Confidential Assistant to the Assistant Secretary for Aging (Commissioner for Aging)
DHGS60006 Confidential Assistant to the Assistant Secretary for Public Affairs
DHGS60007 Special Assistant to the Associate Commissioner for External Relations
DHGS60008 Senior Advisor to the Assistant Secretary for Children and Families
DHGS60009 Special Assistant to the Assistant Secretary for Preparedness and Response to the Assistant Secretary for Public Health Emergency Preparedness
DHGS60010 Confidential Assistant (Faith-Based) to the Director, Center for Faith Based and Community Initiatives
DHGS60014 Director (Office of Document and Regulations Management) to the Executive Secretary to the Department
DHGS60015 Deputy Director, Center for Faith Based and Community Initiatives to the Director, Center for Faith Based and Community Initiatives
DHGS60017 Director of Scheduling to the Chief of Staff
DHGS60018 Deputy Director for Advance to the Director of Scheduling
DHGS60021 Special Assistant to the Director, Office of Community Services
DHGS60023 Special Assistant to the Director, Center for Disease Control and Prevention Administration
DHGS60027 Deputy Director for Scheduling to the Director of Scheduling
DHGS60028 Special Assistant to the Chief of Staff
DHGS60029 Special Assistant to the Assistant Secretary for Public Affairs
DHGS60030 Special Assistant to the General Counsel
DHGS60032 Special Assistant to the Deputy Commissioner for Policy
DHGS60033 Special Assistant to the Assistant Secretary for Administration and Management
DHGS60035 Confidential Assistant to the Administrator to the Administrator Centers for Medicare and Medicaid Services
DHGS60036 Confidential Assistant to the Director to the Director of Intergovernmental Affairs
DHGS60037 Director, Trafficking Program to the Director Office of Refugee Resettlement
DHGS60038 Special Assistant to the Senior Advisor to the Assistant Secretary for Health
DHGS60040 Special Assistant to the Chief of Staff
DHGS60041 Special Assistant to the Deputy Commissioner for Policy
DHGS60043 Deputy Assistant Secretary for Planning and Evaluation Human Services Policy to the Assistant Secretary for Planning and Evaluation
DHGS60044 Special Assistant to the Assistant Secretary for Legislation
DHGS60045 Associate Director Temporary Assistance for Needy Families to the Director, Office of Family Assistance
DHGS60046 Senior Speech Writer to the Assistant Secretary for Public Affairs
DHGS60048 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media)
DHGS60050 Confidential Assistant to the Associate Commissioner Head Start Bureau
DHGS60053 Confidential Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
DHGS60056 Special Assistant to the Director Office of Refugee Resettlement
DHGS60057 Special Assistant to the Director Office of Refugee Resettlement
DHGS60058 Confidential Assistant to the Director, Congressional Liaison Office
DHGS60060 Special Assistant to the Deputy for Policy and External Affairs
DHGS60127 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services
DHGS60133 Special Assistant to the Assistant Secretary for Budget, Technology and Finance to the Assistant Secretary for Budget Technology and Finance
DHGS60168 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Planning and Budget)
DHGS60169 Special Assistant to the Assistant Secretary for Public Affairs
DHGS60180 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
DHGS60237 Regional Director, New York, Region II to the Director of Intergovernmental Affairs
DHGS60238 Regional Director, Boston, Massachusetts, Region I to the Director of Intergovernmental Affairs
DHGS60240 Regional Director, Dallas, Texas, Region VI to the Director of Intergovernmental Affairs
DHGS60243 Regional Director, Atlanta, Georgia, Region IV to the Director of Intergovernmental Affairs
DHGS60244 Regional Director, Seattle, Washington, Region X to the Director of Intergovernmental Affairs
DHGS60247 Regional Director Philadelphia Region III to the Director of Intergovernmental Affairs
DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs
DHGS60255 Regional Director, Chicago, Illinois-Region V to the Director of Intergovernmental Affairs
DHGS60256 Confidential Assistant to the Director of Intergovernmental Affairs
DHGS60293 Special Assistant to the Commissioner Administration for Children Youth and Families
DHGS60336 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
DHGS60345 Director of Public Affairs to the Assistant Secretary for Children and Families
DHGS60347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
DHGS60363 Director, Congressional Liaison Office to the Assistant Secretary for Legislation
DHGS60374 Confidential Assistant to the Executive Secretary to the Department
DHGS60399 Special Assistant to the Assistant Secretary for Children and Families
DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs
DHGS60417 Regional Director, Kansas City, Missouri, Region VII to the Director of Intergovernmental Affairs
DHGS60418 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60427 Executive Director, President's Committee for People with Intellectual Disabilities to the Assistant Secretary for Children and Families
DHGS60436 Associate Commissioner to the Assistant Secretary for Children and Families
DHGS60485 Director of Communications to the Assistant Secretary, Health

DHGS60513 Special Assistant to the Commissioner for Child Support Enforcement to the Director of Public Affairs
DHGS60519 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary, Health
DHGS60526 Confidential Assistant to the Deputy Secretary to the Deputy Secretary, Health and Human Services
DHGS60527 Confidential Assistant (Scheduling) to the Director of Scheduling
DHGS60546 Special Assistant to the Executive Secretary to the Executive Secretary to the Department
DHGS60570 Confidential Assistant (Advance) to the Deputy Director for Advance
DHGS60627 Confidential Assistant to the Administrator, Substance Abuse and Mental Health Service
DHGS60632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
DHGS60636 Senior Advisor to the Director, Indian Health Service to the Director, Indian Health Service
DHGS60675 Special Assistant to the Assistant Secretary for Aging (Commissioner for Aging)
DHGS60681 Confidential Assistant to the Director of Media Affairs to the Director of Media Affairs
DHGS60689 Director of Media Affairs to the Director, Office of External Affairs
DHGS60698 Special Assistant to the Director, Office of External Affairs to the Director, Office of External Affairs

Section 213.3317 Department of Education

DBGS00081 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00198 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00204 Special Assistant to the Chief Financial Officer
DBGS00211 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools
DBGS00284 Confidential Assistant (Protocol) to the Deputy Chief of Staff for Operations
DBGS00285 Special Assistant (Education Attache to the United States Mission to the United Nations Educational, Scientific and Cultural Organization) to the Secretary
DBGS00290 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS00299 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00303 Director, White House Initiative on Hispanic Education to the Chief of Staff
DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00344 Special Assistant to the Deputy Assistant Secretary
DBGS00355 Confidential Assistant to the Chief of Staff to the Deputy Secretary
DBGS00359 Special Assistant to the Assistant Secretary for Civil Rights
DBGS00375 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00376 Director, Scheduling and Advance Staff to the Chief of Staff
DBGS00391 Confidential Assistant to the Secretary
DBGS00396 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00404 Special Assistant to the Deputy General Counsel for Departmental and Legislative Service
DBGS00405 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00411 Special Assistant to the Chief of Staff
DBGS00413 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00423 Secretary's Regional Representative to the Director, Regional Services
DBGS00424 Secretary's Regional Representative to the Director, Regional Services
DBGS00425 Secretary's Regional Representative to the Director, Regional Services
DBGS00427 Secretary's Regional Representative to the Director, Regional Services
DBGS00428 Confidential Assistant to the Director, Regional Services
DBGS00431 Press Secretary to the Chief of Staff
DBGS00435 Special Assistant to the Chief of Staff
DBGS00442 Confidential Assistant to the Director, Regional Services
DBGS00446 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region 3
DBGS00451 Secretary's Regional Representative, Region 5 to the Director, Regional Services
DBGS00452 Secretary's Regional Representative, Region 7 to the Director, Regional Services
DBGS00453 Secretary's Regional Representative, Region 8 to the Director, Regional Services
DBGS00454 Deputy Secretary's Regional Representative, Region 8 to the Director, Regional Services
DBGS00455 Deputy Secretary's Regional Representative—Region X to the Director, Regional Services
DBGS00457 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00462 Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00463 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00464 Special Assistant to the Chief of Staff
DBGS00466 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00467 Director, Faith-Based and Community Initiatives Center to the Chief of Staff
DBGS00469 Special Assistant to the Chief of Staff
DBGS00474 Deputy Secretary's Regional Representative, Region 6 to the Director, Regional Services
DBGS00476 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications
DBGS00477 Deputy Secretary's Regional Representative, Region 4 to the Director, Regional Services
DBGS00478 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00481 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00482 Executive Director to the Chief of Staff
DBGS00484 Deputy Assistant Secretary to the Assistant Secretary, Office of Communications and Outreach
DBGS00487 Deputy Assistant Secretary (Senate) to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00488 Executive Assistant to the Assistant Secretary for Postsecondary Education
DBGS00495 Confidential Assistant to the Chief of Staff
DBGS00499 Director, Intergovernmental Affairs to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00500 Confidential Assistant to the Chief of Staff
DBGS00503 Deputy Secretary's Regional Representative, Region 1 to the Director, Regional Services

DBGS00505 Deputy Secretary's Regional Representative, Region 6 to the Director, Regional Services
DBGS00508 Deputy Director, Office of English Language Acquisition to the Assistant Deputy Secretary and Director, Office of English Language Acquisition
DBGS00509 Executive Director, White House Initiative on Historically Black Colleges and Universities to the Chief of Staff
DBGS00511 Special Assistant to the Director, International Affairs Office
DBGS00512 Special Assistant to the Deputy Assistant Secretary for External Affairs and Outreach Services
DBGS00513 Special Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development
DBGS00514 Special Assistant to the Director, Faith-Based and Community Initiatives Center
DBGS00518 Special Assistant to the Director, Regional Services
DBGS00521 Deputy Chief of Staff for Strategy to the Chief of Staff
DBGS00523 Director, White House Liaison to the Chief of Staff
DBGS00524 Special Assistant to the Chief of Staff to the Deputy Secretary
DBGS00528 Chief of Staff to the Assistant Deputy Secretary for Innovation and Improvement
DBGS00531 Press Secretary to the Assistant Secretary, Office of Communications and Outreach
DBGS00532 Special Assistant to the Director, Office of Educational Technology
DBGS00533 Special Assistant to the Director, White House Liaison
DBGS00534 Special Assistant to the Under Secretary
DBGS00536 Confidential Assistant to the Deputy Assistant Secretary
DBGS00539 Special Assistant to the Senior Counselor to the Secretary
DBGS00540 Confidential Assistant to the Director, Scheduling and Advance Staff
DBGS00541 Special Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools
DBGS00542 Special Assistant to the Executive Assistant
DBGS00543 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00544 Confidential Assistant to the Press Secretary
DBGS00545 Director, Regional Services to the Assistant Secretary, Office of Communications and Outreach
DBGS00546 Special Assistant to the Director, Scheduling and Advance Staff
DBGS00547 Special Assistant to the Assistant Secretary for Civil Rights
DBGS00549 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00551 Confidential Assistant to the Senior Policy Advisor to the Deputy Secretary
DBGS00552 Confidential Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools
DBGS00553 Deputy Secretary's Regional Representative, Region 9 to the Assistant Secretary, Office of Communications and Outreach
DBGS00554 Confidential Assistant to the Deputy Chief of Staff for Policy and Programs
DBGS00555 Confidential Assistant to the Assistant Secretary for Management
DBGS00557 Special Assistant to the Director, White House Initiative on Hispanic Education
DBGS00558 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00559 Special Assistant to the Secretary's Regional Representative, Region 8
DBGS00561 Deputy Assistant Secretary for Policy and Strategic Initiatives to the Assistant Secretary for Elementary and Secondary Education
DBGS00562 Confidential Assistant to the Deputy Assistant Secretary for Communications and Outreach
DBGS00563 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00564 Special Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications
DBGS00565 Confidential Assistant to the Director, Office of Educational Technology
DBGS00567 Chief of Staff to the Assistant Secretary, Office of Communications and Outreach
DBGS00568 Deputy Assistant Secretary for Policy and State Technical Assistance to the Assistant Secretary for Elementary and Secondary Education
DBGS00569 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00572 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS00573 Confidential Assistant to the Deputy Assistant Secretary
DBGS00574 Deputy Assistant Secretary for Community Colleges to the Assistant Secretary for Vocational and Adult Education
DBGS00575 Confidential Assistant to the Director, White House Liaison
DBGS00576 Special Assistant to the Director, Scheduling and Advance Staff
DBGS00577 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00578 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00579 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00580 Deputy Assistant Secretary for Performance Improvement to the Assistant Secretary for Management
DBGS00581 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00582 Confidential Assistant to the Assistant Secretary for Postsecondary Education
DBGS00583 Confidential Assistant to the Senior Advisor to the Under Secretary
DBGS00584 Confidential Assistant to the Deputy Assistant Secretary for Media Relations and Strategic Communications
DBGS00585 Senior Advisor to the Deputy Secretary to the Deputy Secretary of Education
DBGS00588 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00589 Confidential Assistant to the Director, Scheduling and Advance Staff
DBGS00590 Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00591 Confidential Assistant to the Press Secretary
DBGS00592 Special Assistant to the Special Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00593 Special Assistant to the Special Assistant to Assistant Secretary, Office of Communications and Outreach
DBGS00594 Confidential Assistant to the Press Secretary
DBGS00596 Associate Assistant Deputy Secretary to the Assistant Deputy Secretary
DBGS00597 Confidential Assistant to the Assistant Deputy Secretary
DBGS00598 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00599 Special Assistant to the Secretary's Regional Representative
DBGS00600 Special Assistant to the General Counsel
DBGS00601 Special Assistant to the Director, Intergovernmental Affairs
DBGS00602 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach

DBGS00604 Deputy Director, Office of International Affairs to the Director, International Affairs Office
DBGS00605 Deputy Secretary's Regional Representative to the Director, Regional Services
DBGS00606 Secretary's Regional Representative, Region 3 to the Director, Regional Services
DBGS00607 Confidential Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS00609 Special Assistant to the Under Secretary
DBGS00611 Chief of Staff to the Deputy Assistant Secretary
DBGS00612 Special Assistant to the General Counsel
DBGS00613 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00614 Confidential Assistant to the Assistant Secretary, Office of Communications and Outreach
DBGS00615 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00616 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS00617 Confidential Assistant to the Chief of Staff
DBGS00618 Chief of Staff to the Assistant Deputy Secretary
DBGS00619 Confidential Assistant to the Deputy Assistant Secretary
DBGS00620 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS00621 Confidential Assistant to the Senior Advisor to the Under Secretary
DBGS60077 Special Assistant to the Director, Office of Scheduling and Briefing
DBGS60143 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center

Section 213.3318 Environmental Protection Agency

EPGS00922 Associate Assistant Administrator to the Assistant Administrator for Research and Development
EPGS03200 Director of Scheduling to the Deputy Chief of Staff (Operations)
EPGS03500 Senior Policy Advisor to the Deputy Assistant Administrator for Water
EPGS04025 Counselor to the Administrator for Agricultural Policy to the Administrator
EPGS05007 Associate Director, Office of Executive Secretariat to the Chief of Staff
EPGS05024 Deputy Associate Administrator to the Associate Administrator for Public Affairs
EPGS05031 Program Specialist to the Assistant Administrator for Administration and Resources Management
EPGS05034 Program Advisor to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS05036 Program Advisor Office of Public Affairs to the Deputy Chief of Staff (Operations)
EPGS06000 Senior Policy Advisor to the Regional Administrator
EPGS06008 Advance Specialist to the Deputy Chief of Staff (Operations)
EPGS06015 Staff Secretary to the Chief of Staff
EPGS06018 Program Manager (Operations) to the Administrator
EPGS06022 Program Advisor to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS06023 Senior Speechwriter to the Associate Administrator for Public Affairs
EPGS06024 Associate Assistant Administrator to the Assistant Administrator for Solid Waste and Emergency Response
EPGS06028 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS06030 Program Specialist to the Associate Administrator for Policy, Economics and Innovation
EPGS06031 Advance Specialist to the Director of Advance
EPGS06033 Confidential Assistant to the Deputy Administrator
EPGS06034 Deputy Speech Writer to the Associate Administrator for Public Affairs
EPGS06035 Advance Specialist to the Director of Advance
EPGS06036 Supervisory Public Affairs Specialist to the Associate Administrator for Public Affairs
EPGS06037 Senior Policy Advisor to the Deputy Administrator
EPGS07000 Deputy Press Secretary to the Associate Administrator for Public Affairs
EPGS07001 Program Advisor to the Associate Administrator for Public Affairs
EPGS07002 Assistant to the Scheduler to the Director of Scheduling
EPGS07003 Deputy of Advance to the Director of Advance
EPGS07004 Communications Specialist to the Principal Deputy Assistant Administrator for Enforcement and Compliance Assurance
EPGS07005 Program Advisor (Media Relations) to the Deputy Chief of Staff (Operations)
EPGS07007 Audio Visual Producer to the Deputy Chief of Staff (Operations)
EPGS07009 Special Assistant to the Regional Administrator to the Regional Administrator
EPGS07010 Press Secretary to the Associate Administrator for Public Affairs
EPGS07011 Associate Assistant Administrator/White House Liaison to the Assistant Administrator for Administration and Resources Management
EPGS07012 Advance Specialist to the Director of Advance
EPGS60069 Special Assistant for Communications to the Assistant Administrator for Water
EPGS60071 Senior Advisor to the Assistant Administrator for International Activities
EPGS60074 Policy Analyst to the Assistant Administrator for Air and Radiation
EPGS60076 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations Council of Economic Advisers

Section 213.3323 Overseas Private Investment Corporation

PQGS06001 Confidential Assistant to the Deputy Chief of Staff and Senior Advisor to President
PQGS06002 Confidential Assistant to the Chief of Staff
PQGS06015 Special Assistant to the Vice President, Investment Funds to the Vice President, Investment Funds
PQGS60018 Executive Assistant to the President
PQGS60020 Executive Assistant to the Executive Vice President

Section 213.3325 United States Tax Court

JCGS60040 Secretary (Confidential Assistant) to a Chief Judge
JCGS60041 Secretary (Confidential Assistant) to a Chief Judge
JCGS60042 Secretary (Confidential Assistant) to a Chief Judge
JCGS60043 Secretary (Confidential Assistant) to a Chief Judge
JCGS60044 Secretary (Confidential Assistant) to a Chief Judge
JCGS60045 Secretary (Confidential Assistant) to a Chief Judge
JCGS60046 Secretary (Confidential Assistant) to a Chief Judge
JCGS60047 Secretary (Confidential Assistant) to a Chief Judge
JCGS60048 Secretary (Confidential Assistant) to a Chief Judge
JCGS60049 Secretary (Confidential Assistant) to a Chief Judge
JCGS60050 Secretary (Confidential Assistant) to a Chief Judge

JCGS60051 Secretary (Confidential Assistant) to a Chief Judge
JCGS60052 Secretary (Confidential Assistant) to a Chief Judge
JCGS60053 Secretary (Confidential Assistant) to a Chief Judge
JCGS60054 Secretary (Confidential Assistant) to a Chief Judge
JCGS60056 Secretary (Confidential Assistant) to a Chief Judge
JCGS60057 Secretary (Confidential Assistant) to a Chief Judge
JCGS60058 Secretary (Confidential Assistant) to a Chief Judge
JCGS60059 Secretary (Confidential Assistant) to a Chief Judge
JCGS60060 Secretary (Confidential Assistant) to a Chief Judge
JCGS60061 Secretary (Confidential Assistant) to a Chief Judge
JCGS60062 Secretary (Confidential Assistant) to a Chief Judge
JCGS60063 Secretary (Confidential Assistant) to a Chief Judge
JCGS60064 Secretary (Confidential Assistant) to a Chief Judge
JCGS60065 Secretary (Confidential Assistant) to a Chief Judge
JCGS60067 Trial Clerk to the Chief Judge
JCGS60068 Trial Clerk to the Chief Judge
JCGS60069 Trial Clerk to the Chief Judge
JCGS60071 Trial Clerk to the Chief Judge
JCGS60072 Trial Clerk to the Chief Judge
JCGS60073 Trial Clerk to the Chief Judge
JCGS60074 Trial Clerk to the Chief Judge
JCGS60077 Trial Clerk to the Chief Judge
JCGS60079 Trial Clerk to the Chief Judge

Section 213.3327 Department of Veterans Affairs

DVGS00082 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60011 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60015 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60032 Director, Center for Faith Based Community Initiatives to the Secretary of Veterans Affairs
DVGS60036 Protocol Liaison Officer to the Secretary of Veterans Affairs
DVGS60056 Special Assistant to the Senior Advisor
DVGS60069 Special Assistant to the Secretary of Veterans Affairs

Section 213.3328 Broadcasting Board of Governors

IBGS00013 Chief of Staff to the Director Office of Cuba Broadcasting
IBGS00018 Senior Projects Officer to the Director
IBGS00020 Special Assistant to the Chairman, Broadcasting Board of Governors

Section 213.3330 Securities and Exchange Commission

SEOT60002 Confidential Assistant to a Commissioner
SEOT60004 Director of Legislative Affairs to the Chairman
SEOT60007 Confidential Assistant to a Commissioner
SEOT60008 Secretary (Office Automation) to the Chief Accountant
SEOT60009 Secretary to the General Counsel of the Commission
SEOT60012 Investor Advocate to the Chairman
SEOT60016 Secretary to the Director, Division of Enforcement
SEOT60029 Secretary to the Director, Division of Market Regulation
SEOT60052 Chief of Staff to the Chairman
SEOT60054 Secretary to the Director, Division of Market Regulation
SEOT60056 Legislative Affairs Specialist to the Director of Communications
SEOT90001 Senior Advisor to the Chairman to the Chairman
SEOT90006 Confidential Assistant to a Commissioner
SEOT90007 Confidential Assistant to the Chairman
SEOT90008 Confidential Assistant to a Commissioner

Section 213.3331 Department of Energy

DEGS00395 Special Assistant to the Chief of Staff
DEGS00439 Senior Policy Advisor to the Assistant Secretary for Fossil Energy
DEGS00440 Special Assistant to the Communications Director
DEGS00443 Senior Policy Advisor to the Principal Deputy Assistant Secretary for Fossil Energy
DEGS00469 Advance Representative to the Director, Office of Scheduling and Advance
DEGS00476 Policy Advisor to the Director, Office of Legacy Management
DEGS00480 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs
DEGS00485 Director, Office of Scheduling and Advance to the Chief of Staff
DEGS00489 Special Assistant to the Deputy Secretary to the Chief of Staff
DEGS00493 Senior Policy Advisor to the Director, Office of Management
DEGS00498 Public Affairs Specialist to the Director of Congressional, Intergovernmental and Public Affairs
DEGS00503 Speechwriter to the Director, Public Affairs
DEGS00510 Lead Advance Representative to the Director, Office of Scheduling and Advance
DEGS00512 Press Secretary to the Director, Public Affairs
DEGS00518 Senior Legislative Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00519 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00523 Trip Coordinator to the Director, Office of Scheduling and Advance
DEGS00524 Assistant Press Secretary to the Director, Public Affairs
DEGS00525 Deputy White House Liaison to the White House Liaison
DEGS00526 Trip Coordinator to the Director, Office of Scheduling and Advance
DEGS00527 Staff Assistant to the Director, Office of Scheduling and Advance
DEGS00528 Advisor to the Under Secretary to the Senior Advisor
DEGS00531 Senior Advisor to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00532 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00533 Senior Policy Advisor to the Assistant Secretary for Environment, Safety and Health
DEGS00534 Senior Advisor to the Chief of Staff
DEGS00535 Web Content Manager to the Senior Policy Advisor
DEGS00536 Policy Advisor to the Senior Advisor
DEGS00537 Program Assistant to the Assistant Secretary of Energy (Nuclear Energy)
DEGS00540 Special Assistant to the Director, Office of Electricity Delivery and Energy Reliability
DEGS00541 Director of Commercialization and Deployment to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00542 Special Assistant to the Director, Public Affairs
DEGS00543 Communications Assistant to the Under Secretary for Science
DEGS00544 Senior Communications Advisor to the Assistant Secretary of Energy (Environmental Management)

DEGS00547 Scheduler to the Secretary to the Director, Office of Scheduling and Advance
DEGS00548 Staff Assistant to the General Counsel
DEGS00549 Senior Advisor to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00550 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00555 Deputy Chief of Staff to the Chief of Staff
DEGS00557 Special Assistant to the Director, Office of Electricity Delivery and Energy Reliability
DEGS00558 Advisor, Legislative Affairs to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00559 Special Assistant to the Assistant Secretary of Energy (Nuclear Energy)
DEGS00561 Senior Advisor to the Chief of Staff
DEGS00562 Senior Policy Advisor to the Associate Director for System Operations and External Relations
DEGS00563 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00564 Special Assistant to the Principal Deputy Assistant Secretary
DEGS00565 Special Assistant, Deputy Director of Scheduling and Advance to the Director, Office of Scheduling and Advance
DEGS00567 Deputy Director, Public Affairs to the Director, Public Affairs
DEGS00568 Special Assistant for Communications to the Director, Office of Electricity Delivery and Energy Reliability
DEGS00569 Transmission Siting Analyst to the Director, Office of Electricity Delivery and Energy Reliability
DEGS00570 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)
DEGS00571 Special Assistant to the Director, Office of Science
DEGS00572 Policy Advisor to the Deputy Assistant Secretary for International Affairs
DEGS00573 Senior Counsel to the General Counsel
DEGS00574 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00575 Director of Intergovernmental and Tribal Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DEGS00576 Intergovernmental Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DEGS00577 Staff Assistant to the Director, Office of Scheduling and Advance
DEGS00579 Senior Policy Advisor to the Deputy Administrator for Defense Nuclear Nonproliferation
DEGS00582 Special Assistant to the Chief of Staff
DEGS00585 Special Assistant to the Associate Director
DEGS00586 Director, Office of Technology Advancement and Outreach to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00587 Special Assistant to the Chief of Staff
DEGS00589 Senior Advisor to the Chief Operating Officer for Energy Efficiency and Renewable Energy
DEGS00591 Special Assistant for Communication to the Chief Operating Officer for Energy Efficiency and Renewable
DEGS00592 Small Business Specialist to the Associate Director
DEGS00593 Congressional Affairs Specialist to the Director, Congressional Affairs
DEGS00594 Senior Advisor for Public Affairs to the Director, Public Affairs (National Nuclear Security Administration)
DEGS00598 Special Assistant to the Assistant Secretary for Policy and International Affairs
DEGS60121 Special Assistant to the Director, Office of Scheduling and Advance
DEGS60233 Special Assistant to the Assistant Secretary for Policy and International Affairs
DEGS60265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science
DEGS60276 Senior Policy Advisor to the Director, Office of Science

Section 213.3331 Federal Energy Regulatory Commission

DRGS17039 Confidential Assistant to the Member-Federal Energy Regulatory Commission
DRGS17040 Congressional, Intergovernmental and Public Affairs Specialist to the Director, Office of External Affairs
DRGS60001 Regulatory Policy Analyst to the Director, Markets, Tariffs, and Rates
DRGS60003 Confidential Assistant to the Member-Federal Energy Regulatory Commission
DRGS60007 Confidential Assistant to the Member-Federal Energy Regulatory Commission

Section 213.3332 Small Business Administration

SBGS00540 Director of Small Business Association's Center for Faith-Based and Community Initiatives to the Chief of Staff and Chief Operating Officer
SBGS00555 Legislative Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBGS00572 Regional Administrator (Region 2) to the Associate Administrator for Field Operations
SBGS00574 Assistant Administrator for Field Operations to the Associate Administrator for Field Operations
SBGS00576 Deputy Associate Administrator for Office of Communications and Public Liaison to the Associate Administrator for Communications and Public Liaison
SBGS00587 Senior Advisor for Policy and Planning to the Associate Administrator for Policy
SBGS00589 Legislative Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBGS00592 Regional Administrator, Region III, Philadelphia, PA to the Associate Administrator for Field Operations
SBGS00593 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs
SBGS00594 Press Secretary to the Associate Administrator for Communications and Public Liaison
SBGS00597 Director of Scheduling to the Chief of Staff and Chief Operating Officer
SBGS00600 Director of External Affairs to the Associate Administrator for Field Operations
SBGS00601 Associate Administrator for Field Operations to the Administrator
SBGS00602 Special Assistant to the Administrator
SBGS00603 Policy Analyst to the Associate Administrator for Policy
SBGS00604 Director of Scheduling and Advance to the Chief of Staff
SBGS00606 Speech Writer to the Associate Administrator for Communications and Public Liaison
SBGS00607 White House Liaison to the Chief of Staff
SBGS00608 Assistant Administrator for Congressional and Legislative Affairs
SBGS00609 Director of Performance Management to the Associate Administrator for Performance Management and Chief Financial Officer
SBGS00610 Senior Advisor to the Associate Administrator for Capital

Access to the Associate Administrator for Capital Access
SBGS00612 Deputy Assistant Administrator for Faith Based Community Initiatives to the Director of Small Business Administration's Center for Faith-Based and Community Initiatives
SBGS00613 Legislative Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBGS00614 Senior Advisor to the Deputy Administrator
SBGS00615 Senior Advisor, Office of Performance Management to the Director of Performance Management
SBGS00616 Deputy Associate Administrator for Field Operations to the Associate Administrator for Field Operations
SBGS00617 Special Assistant to the Associate Administrator for Government Contracting and Business Development
SBGS60003 National Director for Native American Affairs to the Associate Administrator for Entrepreneurial Development
SBGS60170 Regional Administrator, Region VIII, Denver Colorado to the Assistant Inspector General for Inspections and Evaluation
SBGS60171 Regional Administrator, Region VII, Kansas City, Missouri to the District Director
SBGS60173 Regional Administrator, Region VI, Dallas, Texas to the District Director
SBGS60174 Regional Administrator to the Associate Administrator for Field Operations
SBGS60175 Regional Administrator to the District Director
SBGS60188 Regional Administrator, Region IX, San Francisco to the Administrator
SBGS60189 Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations
SBGS60190 Deputy Chief of Staff
SBGS60559 Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs

Section 213.3333 Federal Deposit Insurance Corporation

FDOT00010 Chief of Staff to the Chairman of the Board of Directors (Director)
FDOT00012 Director for Public Affairs to the Chairman of the Board of Directors (Director)

Section 213.3334 Federal Trade Commission

FTGS60001 Director, Office of Public Affairs to the Chairman
FTGS60006 Congressional Liaison Specialist to the Chairman
FTGS60027 Confidential Assistant to a Commissioner

Section 213.3337 General Services Administration

GSGS00084 Special Assistant to the Regional Administrator, Region VI, Kansas City
GSGS00087 Senior Advisor to the Regional Administrator, (Region IX, San Francisco)
GSGS00130 Senior Advisor to the Regional Administrator-Region 7, Fort Worth Texas
GSGS00132 Special Assistant to the Regional Administrator to the Regional Administrator, Region 10, Auburn, Washington
GSGS00156 Confidential Assistant to the Chief of Staff
GSGS00159 Deputy Director for Communications to the Deputy Associate Administrator for Communications
GSGS00161 Public Affairs Specialist to the Deputy Director for Communications
GSGS00163 Special Assistant to the Associate Administrator for Performance Improvement
GSGS00165 Special Assistant to the Chief Acquisition Officer
GSGS00166 Deputy Associate Administrator for Small Business Utilization to the Associate Administrator for Small Business Utilization
GSGS00172 Senior Advisor to the Commissioner, Public Buildings Service
GSGS00173 Senior Advisor to the Chief Acquisition Officer
GSGS00174 Principal Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00176 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00177 Deputy Chief of Staff to the Chief of Staff
GSGS00178 Special Assistant to the Chief Acquisition Officer
GSGS00179 Small Business Specialist to the Associate Administrator for Small Business Utilization
GSGS00182 Confidential Assistant to the Administrator
GSGS00184 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00185 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00186 Confidential Assistant to the Associate Administrator for Performance Improvement
GSGS00187 Deputy Associate Administrator for Congressional and Intergovernmental Affairs to the Principal Deputy Associate Administrator for Congressional and Intergovernmental Affairs
GSGS00188 Senior Advisor to the Regional Administrator (Region VIII, Denver, Colorado)
GSGS60082 Senior Advisor to the Regional Administrator, Regional 4, Atlanta, Georgia
GSGS60089 Confidential Assistant to the Administrator
GSGS60095 White House Liaison to the Chief of Staff
GSGS60113 Special Assistant to the Regional Administrator Region 1, Boston
GSGS60119 Senior Advisor to the Deputy Regional Administrator
GSGS60126 Deputy Associate Administrator for Communications to the Associate Administrator for Citizen Services and Communications
GSGS60127 Associate Administrator for Small Business Utilization to the Administrator
GSGS60131 Director of Strategic Communications to the Deputy Associate Administrator for Communications

Section 213.3338 Federal Communications Commission

FCGS03051 Deputy Director, Office of Media Relations to the Chief of Staff
FCGS07052 Bureau Chief to the Chairman
FCGS07077 Associate Director-Senior Speechwriter to the Chairman
FCGS60005 Special Assistant to the Director, Office of Legislative Affairs
FCGS95448 Attorney Advisor (Legal Advisor) to the Chairman

Section 213.3339 United States International Trade Commission

TCGS00007 Staff Assistant (Legal) to a Commissioner
TCGS00010 Staff Assistant (Legal) to a Commissioner
TCGS00012 Staff Assistant (Legal) to a Commissioner
TCGS00013 Staff Assistant (Economics) to the Vice Chairman
TCGS00025 Confidential Assistant to a Commissioner
TCGS00031 Executive Assistant to a Commissioner

TCGS00033 Staff Assistant to a Commissioner
TCGS00037 Staff Assistant (Legal) to the Chairman
TCGS60005 Staff Assistant (Legal) to a Commissioner
TCGS60006 Staff Assistant (Legal) to a Commissioner
TCGS60007 Staff Assistant (Economics) to a Commissioner
TCGS60015 Executive Assistant to the Vice Chairman
TCGS60018 Staff Assistant (Legal) to a Commissioner
TCGS60019 Staff Assistant (Legal) to a Commissioner
TCGS60022 Staff Assistant (Legal) to a Commissioner
TCGS60025 Staff Assistant (Legal) to a Commissioner
TCGS60030 Confidential Assistant to a Commissioner
TCGS60100 Senior Economist to a Commissioner
TCGS60101 Executive Assistant to the Vice Chairman

Section 213.3340 National Archives and Records Administration

NQGS60003 Presidential Diarist to the Archivist of the United States

Section 213.3342 Export-Import Bank

EBSL47970 Senior Vice President and Chief of Staff to the President and Chairman

Section 213.3343 Farm Credit Administration

FLOT00028 Director, Congressional and Public Affairs to the Chairman, Farm Credit Administration Board
FLOT00054 Chief of Staff to the Chairman, Farm Credit Administration Board
FLOT00080 Executive Assistant to Member to the Chairman, Farm Credit Administration Board
FLOT60013 Executive Assistant to the Member, Farm Credit Administration Board

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00003 Confidential Assistant to a Commission Member
SHGS00004 Confidential Assistant to a Commission Member
SHGS60007 Counsel to a Commissioner to a Commission Member
SHGS60008 Counsel to a Commissioner to a Commission Member

Section 213.3346 Selective Service System

SSGS00001 Public Affairs Specialist to the Director
SSGS03373 Administrative Assistant to the Director Selective Service System

Section 213.3348 National Aeronautics and Space Administration

NNGS00044 Legislative Affairs Specialist to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs
NNGS00155 Program Specialist to the Chief of Strategic Communications
NNGS00168 Editor to the Assistant Administrator for Public Affairs
NNGS00170 Program Specialist to the Deputy Administrator
NNGS00171 Senior Legislative Affairs Program Specialist to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs
NNGS00172 Congressional Relations Specialist to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs
NNGS00176 Deputy Press Secretary/Public Affairs Specialist to the Assistant Administrator for Public Affairs
NNGS00177 Writer/Editor to the Associate Deputy Administrator for Policy and Planning
NNGS02317 Special Assistant to the Inspector General
NNGS60020 Writer-Editor to the Assistant Administrator for Public Affairs

Section 213.3351 Federal Mine Safety and Health Review Commission

FRGS60024 Confidential Assistant to the Chairman
FRGS90501 Attorney Advisor (General) to the Chairman
FRGS90504 Attorney Advisor (General) to a Member

Section 213.3353 Merit Systems Protection Board

MPGS00002 Confidential Assistant to the Member to a Member
MPGS00003 Confidential Assistant to the Member to a Board Member
MPGS60010 Confidential Assistant to the Chairman
MPSL00001 Chief Counsel to the Vice-Chair to the Vice Chairman

Section 213.3355 Social Security Administration

SZGS00017 Associate Commissioner for External Affairs to the Deputy Commissioner for Communications
SZGS00018 Special Assistant to the Commissioner to the Chief of Staff

Section 213.3356 Commission on Civil Rights

CCGS00017 Special Assistant to the Commissioner to a Commissioner
CCGS60013 Special Assistant to a Commissioner
CCGS60020 Special Assistant to the Commissioner to the Chairman
CCGS60031 General Counsel to the Staff Director
CCGS60033 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

CUOT00025 Staff Assistant to a Board Member
CUOT00026 Staff Assistant to the Vice Chair
CUOT00030 Associate Director of External Affairs to the Chairman
CUOT01008 Senior Policy Advisor to a Board Member
CUOT01009 Senior Policy Advisor to a Board Member
CUOT01317 Senior Policy Advisor to the Chairman

Section 213.3360 Consumer Product Safety Commission

PSGS00066 Supervisory Public Affairs Specialist to the Executive Director
PSGS60007 Director, Office of Congressional Relations to the Chairman, Consumer Product Safety Commission
PSGS60010 Executive Assistant to a Commissioner
PSGS60014 General Counsel to the Chairman, Consumer Product Safety Commission
PSGS60049 Special Assistant (Legal) to a Commissioner
PSGS60061 Executive Assistant to a Commissioner
PSGS60062 Special Assistant (Legal) to a Commissioner
PSGS60063 Special Assistant (Legal) to a Commissioner

Section 213.3365 Chemical Safety and Hazard Investigation Board

FJGS60001 Special Assistant to the Chief Operating Officer

Section 213.3367 Federal Maritime Commission

MCGS60003 Counsel to the Commissioner to a Member
MCGS60006 Counsel to the Commissioner to a Member
MCGS60042 Counsel to a Member

Section 213.3370 Millennium Challenge Corporation

CMOT00001 Executive Assistant to the Chief Executive Officer

Section 213.3371 Office of Government Ethics

GGGS02900 Confidential Assistant to the Director

Section 213.3373 Trade and Development Agency

TDGS00004 Public Affairs Specialist to the Director
TDGS60001 Executive Assistant to the Director
TDGS60002 Congressional Liaison to the Director

Section 213.3376 Appalachian Regional Commission

APGS00005 Confidential Policy Advisor to the Federal Co-Chairman

Section 213.3379 Commodity Futures Trading Commission

CTGS00030 Chief of Staff to the Chairperson
CTGS00091 Chief Economist to the Chairperson
CTGS60004 Administrative Assistant to the Commissioner to a Commissioner
CTGS60014 Special Assistant to the Commissioner to a Commissioner
CTGS60477 Attorney-Advisor (General) to a Commissioner
CTGS60768 Director, Office of External Affairs to the Chairperson

Section 213.3382 National Endowment for the Arts

NAGS00062 Counselor to the Chairman to the Chairman National Endowment for the Arts
NAGS60049 Congressional Liaison to the Director, Office of Government Affairs
NAGS60077 Director of Communications to the Chairman, National Endowment for the Arts
NASL00001 Executive Director, Presidents Committee on the Arts and Humanities to the Chairman National Endowment for the Arts

Section 213.3382 National Endowment for the Humanities

NHGS00078 Associate Director of Communications and Chief Speechwriter to the Director of Communications
NHGS00080 Director of Congressional Affairs to the Chairman
NHGS60075 Director of Communications to the Deputy Chairman
NHGS60077 Senior Advisor to the Chairman to the Chairman

Section 213.3384 Department of Housing and Urban Development

DUGS00032 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Public and Indian Housing
DUGS00041 Advance Coordinator to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS00044 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60039 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60110 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60138 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS60151 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60168 Staff Assistant to the Chief of Staff
DUGS60174 Congressional Relations Officer to the Deputy Assistant Secretary for Congressional Relations
DUGS60175 Special Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60176 Staff Assistant to the Deputy Assistant Secretary for Congressional Relations
DUGS60187 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60195 Staff Assistant to the Deputy Assistant Secretary for Economic Development
DUGS60206 Intergovernmental Relations Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60210 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60211 Advance Coordinator to the Director, Office of Executive Scheduling and Operations
DUGS60217 Special Policy Advisor to the Assistant Secretary for Policy Development and Research
DUGS60224 Regional Director, Seattle, Washington to the Deputy Secretary, Housing and Urban Development
DUGS60232 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS60238 Special Assistant to the Regional Director to the Regional Director
DUGS60255 Special Assistant to the Assistant Secretary for Policy Development and Research
DUGS60281 Special Projects Officer to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60288 Congressional Relations Officer to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60289 Special Policy Advisor to the Assistant Secretary for Community Planning and Development
DUGS60291 Staff Assistant to the Secretary, Housing and Urban Development
DUGS60293 Staff Assistant to the President, Government National Mortgage Association
DUGS60319 Regional Director to the Assistant Deputy Secretary for Field Policy and Management
DUGS60330 Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development
DUGS60338 Special Policy Advisor to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60340 Special Assistant to the Chief of Staff
DUGS60354 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60357 Staff Assistant to the Chief of Staff
DUGS60366 Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing to the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing
DUGS60373 Media Outreach Specialist to the Assistant Secretary for Public Affairs
DUGS60385 Staff Assistant to the General Deputy Assistant Secretary for Public Affairs
DUGS60390 Senior Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60391 Special Assistant to the Regional Director
DUGS60394 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60410 Special Assistant to the General Counsel
DUGS60411 Special Assistant to the General Counsel
DUGS60416 Staff Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60419 Speechwriter to the General Deputy Assistant Secretary for Public Affairs
DUGS60421 Director, Office of Executive Scheduling and Operations to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60423 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60427 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60431 Regional Director, Kansas City, Kansas to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations

DUGS60447 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60449 Congressional Relations Specialist to the Deputy Assistant Secretary for Congressional Relations
DUGS60458 Legislative Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
DUGS60464 Special Projects Coordinator to the Regional Director
DUGS60467 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60468 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60470 Staff Assistant to the General Counsel
DUGS60489 Director, Office of Receivership Oversight to the Assistant Secretary for Public and Indian Housing
DUGS60502 Special Policy Advisor to the Assistant Secretary for Public and Indian Housing
DUGS60505 Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60542 Assistant to the Secretary and White House Liaison to the Secretary, Housing and Urban Development
DUGS60543 Staff Assistant to the Director, Center for Faith Based and Community Initiatives
DUGS60546 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60571 Deputy Assistant for International Affairs to the Assistant Secretary for Policy Development and Research
DUGS60575 Special Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS60588 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer
DUGS60601 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60620 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer

Section 213.3388 President's Commission on White House Fellowships

WHGS00018 Special Assistant to the Director, President's Commission on White House Fellowships
WHGS00019 Associate Director to the Director, President's Commission on White House Fellowships
WHGS00020 Staff Assistant to the Associate Director

Section 213.3389 National Mediation Board

NMGS60053 Confidential Assistant to the Chairman
NMGS60054 Confidential Assistant to a Board Member
NMGS60056 Confidential Assistant to a Board Member

Section 213.3391 Office of Personnel Management

PMGS00033 Chief, Office of Senate Affairs to the Director, Office of Congressional Relations
PMGS00052 Special Counsel to the General Counsel
PMGS00056 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS00057 Executive Director to Chief Human Capital Officer Council to the Executive Director and Senior Counselor
PMGS00059 Congressional Relations Officer to the Director, Office of Congressional Relations
PMGS00063 Staff Assistant to the White House Liaison
PMGS30249 Congressional Relations Officer to the Director, Office of Congressional Relations
PMGS60018 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS60019 Special Assistant to the Director, Office of Communications and Public Liaison
PMGS60028 Scheduler and Special Assistant to the Chief of Staff and Director of External Affairs
PMGS60051 Special Assistant to the Director, Office of Communications and Public Liaison

Section 213.3392 Federal Labor Relations Authority

FAGS60022 Executive Assistant to the Chairman
FAGS60023 Management Assistant to the General Counsel

Section 213.3393 Pension Benefit Guaranty Corporation

BGSL00063 Deputy Executive Director, Office of Policy and External Affairs to the Deputy Executive Director, Office of Policy and External Affairs

Section 213.3394 Department of Transportation

DTGS60017 Assistant to the Secretary for Policy to the Secretary
DTGS60054 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60055 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60117 Assistant to the Secretary for Policy to the Secretary
DTGS60139 Special Assistant to the Deputy Secretary
DTGS60159 Special Assistant to the Associate Administrator for Policy and Governmental Affairs
DTGS60173 Director of Congressional Affairs to the Administrator
DTGS60194 Special Assistant to the Administrator
DTGS60197 Confidential Assistant to the Chief of Staff
DTGS60199 Special Assistant to the Associate Administrator for Communications and Legislative Affairs
DTGS60202 Counselor to the Administrator
DTGS60229 Special Assistant to the Administrator
DTGS60239 Director, Office of Congressional and Public Affairs to the Administrator
DTGS60243 Speechwriter to the Associate Director for Speechwriting
DTGS60257 Deputy Director for Public Affairs to the Assistant to the Secretary and Director of Public Affairs
DTGS60274 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DTGS60279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
DTGS60292 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60294 Counselor to the Under Secretary of Transportation for Policy
DTGS60301 Associate Director for Governmental Affairs to the Deputy Assistant Secretary for Governmental Affairs
DTGS60311 Special Assistant to the Director for Scheduling and Advance
DTGS60313 Director of External Affairs to the Administrator
DTGS60317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs
DTGS60324 Director for Scheduling and Advance to the Chief of Staff
DTGS60337 Executive Director for Public Affairs to the Administrator
DTGS60342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60351 Counselor to the Deputy Secretary
DTGS60357 Special Assistant to the White House Liaison and Scheduling

and Advance to the Director for Scheduling and Advance

DTGS60364 Special Assistant to the Assistant Secretary for Transportation Policy

DTGS60369 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs

DTGS60371 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs

DTGS60375 White House Liaison to the Chief of Staff

DTGS60376 Director, Office of Small and Disadvantaged Business Utilization to the Secretary

DTGS60377 Director, Office of Governmental, International and Public Affairs to the Deputy Administrator

DTGS60379 Confidential Assistant to the Assistant to the Secretary and Director of Public Affairs

DTGS60380 Associate Administrator for Governmental, International, and Public Affairs to the Administrator

DTGS60381 Chief of Staff to the Administrator

DTGS60450 Deputy Director for Scheduling and Advance to the Secretary

DTGS60451 Director of Communications to the Administrator

DTGS60460 Director of Public Affairs to the Administrator Section

213.3396 National Transportation Safety Board

TBGS60025 Special Assistant to the Vice Chairman

TBGS60033 Assistant to the Director, National Transportation Safety Board Academy for Special Projects to the Chairman

TBGS60105 Confidential Assistant to the Vice Chairman

TBGS60107 Confidential Assistant to a Member

Section 213.3397 Federal Housing Finance Board

FBOT00004 Counsel to the Chairman

FBOT00005 Staff Assistant to the Chairman

FBOT00010 Special Assistant to the Board Director

FBOT60009 Special Assistant to the Board Director

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–20648 Filed 10–22–07; 8:45 am]

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Federal Register

Tuesday,
October 23, 2007

Part V

Department of Education

Compliance Agreement; Notice

DEPARTMENT OF EDUCATION

Compliance Agreement

AGENCY: Department of Education.

ACTION: Notice of written findings, compliance agreement with the Commonwealth of Puerto Rico and the Puerto Rico Department of Education, and subsequent actions.

SUMMARY: This notice is being published in the **Federal Register** consistent with sections 457(b)(2) and (d) of the General Education Provisions Act (GEPA). Section 457 of GEPA authorizes the U.S. Department of Education (the Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements and for whom the Department determines that full compliance is not feasible until a future date. Section 457(b)(2) requires the Department to publish written findings leading to a compliance agreement, with a copy of the compliance agreement, in the **Federal Register**. If a recipient fails to comply with the terms and conditions of a compliance agreement, the Secretary may take any action authorized by law with respect to the recipient.

On October 25, 2004, the Department entered into a compliance agreement (Agreement) with the Commonwealth of Puerto Rico (Puerto Rico) and the Puerto Rico Department of Education (PRDE) because PRDE was failing to comply substantially with numerous Federal requirements, and it was clear to the Department from all available information that PRDE would not be able to come into full compliance with applicable Federal requirements for the administration of Department programs until a future date. The Agreement applied to all grant funds awarded to Puerto Rico and PRDE by the Department's Offices of Special Education and Rehabilitative Services; Elementary and Secondary Education; English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students; Vocational and Adult Education; Innovation and Improvement; and Postsecondary Education. Prior to, and during the term of, the Agreement, the Department and PRDE have been working collaboratively to resolve a backlog of PRDE audits dating back to 1994 and, through jointly developed corrective action plans, to address a range of longstanding problems in PRDE's administration of Federal grants in the areas of grants management, payroll, financial management, property management, and procurement.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Maestri, U.S. Department of Education, Office of the Secretary, 400 Maryland Avenue, SW., Room 7E206, Washington, DC 20202–6132. Telephone: (202) 205–3511.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: PRDE is a State educational agency (SEA) that receives grant funds under a number of programs administered by the Department, including programs authorized under the Elementary and Secondary Education Act of 1965, as amended; the Carl D. Perkins Career and Technical Education Act of 2006 (formerly the Carl D. Perkins Vocational and Technical Education Act); the Adult Education and Family Literacy Act; and the Individuals with Disabilities Education Act. Because of longstanding and recurring audit findings of fiscal and programmatic accountability deficiencies in the administration of Department programs by PRDE and several other agencies in Puerto Rico with management responsibility for Department funds, in 2002 the Department designated PRDE a ''high-risk'' grantee under the authority of 34 CFR 80.12. At that time, the Department imposed special conditions on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. Audit findings were recurrent over several years and involved such issues as missing or inadequate documentation to support procurements, lack of proper accounting procedures, mismanagement of property, and improper payroll costs.

In September 2003, the Department and PRDE began a collaborative effort, under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI) to resolve jointly the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994. Through this effort, PRDE made some progress in establishing controls to improve its payroll and procurement processes and its grants management system, to enable it to address a number of the recurring audit issues and make systemic changes. However, it appeared that it would take additional time to address completely the underlying issues and longstanding systemic problems that led to the large number of audit findings that PRDE was attempting to resolve.

Therefore, the Department proposed the possibility of Puerto Rico, PRDE, and the Department entering into a compliance agreement, pursuant to section 454 of GEPA, that would apply to all Department grants awarded to, and administered by, PRDE. The purpose of the compliance agreement would be to bring PRDE ''into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' [1] 20 U.S.C. 1234f(a). Under a compliance agreement, PRDE would have up to three years to continue its efforts to address the audit findings and underlying problems by implementing significant changes and improvements in grant administration, payroll, financial and property management, and procurement in order to come into full compliance with Federal requirements related to the programs under which the Department awards grants to PRDE. In order to enter into a compliance agreement with Puerto Rico and PRDE, the Department had to determine, in written findings, that PRDE would not be able to comply until a future date with the applicable program requirements and that a compliance agreement would be a viable means for bringing about such compliance.

In accordance with the requirements of section 457(b) of GEPA, 20 U.S.C 1234f(b), Department officials conducted a public hearing in Puerto Rico in October 2004. Witnesses representing PRDE and other concerned individuals testified at this hearing on whether a compliance agreement with Puerto Rico and PRDE would be appropriate. The Department reviewed this testimony and all other relevant materials and concluded that, while the Department had been working closely with Puerto Rico, PRDE, and other Puerto Rico agencies to address the major issues that PRDE had been facing in administering Department grant

[1] Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law applicable'' to the Federal program funds administered by this agency. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

programs, it was clear that the problems could not be corrected by PRDE immediately and that PRDE would need more than one year to correct them. Therefore, the Department, Puerto Rico, and PRDE entered into the Agreement, a comprehensive compliance agreement with a three-year term. The Agreement, which incorporated the Department's written findings, gave PRDE time to develop integrated and systemic solutions to problems in managing its Department funds and programs. Under the terms of the Agreement, by the end of the three-year term, PRDE is supposed to be in full compliance with the requirements of all programs funded by the Department. The Agreement became effective on October 25, 2004 and is set to expire on October 25, 2007.

Upon entering into the Agreement, the Department removed PRDE's ''high-risk'' designation related to the audit findings and underlying problems, based upon PRDE's demonstration of initiative and commitment to resolving the problems that had led to the ''high-risk'' designation, and upon PRDE's willing and effective collaboration with the Department. Also upon entering into the Agreement, the Department and PRDE worked together to develop corrective action plans covering grants management, payroll, property management, and procurement. These plans contained goals, action steps, and objectives to guide PRDE into full compliance with Federal requirements applicable to the grants that it receives from the Department. The Department has been closely monitoring PRDE's progress in implementing these corrective action plans through site visits, conference calls, meetings, and reviews of PRDE's periodic written reports. In addition, in July 2006, the Department and PRDE collaboratively resolved the backlog of audit findings from audit reports issued for fiscal years 1994 through 2003; in May 2007, they resolved the fiscal year 2004 single audit of PRDE; and in September 2007, they resolved, in large part, the fiscal year 2005 single audit of PRDE. The Department is currently working with PRDE to determine the full extent of PRDE's progress under the compliance agreement and corrective action plans, and the effect of such progress. Based on this assessment, the Department is also determining next steps for PRDE following the expiration of the Agreement.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Agreement (which incorporates the Department's written findings in the sections entitled ''Overview of Issues Addressed by this Compliance Agreement'' and ''Removal of 'High-Risk' Designation'') is included as appendix A of this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Authority: 20 U.S.C. 1234c, 1234f).

Dated: October 18, 2007.

Hudson La Force III,

Senior Counselor to the Secretary of Education.

Appendix A—Compliance Agreement Among The Commonwealth of Puerto Rico, The Puerto Rico Department of Education, and The United States Department of Education

October 25, 2004

I. Overview of Issues Addressed by This Compliance Agreement

The Puerto Rico Department of Education (PRDE) has been undertaking a large-scale endeavor to address long-standing, systemic issues faced by PRDE, including the resolution of audit findings issued by auditors dating back to 1994. PRDE has been putting forth great effort to rebuild, to make important changes, to improve education services to students, and to restore the trust and credibility previously lost by PRDE. A number of these activities have been undertaken in accordance with special conditions imposed on PRDE's grants, with technical assistance by the U.S. Department of Education (the Department), and as part of an initiative undertaken between PRDE and the Department, under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI). Although the Department has been working closely and productively with PRDE in recent months to address these major issues, it appears that it will take more than one year to completely address some of the long-standing, systemic problems that PRDE is working so hard to correct, and it will also take the continued cooperation of other parts of the Puerto Rico government. Therefore, the Department is entering into this comprehensive, three-year Compliance Agreement (Agreement) with the Commonwealth of Puerto Rico (Puerto Rico) and PRDE.

Through this Agreement, Puerto Rico and PRDE, with assistance from the Department, agree to develop or complete integrated and systemic solutions to problems they have had in the management of Federal education funds and programs. The issues are being carefully examined and addressed from the perspective of PRDE and other Puerto Rico agencies with management responsibility for resources or programs that have an impact on education in Puerto Rico. Solutions involve re-engineering systems and processes and the increased use of technology. In addition, solutions must address communication and cooperation among Puerto Rico agencies, including PRDE (including its Office of Federal Affairs (OFA)), Departmento de Hacienda, Oficina de Gerencia y Presupuesto (OGP), and Banco Gubernamental de Fomento. Whatever the solutions Puerto Rico and PRDE choose to implement, they should seek to ensure the best educational systems possible for the students of Puerto Rico. It is also understood that by the end of the term of this Agreement, Puerto Rico, and PRDE in particular, must be in full compliance with the requirements of all programs funded by the Department.

This Compliance Agreement is also intended to ensure an effective planning and evaluation process throughout PRDE's programs and initiatives. Planning and evaluation processes are the basis for determining program goals, current status, improvement needs, budgets, resources, effectiveness of results, and other important aspects of effective program management. Through this Agreement, Puerto Rico and PRDE will improve program planning and evaluation for education programs and use the plans and evaluation results to drive management and resource decisions.

This Compliance Agreement addresses the following issue areas: Grants Management generally, Grants Management for several specific program areas, Payroll, and Procurement and Property Management. This Agreement lists specific tasks, goals, and measurable objectives for each issue area. Action steps and substeps with corresponding timelines, the persons and offices responsible for carrying out specific tasks, and

underlying problems resolved by Puerto Rico's compliance with each task, goal, and action step, will be contained more fully in the Puerto Rico Action Plans that will be completed within the next thirty days and will be incorporated into the Agreement by reference.

The General Grants Management Task contained in this Agreement (Task 1.0) applies to the administration of all Federal education programs administered by PRDE. In addition to the general section on Grants Management, Tasks 2.0 through 5.0 below contain additional, program-specific tasks, goals, and steps, which will apply to the administration of specific areas or programs, as noted, including the Community Schools, the Vocational Education Program, authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301, *et seq.*), the Adult Education Program, authorized under the Adult Education and Family Literacy Act (20 U.S.C 9201 *et seq.*), and the Special Education Program, authorized under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1401, *et seq.*).

The Department will review Puerto Rico's and PRDE's progress in meeting the terms of this Agreement by assessing the systemic approaches and degree of integration that Puerto Rico and PRDE bring in designing and implementing solutions to the complex problems in each of the crosscutting areas, by the demonstrated communication, cooperation, and organizational culture change toward ''getting the work done right,'' and by assessing Puerto Rico's and PRDE's completion of corrective action steps. The approaches adopted by Puerto Rico and PRDE should include effective planning and evaluation of resource and management decisions that are designed to produce better educational results.

In making the critical systemic and organizational changes required to meet the terms of this Compliance Agreement, it is important to understand that the Agreement is not only designed to bring about compliance with Federal requirements but toward improving education for the students of Puerto Rico. In the end, the Department and Puerto Rico will judge success by compliance with all requirements and by determining how well Puerto Rico has improved educational programs by meeting applicable requirements and the terms of this Compliance Agreement.

II. Removal of ''High-Risk'' Designation

In 2002, the Department designated PRDE a ''high-risk'' grantee, under authority of § 80.12 of the Education Department General Administrative Regulations (EDGAR) (34 C.F.R. 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's special conditions were intended to bring about necessary changes to Federal program administration in Puerto Rico that would ultimately bring it into compliance with all Federal program requirements. The special conditions were intended to result in important improvements to Federal grants administration in Puerto Rico so that the systemic problems uncovered by the auditors would be corrected and would not reoccur. In addressing the special conditions, and in conjunction with CAROI, as outlined below, PRDE has taken numerous steps to address underlying problems.

Since September 2003, the Department and PRDE have been working together in a collaborative effort under the CAROI process, to jointly resolve the backlog of unresolved PRDE audits, which contain over six hundred audit findings dating back to 1994. As a result of this effort, PRDE has already taken steps and established controls to improve its payroll and procurement processes and its management of grants to address numerous recurring audit issues and make systemic changes. It has assigned knowledgeable staff to this task and has employed expert contractors to assist in this effort. PRDE has sought to come into compliance with Federal requirements with the ultimate goal of improving educational services to all students in Puerto Rico.

One of the most significant steps Puerto Rico and PRDE have taken is the creation of both an Internal Audit Office and an Audit Oversight Committee that will provide independent review and oversight of Puerto Rico and PRDE activities and will assure Puerto Rico and PRDE's commitment to maintaining a strong control environment, quality financial reporting, and compliance with program objectives and regulations. The signing of the legislation for the Audit Oversight Committee, on August 5, 2004, was a very positive step that demonstrated the commitment and strides Puerto Rico and PRDE are taking to protect the Federal funds they receive and to help ensure they meet the fiscal and programmatic responsibilities under all Federal programs. PRDE has worked very effectively with the Department and has generally committed itself to improving its Federal program administration by placing a high priority on addressing and ultimately eliminating what had been found to be serious problems.

Since PRDE has demonstrated great initiative and commitment to resolving the problems that led to the 2002 ''high-risk'' designation, in recognition of the progress shown by PRDE, upon execution of this Agreement, the Department will remove PRDE's ''high-risk'' designation. However, all special conditions currently applicable to Federal education grants awarded to PRDE remain in effect. The Department will work with PRDE within thirty days to eliminate possible duplication of effort in the special conditions and in this Agreement including with respect to reporting requirements. In lieu of the ''high-risk'' designation, during the first six months following execution of this Agreement, *i.e.*, the early implementation phase of this Agreement, PRDE will be on ''probationary status.'' During this period, the Department and PRDE will continue the close, cooperative relationship that has characterized their work under the CAROI initiative, but the Department will scrutinize very carefully the progress that PRDE is making under the Agreement. The Department will remain available to provide PRDE with technical assistance that is needed, and it will also oversee the progress made by PRDE on its Federal program administration, consistent with the terms of this Agreement. PRDE will remain committed to continued and timely movement toward full compliance with Federal requirements.

III. Consequences for Not Meeting the Terms and Conditions of This Agreement

A. Mutual Agreements and Understandings Regarding the Terms, Conditions and Enforcement of This Compliance Agreement

Severability

The parties agree that this Compliance Agreement includes terms and conditions that apply to the various Federal programs included in the Agreement (hereafter ''covered Federal programs'') and also terms and conditions that are program specific. To that end, the parties agree that each such term and condition for each covered Federal program may constitute a separate agreement among Puerto Rico, PRDE and the Department. For purposes of 20 U.S.C. § 1234f, each such term or condition as to each covered Federal program shall be severable from

each other term or condition for each of the covered Federal programs. Unless set out otherwise, a determination by the Department under 20 U.S.C. § 1234f (d) that Puerto Rico or PRDE is not meeting terms and conditions may be specific to such term, condition, or program without impacting Puerto Rico's or PRDE's continuing obligations under the Agreement. That is, all other terms and conditions for all covered Federal programs or the specific term or condition for other covered Federal programs would remain in place for the duration of the Agreement or until such time as the Department were to determine that Puerto Rico or PRDE had substantially failed to meet those terms and conditions.

Alternatively, the parties understand and agree that a determination by the Department under 20 U.S.C. § 1234f(d) that Puerto Rico or PRDE has substantially failed to meet any of the terms and conditions shall, at the Department's discretion, be grounds for finding the Agreement, as to such terms and conditions, no longer in effect and that the Department may take any and all additional actions authorized by law. At the same time, if Puerto Rico or PRDE substantially fails to meet the terms and conditions of the Agreement, the Department may terminate the entire Agreement, and the Department may take any and all actions authorized by law. Some examples of such actions are set out below.

Judicial Enforcement

1. *Cease and Desist Order Under 20 U.S.C. §§ 1234c(a)(2) and 1234e*

The Department may seek injunctive relief to compel specific actions or to stop specific actions. Under this process, the Department issues a complaint to Puerto Rico or PRDE, describing the factual and legal basis for the Department's belief that Puerto Rico or PRDE is failing to comply substantially with a requirement of law including this Agreement, and containing a notice of hearing. A hearing before an Administrative Law Judge (ALJ) could then occur. The ALJ's report and order, requiring Puerto Rico or PRDE to stop specific actions or compelling specific actions, becomes the final agency decision. The Department may enforce the final order by withholding any portion of Puerto Rico's or PRDE's grant award or certifying the facts to the Attorney General who may bring an appropriate action for enforcement of the order.

2. *Referral to Department of Justice For Appropriate Enforcement—20 U.S.C. § 1416*

If the Department finds, after reasonable notice and opportunity for hearing to Puerto Rico or PRDE, that there has been a failure by Puerto Rico or PRDE to comply substantially with any provision of applicable Federal laws (with regard to the programs to which 20 U.S.C. § 1416 applies) (including terms of Compliance Agreement within timelines in the Agreement), the Department may, after notifying Puerto Rico or PRDE, refer the matter for an appropriate enforcement action, which may include referral to the Department of Justice.

Withholding of Grant Funds—20 U.S.C. §§ 1234c(a)(1), 1234d and 1416

If the Department finds, after reasonable notice and opportunity for hearing to Puerto Rico or PRDE, that there has been a failure to comply substantially with a requirement of law, including with this Agreement, the Department may, after notifying Puerto Rico or PRDE or both, withhold, in whole or in part, future payments. The Department may limit withholding to a particular Federal grant or part of the grant.

Escrow Account To Fund Third-Party

If Puerto Rico or PRDE fails substantially to meet a significant term in this Compliance Agreement, the Department may place an appropriate amount of Puerto Rico's or PRDE's grants into an interest bearing escrow account to fund the duties of a third-party fiduciary agent. Puerto Rico or PRDE may request a reconsideration of this action.

Recovery of Funds—20 U.S.C. § 1234a

Any funds improperly expended or not properly accounted for are subject to recovery by the Department according to 20 U.S.C. § 1234a.

B. Criteria for Determining Consequences

Puerto Rico or PRDE will provide the Department with progress reports—as required in Section IV below—for the action steps and measurable objectives set forth in the Agreement. Puerto Rico or PRDE, and the Department agree that substantial failure to: (1) provide all required reports in a timely manner, (2) show substantial progress in completing action steps as required, (3) complete significant action steps within the timeframes designated in the Agreement, or (4) achieve critical measurable objectives as specified in this Agreement, will be considered a failure to meet the terms and conditions of this Agreement.

Reinstatement of ''High-Risk'' Status Under 34 CFR § 80.12

In the event that PRDE and Puerto Rico fail to continue their efforts toward correcting the systemic problems uncovered by the auditors between 1994 and 2003, and are not making sufficient progress to meet the terms of this Agreement, the Department retains the authority to reinstate the ''high-risk'' designation being removed under the terms of this Agreement. If the Department determines that such reinstatement becomes necessary, additional special conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring PRDE to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of PRDE's grants from the Department; or (6) establishing additional prior approvals. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

In the event that the Department decides to reinstate ''high-risk'' status, it would notify PRDE as early as possible, in writing, of the: (1) Nature of additional special conditions and restrictions; (2) reason(s) for imposing them; (3) corrective actions which must be taken before they will be removed and time allowed for completing any additional corrective actions; and (4) method of requesting reconsideration of conditions and restrictions imposed.

IV. Reporting Requirements

This Compliance Agreement requires regular progress reporting for all issues. Generally, Puerto Rico and PRDE must provide the Department with progress reports on a quarterly basis.

The submission of each written report will be preceded by a meeting or conference call among representatives of Puerto Rico (which may include representatives of the various Puerto Rico agencies mentioned in Section I above), PRDE, and the Department, within five business days (according to PRDE's business calendar) of the end of the quarter, to discuss Puerto Rico and PRDE's progress and what level of detail the Department wants Puerto Rico and PRDE to cover in its written quarterly report that will be submitted within fifteen business days (according to

PRDE's business calendar) of the call or meeting. The parties may modify the schedule by mutual agreement.

Subject to the meeting or call above, in general, each quarterly report will include information such as: (1) a description of activities and progress for each task and its related sub-tasks during the reporting period, (2) the status of each critical action step required to be taken during the reporting period, (3) documentation of critical action step completion for those steps required to be completed during the reporting period (including explanations of delays for all steps not completed that were scheduled to be completed during the period, and expected completion dates for all unimplemented steps), (4) documentation of measures of performance and results, and (5) other data or documentation as specified within the action steps for each task or related sub-task in this Agreement, and/or discussed in the pre-report meeting among the Department, Puerto Rico, and PRDE.

Puerto Rico and PRDE will consider, if feasible and cost-effective, transmitting reporting information to the Department via an Internet web site. If transmittal of the reporting information is not possible via a website, Puerto Rico and PRDE will continue to be responsible for tracking, monitoring and reporting progress on all requirements and milestones in this Agreement in a manner that is fully accessible to the Department and the public. Reporting information will be updated continuously, but in any event, on a quarterly basis, no later than within fifteen business days (according to PRDE's business calendar) from the day of the call or meeting among the Department, Puerto Rico, and PRDE, specifying the specific reporting required for that quarterly period. These reports also will fulfill the reporting requirements required under PRDE's special conditions that are currently in effect or as modified in accordance with the process to eliminate duplication in Section II above. The first quarterly period will encompass the time from which all parties sign this Agreement through December 31, 2004. Within the first thirty days of this Agreement, the Department will work with PRDE to agree on a more rigorous reporting schedule for reporting progress during the first six months following execution of this Agreement, (the early implementation phase of this Agreement).

V. Updated Action Plans, Action Steps, and Timelines

Action steps and timelines that PRDE has developed are included in the task descriptions throughout this Agreement as well as in PRDE's Action Plans that will be completed and incorporated into this Agreement within thirty days of the execution of this Agreement. PRDE, Puerto Rico, and the Department will continuously reassess the action steps and timelines to determine if: (1) the action steps fully meet the requirements of this Agreement, (2) the action steps will move Puerto Rico and PRDE toward achieving required measurable objectives, and ultimately, full compliance within three years, and (3) the timelines need to be modified within the time boundaries set forth in this Agreement. In addition to the areas currently covered in this Agreement, the Action Plans will also include a section covering continuing progress to be made in implementing the oversight systems for the Internal Audit and Audit Oversight Committee, and the internal audit function within PRDE.

Updating the action steps and interim timelines into Action Plans for which Puerto Rico and PRDE will be accountable is a critical step for each task and sub-task. Once Puerto Rico and PRDE complete the development of Action Plans that address each task or sub-task, as specified in this Agreement, and the Department agrees to the revised Action Plans, the action steps and timelines in the Action Plans will become additional requirements of this Agreement and be subject to the reporting requirements and consequences for not meeting terms and conditions as set forth in this Agreement. The Department will assist by consulting with Puerto Rico and PRDE to develop reports or reporting formats that shall satisfy the reporting requirements as set forth in this Agreement. The Department will also assist Puerto Rico and PRDE, to the extent that resources are available, with the orientation and training of personnel and the provision of meaningful technical assistance.

VI. Resolution of Outstanding Audit Findings

As noted above, the Department designated PRDE a ''high-risk grantee'' under 34 CFR § 80.12 due to numerous serious recurring audit findings which uncovered deficiencies in PRDE's administration of Federally funded programs. This Compliance Agreement does not absolve PRDE's liability under any of these audit findings. The Department has been working closely with PRDE to address all of the issues uncovered in single audits and audits by the Department's Office of the Inspector General (ED OIG) conducted over the years 1994 through 2003. While steady progress is being made, resolution of all findings has not been completed. Thus, in addition to undertaking corrective action in response to these many monetary and non-monetary audit findings, under this Agreement, PRDE also agrees to continue working with the Department toward resolution of all audit findings issued under the single and ED OIG audits covering 1994 through 2003, under the Department's CAROI process. The Department and PRDE anticipate continuing to work cooperatively through a CAROI process so that these audit findings can be resolved no later than six months from the date of the execution of this Agreement. PRDE's continued work with the Department on resolving remaining audit issues is a critical element of compliance with this Agreement. However, in the event that the CAROI process does not appear to be progressing, in addition to other remedies the Department has including those under this Agreement, the Department retains the discretion to issue one or more program determination letters (PDLs) to resolve one or more of these audit findings at any time. In the event that one or more PDLs are issued, PRDE may exercise its appeal rights, and such exercise would not be considered a breach of this agreement, and would not be inconsistent with the resolution of other findings through CAROI.

VII. General Additional Measurable Objectives

Puerto Rico, PRDE, and the Department agree that the following measurable objectives apply for each task and sub-task contained in this Agreement and in the Action Plans that are to be incorporated into this Agreement within thirty days, in addition to other measurable objectives specified throughout this Agreement.

1. Plans, other documents, and reports are timely, complete, accurate, and address the requirements set forth in this Agreement.
2. Action steps are implemented within the timeframes set forth in this Agreement.
3. Implementation of sub-tasks and action steps demonstrates progress towards achieving the outcomes or measurable objectives set forth in this Agreement.

The remainder of this document provides task descriptions, action steps, and measurable objectives for: (1)

General Grants Management, (2) Specific Program Management, (3) Payroll, and (4) Procurement and Property Management. By signing this Agreement and by the end of the three-year period covered by this Agreement, Puerto Rico and PRDE commit to taking the necessary actions to be in full compliance with the program requirements applicable to all Department grants for which Puerto Rico and PRDE expend funds and any other requirements set forth in this Agreement. Puerto Rico and PRDE commit to full implementation of improved grants management, payroll, and procurement and equipment inventory processes laid out in this Agreement and in greater detail in the PRDE Action Plans that will be incorporated by reference into this Agreement.

VIII. Tasks

This section on Tasks represents what the parties have generally agreed to at the time of execution of this Agreement. Some of the subtasks and steps set forth below may be modified as the parties agree to the Action Plans in their final form within thirty days. Appropriate modifications to this section will be made by mutual consent of the parties once the Action Plans are finally agreed to.

Task 1.0: Improving PRDE General Grants Management

Overall Task Description

Because the stated purpose of this Agreement is to improve education for the students of Puerto Rico, it is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the first year of the next three-year period to develop and refine long-term goals, assess the current status of each program receiving Federal assistance, and design coherent plans to bridge the gap between the current status of education in Puerto Rico and its goals of improving education and fully complying with all Federal program requirements. As set forth in Section I above, this General Grants Management Task applies to the administration of all Federal education programs administered by PRDE.

Effective grants management includes the development of effective: (1) Pre-award planning processes, (2) grant application, evaluation, and approval processes, (3) baseline assessments of current PRDE practices as compared with applicable Federal requirements, (4) plans for interagency coordination among relevant Puerto Rico agencies, such as PRDE, Hacienda, the Office of Federal Affairs (OFA), and the Puerto Rico Department of Health (PRDH), (5) restructured budget processes ensuring that all agencies and programs receiving Federal awards will meet stated goals, (6) measurable objectives to determine if the planned grants management improvements are having the intended effect, and (7) options for further modification if implementing the plan is not having the intended effect. The new grants management process implemented by Puerto Rico and PRDE will take into account and adhere to Federal requirements for each program, as well as other applicable accounting and professional standards. In addition, the planning process should include citizen and/or customer input and feedback; input is a vital part of the process to set goals, and feedback is equally significant in assessing results. A critically important aspect of the planning and design process is that it is fully integrated as the foundation for other program-related decisions about budgets, financial management, personnel requirements, and other resource needs.

The Department will continue to provide technical assistance, as appropriate, including referrals to successful jurisdictions for guidance. Puerto Rico and PRDE will seek the assistance of expert consultants and other grantees to provide hands-on guidance in improving its grants management process. Reasonable and necessary expenses for this assistance will be considered allowable costs chargeable to a Department grant provided an approvable application is received in a timely manner.

Sub-Task 1.1: Pre-Award Planning Process

Goal: To ensure that PRDE application, evaluation and approval processes allow for the timely approval of work plans so that implementation of Federally funded programs can commence upon receipt of grant award notifications, i.e., in July or August of each year.

The following step will help achieve the goal:

Create process to ensure that budget planning for all appropriate Federal programs is nearly complete by receipt of grant award notification by September 30, 2005.

Measurable Objectives for Sub-Task 1.1:

Short term: 80% of all applications for Federal funds in the OFA pilot program will have completed the planning process timely so that the approval process is completed by the time grant award notification is received (October 31, 2005).

Mid term: 50% of all applications will have completed the planning process timely so that the approval process is completed by the time the grant award notification is received (October 31, 2006).

Long term: 100% of all applications for Federal funds will have completed the planning process timely so that the approval process is completed by the time grant award notification is received (October 1, 2007). In addition, all applications for Federal funds will comply with all applicable requirements (October 25, 2007).

Sub-Task 1.2: Application, Evaluation, and Approval Process

External Application Goals: To submit applications to the Department for formula and discretionary grant funds in a timely manner in substantially approvable form.

Internal Application Goals: To have an internal application process that is streamlined, is oriented to the needs of PRDE's internal applicants for funds, and provides useful information about the allowable uses of Federal funds.

Evaluation and Approval Process Goals: To have an evaluation and approval process that is streamlined and rapid, and provides useful and timely feedback to PRDE internal applicants.

The following steps will help achieve the goals:

A. Review all applicable Federal requirements,

B. Streamline and strengthen external application process,

C. Streamline and strengthen internal application process for formula grant funds,

D. Streamline and strengthen application process for discretionary grant programs (that require subgrants to be allocated by competition),

E. Streamline and strengthen competitive proposal process for external contractors (refer to procurement plan),

F. Ensure staff has necessary knowledge and expertise to implement revised application process,

G. Create process to ensure proper documentation is maintained throughout the application process,

H. Create streamlined evaluation and approval processes that support the proper use of Federal funds, and

I. Ensure staff has necessary knowledge and expertise to implement revised evaluation and approval processes that are consistent with Federal requirements.

Measurable Objectives for Sub-Task 1.2:

External Application Process: By July 2006, improve and strengthen all applications that are submitted to the Department, utilizing a revised procedure consistent with the milestones contained in the grants management action plan.

Internal Application, Evaluation, and Approval Processes: By January 2007, all applications for Federal funds are going through the new application, evaluation, and approval process, consistent with the planning process.

Sub-Task 1.3: Interagency Process

Goal: Ensure productive coordination between PRDE and other Puerto Rico agencies, such as Hacienda, OGP, PRDH, and OFA, to ensure that budget processes operate efficiently, in accordance with PRDE procedures, and in accordance with all applicable Federal requirements.

Measurable Objective for Sub-Task 1.3:

In accordance with current PRDE Special Conditions, to prepare an Action Plan to address this initiative and will submit it to the Department by February 15, 2005.

Sub-Task 1.4: Budget Process

Goal: Restructure the PRDE budget process so that all programs that receive Federal funds will have prepared a preliminary budget and received preliminary approval from PRDE's budget office prior to their receipt of a grant award notification.

The following steps will help achieve the goal:

A. Review all applicable Federal requirements,

B. Create detailed map of the current budget process, including all forms and approvals necessary for Federal funds to be awarded and flow from PRDE to programs/entities,

C. Streamline PRDE budget process, consistent with applicable Federal requirements,

D. After budget process has been streamlined, prepare a written document describing uniform procedures that PRDE and subrecipients must follow in submission of budgets for approval by PRDE, and

E. Ensure the obligation of Federal funds in a timely manner.

Measurable Objective for Sub-Task 1.4:

By July 2006, 100% of all programs that have received Federal funds will have prepared a preliminary budget according to all program requirements for 2005–2006 and received preliminary approval from the budget office prior to the receipt of a grant award notification.

Sub-Task 1.5: Program Implementation Process

Goal: To ensure that all PRDE staff responsible for program implementation and administration have the necessary knowledge, tools, and resources necessary for implementing and administering Federal programs consistent with all applicable Federal programmatic and fiscal requirements.

The following steps will help achieve the goal:

A. Identify specific technical assistance available from OFA to academic staff and other recipients of Federal funds, to ensure that Federal programs are implemented and Federal program funds are expended in a manner consistent with Federal requirements,

B. Ensure that all staff responsible for the implementation of Federal programs at all levels is aware of and familiar with all applicable Federal programmatic requirements,

C. Ensure that all staff responsible for the implementation of Federal programs at all levels is aware of and familiar with all applicable Federal requirements related to procurement with Federal funds, such as RFP requirements for contracts, competitive bidding requirements (which is discussed in greater detail below under Task 7.0,

D. Create uniform documentation requirement/template for all staff responsible for implementing Federal programs, and

E. Ensure that all staff responsible for implementing Federal programs fully understands Federal requirements on retention of documentation

Measurable Objectives for Sub-Task 1.5:

- By July 2005, there has been formalized and regularly scheduled staff training for non-OFA, PRDE staff for relevant central level employees who administer Federal funds, and
- By July 2006, program specific and Federal grants management training will have been completed for 100% of Central Office PRDE staff responsible for implementing Federal programs.
- Each year, there is a significant reduction in the number of sustainable audit findings contained in single audit reports.

Sub-Task 1.6: Monitoring and Technical Assistance Process

Goal: To ensure that weaknesses in Federal program administration are identified and remedied in a timely manner to significantly reduce audit findings.

Goal: To ensure that all PRDE personnel who administer Federal funds have access to high-quality technical assistance and training that responds to the needs of PRDE.

The following steps will help achieve the goals:

A. Establish a formal, unified monitoring process for all Federal programs administered by OFA,

B. Create consistent monitoring tools that identify specific programmatic requirements and align programmatic and fiscal monitoring, and

C. Analyze and identify audit findings that are repetitive across programs and ensure that additional monitoring is performed for these programs.

1. Based on recent findings, conduct additional monitoring and intensive technical assistance for Migrant Education Program (MEP):

—Formalize process for maintaining required documentation to support the eligibility of students participating in the program. Ensure that formalized process includes all documents required under the statute,
—Train program directors, regional directors, and other appropriate migrant staff on revised documentation maintenance requirements,
—Conduct additional staff training for all relevant MEP personnel on specific eligibility requirements of migrant program, such as the definition of a qualifying move, agricultural or fishing activity, Principal Means of Livelihood (PMOL), etc. to ensure the accuracy of the Certificates of Eligibility (COE), and
—Conduct additional staff training on specific provision of services requirements, including, but not limited to:
  - Priority for services,
  - How MEP students should be served in schoolwide programs,
  - Service to private school students, and
  - Fiscal requirements.
—Consistent with monitoring plan, monitor revised documentation process and other migrant program requirements, deliver immediate technical assistance if needed, and
—Review manual clarifying eligibility requirements of the migrant program. If necessary, revise manual.

2. Based on recent findings, conduct additional monitoring and intensive technical assistance for the Even Start Program:

—Formalize process for maintaining required documentation to support the eligibility of families participating in the program. Ensure that the formalized process includes all documents required under the statute,

—Train program directors, Even Start partners and other appropriate staff on revised documentation maintenance requirements,
—Develop formal procedure to ensure matching requirements are met or appropriately waived by PRDE consistent with the statutory requirements, and
—Develop formal monitoring process, consistent with statutory requirements, to measure whether there is sufficient progress and indicators of program quality by Even Start subrecipients.

D. Schedule integrated monitoring visits according to identified needs,

E. Train employees who will be conducting monitoring visits,

F. Improve access to information about monitoring process for PRDE programs/offices that will be monitored,

G. Develop a Master Technical Assistance Plan for PRDE programs in accordance with results from monitoring process,

H. Create links between the Department's website, other educational websites and PRDE's website,

I. Develop a plan to properly document PRDE technical assistance,

J. Train employees who will be giving technical assistance, and

K. Ensure that any weaknesses or instances of non-compliance are identified and corrected in a timely manner.

Measurable Objectives for Sub-Task 1.6:

• By April 2005—A master monitoring plan will be created, based on past findings, targeting high need programs first, including MEP and Even Start,

• By August 2005—Uniform monitoring instruments will be created for each Federal program and program/fiscal monitors will use these instruments for their monitoring activities,

• By July 2006—Regular monitoring by appropriate staff will be fully implemented,

• By July 2006—Regular, high-quality technical assistance will be provided by PRDE to PRDE staff regarding Federal requirements. Technical assistance will be provided prior to the delivery of Federal program services by PRDE personnel and will promptly respond to any weaknesses discovered in the monitoring process, and

Each year, there is a significant reduction in the number of sustainable audit findings contained in single audit reports, particularly in the number of recurring audit findings.

Sub-Task 1.7: Reporting

Goal: By July 2005, PRDE will ensure that all reports submitted to the Department are timely and accurate.

The following steps will help achieve the goal:

A. Compose Master List of all performance and financial reports due to the Department under applicable requirements, and

B. Identify PRDE staff responsible for completing and filing all required reports.

Measurable Objective for Sub-Task 1.7:

By July 2005, PRDE will ensure that all reports submitted to the Department are timely and accurate.

Sub-Task 1.8: Private Schools and Equitable Services

Goal: PRDE is in compliance with all Federal requirements applicable to private schools, including the requirements for providing equitable services to private school students.

The following step will help achieve the goal:

Compose a Master List of all Federal programs that contain requirements regarding participation by private school students, including equitable services requirements, and provide appropriate training on these requirements to appropriate PRDE personnel.

Measurable Objectives for Sub-Task 1.8:

• By July 2005, PRDE has trained all relevant employees on the equitable services requirements in the Federal programs administered or monitored by those employees, and

• By July 2006, uniform processes regarding equitable services requirements will be fully implemented.

Sub-Task 1.9: Schoolwide Programs

Goal: PRDE complies with all Schoolwide program requirements

The following steps will help achieve the goal:

A. Create a work group to review the schoolwide program process and make recommendations for, and implement, improvements in the process.

B. Improvements will include identifying Master List of all schools eligible for schoolwide program status and ensuring that all schools deemed eligible and included in the Master List have the required elements in their schoolwide plan, and ensuring that fiscal and programmatic requirements of schoolwide schools are understood by relevant staff.

Measurable Objectives for Sub-Task 1.9:

• By July 2005, PRDE has trained all relevant employees on requirements pertaining to schoolwide programs, and

• By December 2006, uniform processes regarding schoolwide programs will be fully implemented.

Sub-Task 1.10: Implementation of Reorganization Plan

Goal: PRDE's OFA will implement new processes and a new organizational structure to ensure the efficient and effective administration of all the Federal funds it administers and to ensure the administration of those funds in compliance with all applicable Federal requirements.

Measurable Objectives for Sub-Task 1.10:

• By December 2004, a new human resource plan will be implemented, and

• By July 2006, most new processes contained in this grants management plan will be operational, leading to a substantial reduction in audit findings.

Sub-Task 1.11: Implementation of Puerto Rico's Integrated Financial Administration System (PRIFAS) Grants Management and Project Modules

Goal: PRDE's OFA will implement the PRIFAS grants management and project module to improve PRDE's control over the timely obligation of Federal funds and bring PRDE into compliance with Federal requirements applicable to the period of availability of funds, cash management, and proper liquidation of obligations.

Measurable Objective for Sub-Task 1.11:

By January 2005, the new PRIFAS grants management and project module will be operational.

Sub-Task 1.12: Puerto Rico as an SEA/LEA

Goal: PRDE will work with the Department to identify PRDE's needs for technical assistance on the issue of best practices in grants administration by a single SEA and LEA by February 15, 2005.

Task 2.0: Improving PRDE Grants Management—Community Schools Administration

Sub-Task 2.1: Improving Accounting Records at the Community Schools Administration:

Goal: Develop comprehensive plan to resolve accounting issues described in Single Audit findings.

The following steps will help achieve the goal:

A. Map out community school administration responsibilities, and

B. Streamline the application/approval/distribution process to schools.

Measurable Objective for Sub-Task 2.1:

By February 15, 2005, in accordance with the special conditions, PRDE will complete a comprehensive plan to strengthen the accounting records of the Community Schools Administration and submit it to the Department.

Sub-Task 2.2: Improving Cash Management at the Community Schools Administration

Goal: Develop a comprehensive plan to resolve cash management issues at the public school level identified and described in Single Audit findings.

Measurable Objective for Sub-Task 2.2:

By February 15, 2005, in accordance with the special conditions, PRDE will complete a comprehensive plan to strengthen cash management at the public school level and submit it to the Department.

Sub-Task 2.3: Implementation of PRIFAS Grants Management and Project Modules

Goal: PRDE's Community Schools Administration will implement the PRIFAS grants management module and project module to improve control over the timely obligation of funds, comply with period of availability requirements, cash management, and proper liquidation of obligations.

Measurable Objective for Sub-Task 2.3:

By July 2005, the new PRIFAS grants management and project modules will be in operation.

Task 3.0: Improving PRDE Grants Management—Vocational Education Program

Sub-Task 3.1: Improving the Application Process

Goal: Compliance with the Federal vocational education requirement for a State Board to serve as the eligible agency, and related conditions in PRDE's Perkins III grant.

The following steps will help achieve the goal:

A. Establish the new State Board for Vocational and Technical Education within PRDE (completed—EO 2004–29),

B. Nominate members of the new State Board (completed),

C. Create a draft of the new State Board Rule,

D. Create a chart of the new governance structure of the State Board,

E. Adopt the State Plan for Vocational Education submitted by PRDE, including the request to extend and revise the plan, the budget for year six, and the agreed-upon adjusted performance levels for year six,

F. Ratify past actions of the Puerto Rico Secretary of Education and the PRDE,

G. Adopt any necessary revision to ensure conformity with the State Plan,

H. Submit certifications required to be included in the State Plan,

I. Complete the document that delegates to PRDE the authority to receive, hold, and disburse funds awarded under the State Plan, and

J. Create a detailed map of the current application process both for PRDE applications to the Department and PRDE application requirements for Department funds within PRDE.

Measurable Objective for Sub-Task 3.1:

Short Term—30% of all internal applications work plans for Federal funds will be almost operational by the time Grant Award Notification is received in July 2005.

Task 4.0: Improving PRDE Grants Management—Adult Education Program

Sub-Task 4.1: Monitoring and Technical Assistance Process

Goal: Monitor and administer the Adult Education program effectively and in compliance with all applicable requirements.

The following steps will help achieve the goal:

A. Create detailed map of current monitoring process,

B. Identify criteria to be used in identifying monitoring needs,

C. Align programmatic monitoring activities with fiscal monitoring activities

D. Rank program projects by monitoring needs,

E. Develop a master monitoring schedule that coordinates the monitoring of adult education projects,

F. Train employees who will be conducting monitoring visits,

G. Improve communication between adult education and all programs,

H. Create a detailed map of the current technical assistance process,

I. Identify technical assistance resources for developing and completing applications available from the Department, and

J. Develop a master technical assistance plan for the Adult Education Program.

Task 5.0: PRDE Grants Management—Special Education Program

Sub-Task 5.1: Monitoring and Corrective Action Process

Goal: Ensure non-compliance identified through monitoring is corrected within one year of its identification.

The following steps will help achieve the goal:

A. Ensure personnel responsible for the implementation of IDEA requirements fully understand those requirements and, where non-compliance is identified, understand and implement the corrective actions needed to ensure correction of all non-compliance within a reasonable period of time not to exceed one year from identification,

B. Provide training and technical assistance in a comprehensive and systematic manner to staff in districts or sites where non-compliance is identified to ensure the correction of all non-compliance within a reasonable period of time not to exceed one year from identification,

C. Provide technical assistance on the development and implementation of corrective action plans to ensure that they are developed and implemented in a manner that addresses all areas of identified non-compliance,

D. Provide technical assistance and feedback to district and other personnel to ensure that the corrective action plans submitted to PRDE are designed to correct all areas of non-compliance within a reasonable amount of time, not to exceed one year from the identification of the non-compliance,

E. Request and review progress reports from regions, districts and other sites that are implementing corrective action plans,

F. Ensure follow-up activities in regions, districts and other sites that have corrective action plans to ensure that the identified non-compliance has been addressed and is not recurring,

G. All monitoring findings will be corrected within one year of identification,

H. List any sanctions imposed on a district or school for failure to come into compliance with the IDEA requirements as agreed upon in the corrective action plan, and

I. If PRDE, or any district or school failed to achieve compliance and no additional actions, including sanctions were identified, required, or imposed, PRDE must explain the basis for not taking additional actions.

Measurable Objective for Sub-Task 5.1:

• All monitoring findings are corrected under the new monitoring system within a reasonable period of time, not to exceed one year from identification of the monitoring finding,

• Correction of findings from 2002–2003 and 2003–2004 school years is reported to the Department's Office of Special Education (OSEP) no later than July 1, 2005. Thereafter, each quarterly report, as part of this Compliance Agreement, includes documentation of correction of monitoring findings within a reasonable period of time, not to exceed one year from identification,

• Develop and implement an effective set of procedures for sanctioning persistent long-standing non-compliance,

• Analyze existing procedures,

• Amend existing procedures, as necessary, and

• Apply new sanction procedures where required to ensure correction, by January 1, 2006.

Sub-Task 5.2: Ensuring Accurate Child Count Reports

Goal: Ensure Child Count Reports submitted to the Department are accurate.

The following steps will help achieve the goal:

A. Ensure that the staff responsible for the child count reports understand the requirements, processes and timelines to collect the information and report the data,

B. Provide training and technical assistance regarding the collection of the Child Count data,

C. Provide training and technical assistance regarding Child Count data entry,

D. Ensure that the Child Count data collected and reported is valid, accurate and timely,

E. Develop validation process though sample comparison and analysis at school, school district and regional level that ensures that all students receiving special education and related services are identified and included in the child count data reports,

F. PRDE will continue to run side-by-side comparisons of the paper and electronic process to determine and verify the accuracy of the data, and

G. By December 1, 2005, PRDE will ensure that the child count report reflects a complete and accurate count of all children served.

Measurable Objective for Sub-Task 5.2:

By 2005, PRDE will ensure that the Child Count report reflects an accurate count of all children served.

Sub-Task 5.3: Implementation of PRIFAS Grants Management and Project Modules

Goal: PRDE's Office of Special Education will implement the PRIFAS grants management and project module to improve control over the timely obligation of funds, and comply with requirements concerning period of availability, cash management, and proper liquidation of obligations.

The following steps will help achieve the goal:

A. Define new processes and procedures for use of PRIFAS module by program managers,

B. Train users on use of PRIFAS,

C. Train users on proper fiscal grants management issues (liquidations of obligations, timely obligation, etc.) to ensure effective use of PRIFAS, and

D. Implement use of PRIFAS grants management and project modules.

Measurable Objective for Sub-Task 5.3:

By January 2005, the new PRIFAS grants management and project modules will be operational as to PRDE's Office of Special Education.

Task 6.0: Improving Payroll System

Overall Task Description

It is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the next three years to develop adequate controls over a payroll system capable of ensuring that all employees on the payroll system are authorized and that all payroll charges made to a Federal account are allocable to that Federal account. The system developed under this Agreement must include a formal process for certifying all employees' work and must reflect actual time and effort by each employee whose salary is charged directly to a Federal account. The payroll system must be updated in a timely fashion so as to reflect any changes in funding source and must provide for the maintenance of appropriate accounting records that can be made available in the event of an audit. PRDE must be able to account for salary payments to employees who split their time between Federal and other programs, or among more than one Federal program. Any indirect payroll charges to Federal accounts must be allocable to that program and must otherwise be appropriate and consistent with Federal requirements. Additionally, the salaries of employees who work under more than one Federal program must be properly allocated among those programs, in accordance with accurate time distribution records and in compliance with Federal time distribution requirements.

The Department will assess progress in meeting the terms of this Agreement under the ''Payroll'' task by the systemic approaches and degree of integration that Puerto Rico and PRDE bring to designing and implementing solutions to longstanding problems in the payroll area.

Sub-Task 6.1: Improving Employee Hiring and Transfer Processes

Goal: To ensure that employees newly hired and employees transferred (*i.e.*, due to demotion, assignment changes, etc.) are properly captured in the PRIFAS system.

The following steps will help achieve the goal:

A. Electronic register for special recruitment—To accelerate document flow and to avoid loss of documents by eliminating or reducing physical document flow from users (regions and central office) to Payroll Office (changing from a paper to an electronic process will increase efficiency and eliminate loss or misplaced records), and

B. Letters and reports for transitory and probation position expiration—To improve reporting to employees the expiration of transitory and probation periods so as to avoid having to keep them as regular employees.

Measurable Objective for Sub-Task 6.1:

By January 2005, all human resources ''events,'' such as new employees hired, transferred, etc., will be accurately reflected in the STAFF system (the payroll system used by PRDE).

Sub-Task 6.2: Time Distribution

Goal: Ensure proper allocation of Federal funds by PRDE, based on employees' time and effort, consistent with applicable Federal requirements.

The following steps will help achieve the goal:

A. Data entry without GL–200—To allow Time Distribution office to enter effort reported through time sheets without having received the corresponding payroll data from Hacienda, so as to accelerate the entry of effort allocation data,

B. Data entry productivity report (by user)—To report on the amount of data entry performed by users so as to allow Time Distribution management to review the productivity of each employee regarding data entry tasks,

C. Time sheet/STAFF discrepancy report—To report on data changes made by Time Distribution office based on Time sheets, so that these corrections can be submitted to Human Resources

for entry into the Human Resources system,

D. Missing localization code report—To modify several reports to include the description of the location of the employees,

E. Effort allocation report—To provide an analysis report that shows the employee efforts that were applied to federally funded projects by those employees that were paid from state funds, and vice versa, and

F. Massive allocation of effort data (school-wide)—To facilitate the data entry of employee effort by allowing this effort to be entered at different levels, *i.e.*, for a specific employee, for all employees in a school, for all employees in a group of schools, etc.

Measurable Objective for Sub-Task 6.2:

By December 2005, PRDE will properly record time distribution on a quarterly basis for all employees that distribute their time among Federal programs or among State and Federal programs.

Sub-Task 6.3: Semimonthly Payroll Process

Goal: Ensure that PRDE pays employees from the appropriate Federal account(s) each time salary payments are made.

The following steps will help achieve the goal:

A. Electronic DE–15/409 (pipeline)—To accelerate document flow and to avoid loss of documents by eliminating or reducing physical document flow from users (regions and central office) to Payroll Office.

B. Position management—To allow users to make changes to positions with minimal human intervention and following a controlled process. For example, to activate, deactivate, and change locations for a given group of positions.

C. Additional pay management—To improve controls on additional pay by ensuring that additional pay to positions, instead of employees. When an employee record is entered, its corresponding additional pay (if any) will be taken from its position record. When an employee moves into a different position, its additional pay will not move with the employee. A history will be maintained of all changes to the differential amount associated with each position.

D. Automatic generation of retroactive payments (pipeline)—To reduce human intervention by automatically calculating the corresponding retroactive payment when an employee already hired is entered into Payroll. Usually the employee is entered into the Payroll system sometime after he/she has started to work, therefore a retroactive payment has to be made.

E. New module for massive payments/deductions—To facilitate generating payroll transactions by creating a module to allow users to manage all of the steps involved in handling special generic payroll transactions. An example of where this module might be used would be in the creation of fixed amount or fixed percentage salary increases for certain types of personnel.

F. Code table maintenance—To facilitate table maintenance in the Human Resources system through a more friendly interface.

G. Account number/position number validation—To make sure only federal account numbers are assigned to federally funded positions and local account numbers are assigned to locally funded positions.

H. History of account number changes—To keep track of changes made by Time Distribution Office to correct account numbers in Time Distribution data. A report will be produced to inform Positions Department of these changes, so that they can make them in STAFF.

I. Report on payroll payments with accounts that have expired, or are about to expire (0/30/60/90 aging report)—To provide the Positions Department with information on accounts already, or soon to be, expired, so that actions are taken about the employees being paid by these accounts.

J. Global payment financial impact report (all global payments [for example, vacation excess] with an effective date older than the last account number change are to be reported so as to allow the finance department to make any necessary adjustments)—To report on all global payments [for example, vacation excess] with an effective date older than the last account number changes, so as to allow the Finance Department to make any necessary adjustments.

K. Position authorization code control—To establish a standard set of rules so that when certain Human Resources actions occur (terminations, suspensions, reassignments to another position, etc.) the system can evaluate that position and determine its proper authorization code authorized for hiring, frozen, etc.

L. Automatic generation of transactions by STAFF (pipeline)—To avoid manual entry of Payroll transactions, by generating them automatically when the Human Resources transactions are entered.

M. Automatic generation of entries to payment card —To avoid manual entry of these transactions into the Payroll payment card, by generating them automatically when Payroll transactions are generated.

N. Automatic production of RHUM transaction files (partially belonging to pipeline)—To integrate all Payroll transactions into a single file and to produce it through a completely automated process.

O. Error correction—To provide users with a report on rejected transactions, together with the reason for the rejection, so that these transactions can be corrected. Most errors should be corrected in the same payroll run.

P. Transaction resubmission—To give users the opportunity to resubmit for processing in the same payroll the rejected transactions, after they have been corrected. Most corrections should be submitted by the same payroll run.

Q. Inclusion of rejections in item balancing and reconciliation—To provide users with control totals regarding the rejected transactions so that they can account for all transactions submitted to payroll. Transactions accepted plus transactions rejected must equal total transactions.

R. Consolidation of error files—To facilitate the correction of rejected transactions by consolidating all error messages in the same transaction file sent to Hacienda.

S. Readable error messages—To facilitate the correction of rejected transactions by rephrasing all error messages to make them more understandable to users.

T. RHUM/STAFF discrepancy reports (account numbers, gross salary, employee location)—To identify data discrepancies between Hacienda Payroll system and PRDE Human Resources system. For example, discrepancies in account number, employee location, employee salary, etc.

U. Discrepancy management module—To support users in the process of correcting discrepancies. For example, to keep track of all discrepancies pending correction, all discrepancies already corrected, etc. Discrepancies must be corrected on a periodic basis, as supported by the resources available.

V. Missing employee reports (STAFF not RHUM, RHUM not STAFF)—To identify employees in Hacienda's Payroll system that are not in PRDE's Human Resources system, and vice-versa.

W. Item reconciliation (Payroll/RHUM)—To make sure all transactions are properly accounted for by calculating and balancing control totals. For example, transactions sent to Hacienda must be equal to transactions

accepted plus transactions rejected. This balancing must be done for each payroll run.

X. Limit test for salary (by category)—To reduce data entry errors by establishing a limit test for salaries, both when entering salaries for positions and for employees.

Y. Limit test for global payments—To reduce data entry errors by establishing a limit test for global payments made to employees, and

Z. Pay period control.

Measurable Objective for Sub-Task 6.3:

By June 2005, to reduce the number of payroll errors, assure prompt correction of any payroll errors, and bring the payroll system into full compliance with Federal payroll accountability requirements.

Sub-Task 6.4: Interagency Process

Goal: Ensure productive coordination with other PR agencies, such as Hacienda, to ensure PRDE procurement process runs smoothly and according to established PRDE procedures that conform to applicable Federal procurement law and standards.

PRDE will prepare an Action Plan addressing this initiative and will submit it to the Department by February 15, 2005, in accordance with PRDE Special Conditions currently in effect.

Measurable Objective for Sub-Task 6.4:

PRDE will develop an Action Plan to address issues of improved interagency coordination in Puerto Rico, and will submit it to the Department by February 15, 2005, the due date established in the PRDE Special Conditions currently in effect.

Sub-Task 6.5: Draw Downs of Federal Funds

Goal: Ensure Federal funds are properly drawn down by PRDE from the appropriate Federal account and ensure that Federal funds are properly obligated and liquidated in accordance with Federal cash management regulations.

Measurable Objective for Sub-Task 6.5:

In accordance with PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this sub-task and submit it to the Department by February 15, 2005.

Task 7.0: Procurement and Equipment Inventory

Overall Task Description

It is critical to successfully meeting the terms of this Agreement that Puerto Rico and PRDE use the next three years to develop adequate controls over its procurement and equipment inventory systems. PRDE must finalize its revised contracting and procurement procedures ensuring compliance with all applicable Federal requirements. Once PRDE has developed contracting and procurement procedures that comply with all applicable Federal requirements, PRDE must adopt and begin implementing those procedures so that all contracts are awarded, and all equipment and supplies are procured, through PRDE's revised procedures, with the exception of those cases that meet specific limited exceptions. To fully comply with this Agreement, PRDE must also ensure that any non-competitive procurement transactions it undertakes comply with all applicable Federal requirements and cost principles, that any sole source contracts awarded by PRDE are only awarded in accordance with Federal requirements pertaining to sole source contracts, that procurement is undertaken and contracts awarded without conflict of interest, and that all required documentation as to every transaction and contract is properly maintained by PRDE.

Through this Compliance Agreement, Puerto Rico and PRDE's manner of managing equipment inventory will be such that items purchased with Federal program funds can be tracked, distributed in a timely manner, allocable to the Federal program to which they were charged, and used for the benefit of Puerto Rico's students. The equipment inventory system will comply with Federal regulations, to include tagging and tracking of inventory and prompt delivery of property purchased with Federal funds to the appropriate location, so that items may be used for the purposes of the program under which they were purchased. Puerto Rico and PRDE's inventory policy will include an established procedure for replacement or payback of any items in the inventory that cannot be located, consistent with Federal regulations. Ultimately, PRDE's inventory management system will reflect when items are ordered, when ordered items arrive, when items are logged into the system, and when they are delivered to the intended location. In addition, Puerto Rico and PRDE will ensure that inappropriate use of equipment (for example, vehicles or computers) is penalized and that the Department programs are reimbursed, when appropriate.

Sub-Task 7.1: Vendor and Selection Process

Goal: Ensure contracts supported with Federal funds are awarded competitively in a manner consistent with applicable Federal requirements and Puerto Rico law.

The following steps will help achieve the goal:

A. Contracts for Goods and Nonprofessional Services:

1. Complete revision of Puerto Rico and PRDE's procedures for procurement of goods and nonprofessional services, ensuring that such procedures are consistent with Federal law and procurement standards including 34 CFR 80.36, and with Puerto Rico law,

2. Provide the Department with an English version of PRDE's final procurement procedures (English translation of draft procedures has already been provided),

3. Complete training of appropriate staff on revised approved procedures, applicable Federal requirements, and internal controls,

4. Monitor procurement process, to ensure that all contracts are awarded in accordance with PRDE's approved revised procedures, and

5. Ensure staffing is at appropriate levels to manage the procurement process, in accordance with revised approved procedures.

B. Contracts for Professional Services:

1. Complete new guidance for the procurement of professional services with Federal program funds, based on models such as ''best practices'' from other States, the Federal Acquisition Regulations (FAR),

2. Ensure compliance with applicable Federal law, including the standards contained in 34 CFR 80.36, and Puerto Rico law,

3. Ensure that its procurement procedures conform to the new guidance, as required by Federal regulations and Puerto Rico law,

4. Complete training of appropriate staff on new guidance, Federal requirements and internal controls,

5. Monitor procurement process to ensure all Federally-funded contracts are awarded in a manner consistent with PRDE's new final procedures, and

6. Ensure staffing is at appropriate levels to manage the procurement process.

C. Implement plan for increasing the number of vendors available to do business with PRDE:

1. Develop a ''How To Do Business with PRDE'' section of the PRDE Web site. The instructions will be posted in English and Spanish and will explain how vendors can register with Puerto

Rico or PRDE, what documents they need to provide, and how the procurement process works, and

2. Complete revision of the existing PRDE vendor registry to determine areas where too few vendors are registered. Complete development of an outreach to vendors to encourage vendors in those areas to register.

Measurable Objectives for Sub-Task 7.1:

• By February 2005, PRDE will have final revised procurement procedures that are in compliance with applicable Federal law and standards, including those in 34 CFR 80.36, and with Puerto Rico law,

• By February 2005, PRDE will provide the Department with an official English translation of its final revised procurement procedures, and

• By February 2006, 100% of all contracts supported with Federal funds will be awarded in accordance with final revised procedures developed by PRDE to ensure compliance with Federal procurement law and standards.

Sub-Task 7.2: The Contracting Process

Goal: Ensure the process of selecting a vendor, entering into a contract and issuing a purchase order permits: (1) the timely obligation of Federal funds, (2) the timely delivery of goods and services purchased with Federal funds, and (3) the timely payment of a vendor with Federal funds.

The following steps will help achieve the goal:

A. Short-Term Improvements:

1. Streamline the current contracting process,

2. Ensure that staff has the necessary expertise to process requisitions, confirm budget resources, select a vendor and issue a purchase order, and

3. Develop a process to ensure retention and safeguarding of all documentation supporting each transaction with Federal funds in a specific location, and ensure that such documentation can be made available for review.

B. Long-Term Improvements:

1. Ensure that staff has the necessary capacity to process requisitions, confirm budget resources, select a vendor and issue a purchase order, and

2. Further streamline the contracting process.

Measurable Objectives for Sub-Task 7.2:

• Short-term—By July 2005, 50% of all contracts are processed through the streamlined process whereby goods and services are timely delivered once a need is identified, and

• Long-term—By January 2006, 100% of all contracts are processed through the streamlined process.

Sub-Task 7.3: Contract Execution and Management Process

Goal: To ensure the timely and appropriate delivery of goods and services.

The following steps will help achieve the goal:

A. Short-Term Improvements:

1. Streamline the current contracting process,

2. Ensure that staff has the necessary expertise to track payments, determine if goods and services have been delivered, and follow up with vendors, and

3. Develop a process to ensure retention and safeguarding of all documentation relating to each contract supported with Federal funds in a central location, and ensure that such documentation can be made available for review.

B. Mid-Term Improvements:

1. Ensure staff has all necessary capacity to track payments, determine if goods or services have been delivered and follow-up with vendors, and

2. Further streamline the contracting process.

C. Long-Term Improvements:

Implement technological improvements and capabilities to automate the contract management process (which relates to the inventory management initiative below).

Measurable Objectives for Sub-Task 7.3:

• For offices using PRIFAS:

Short-Term—Identify 50% of goods and services not delivered and take appropriate action within 10 days of the agreed-upon delivery date, and

Long-Term—Identify 100% of failed delivery and take appropriate action within 10 days of agreed-upon delivery date.

• For office not using PRIFAS:

Short-Term—Identify 30% of goods and services not delivered and take appropriate action within 10 days of the agreed-upon delivery date, and

Long-Term—Identify 100% of failed delivery and take appropriate action within a reasonable period of agreed-upon delivery date.

Sub-Task 7.4: Inventory Management

Goal: Ensure that all property acquired with Federal funds is tracked, accounted for, and maintained in accordance with Federal and Puerto Rico law.

The following steps will help achieve the goal:

A. Develop a system for tracking property that records the following with regard to the property purchased: a description; a serial or identification number; the source; the holder of title; the acquisition date; the cost; the percentage of Federal participation in the cost; the current location; the use and condition; and any information regarding its disposal, including the disposal date or date of sale,

B. Develop a plan for incorporating historical assets into the asset management system, and

C. Develop an interim plan for accounting for assets.

Measurable Objectives for Sub-Task 7.4:

• Short-Term—Record 60% of newly acquired property using manual logs and 40% with asset management system.

• Long-Term—Record 100% of newly acquired property using an asset management system.

Sub-Task 7.5: Payment Process—Verifying invoices by matching purchase orders, liquidating obligations, and recording payments

Goal: Ensure the process of paying a vendor permits: (1) the timely liquidation of obligations; and (2) the timely delivery of goods and services.

In accordance with PRDE Special Conditions currently in effect, PRDE may expand this initiative to address additional areas of concern and resubmit to the Department by February 15, 2005.

The following steps will help achieve the goal:

A. Short-Term Improvements to Payment Process:

1. Streamline the current process,

2. Ensure staff has the necessary expertise to process invoices and issue checks, and

3. Develop a process to retain and safeguard all necessary documentation in a specific location and make documentation accessible for review.

B. Mid-Term Improvements:

1. Ensure staff has necessary capacity to process invoices and issue checks, and

2. Further streamline the payment process.

C. Long-Term Improvements:

1. Implement technological improvements to automate the payment process, and

2. Redesign the payment process by creating a cohesive ''work unit'' to make more efficient use of PRDE resources.

D. Payment of currently due invoices:

1. Identify any invoices currently due, and

2. Complete processing of payments using pilot streamlined procedures.

Measurable Objectives for Sub-Task 7.5:

• Short-Term—By January 2005, 50% of all invoices are paid through the streamlined process, and

• Long-Term—By December 2006, 100% of all contracts are paid through the streamlined process.

Sub-Task 7.6: Interagency Process

Goal: Ensure productive coordination with other Puerto Rico agencies, such as Hacienda, to make certain procurement process runs appropriately and according to established PRDE procedures.

The following step will help achieve the goal:

In accordance with the PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this initiative and will submit that Action Plan to the Department by February 15, 2005.

Measurable Objective for Sub-Task 7.6:

Development and submission to the Department of comprehensive plan to address the interagency process by February 15, 2005.

Sub-Task 7.7: Proper Draw Downs of Federal Funds

Goal: Ensure that Federal funds are properly drawn down from the appropriate account to make certain that expenditures are properly obligated, liquidated, and charged in accordance with applicable Federal cash management statutes and regulations.

In accordance with the PRDE Special Conditions currently in effect, PRDE will prepare an Action Plan addressing this initiative and will submit that action plan to the Department by February 15, 2005.

Measurable Objectives for Sub-Task 7.7:

Development and submission to the Department of an Action Plan to address the interagency process by February 15, 2005.

The parties to this Compliance Agreement, the U.S. Department of Education, the Puerto Rico Department of Education, and the Commonwealth of Puerto Rico, agree to faithfully carry out the terms of this Agreement, as set forth above.

Effective Date and Modification of Agreement:

This Compliance Agreement will take effect upon execution by all the parties and may be modified or amended only by mutual written agreement of all the parties hereto.

For the Commonwealth of Puerto Rico:

Dated: October 25, 2004.

_____/s/_____

Sila María Calderón

Governor

For the Puerto Rico Department of Education:

Dated: October 25, 2004.

_____/s/_____

César Rey Hernández

Puerto Rico Secretary of Education

For the U.S. Department of Education:

Dated: October 25, 2004.

_____/s/_____

Rod Paige

U.S. Secretary of Education

[FR Doc. E7–20842 Filed 10–22–07; 8:45 am]

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Federal Register

Tuesday,
October 23, 2007

Part VI

Department of Education

Compliance Agreement; Notice

DEPARTMENT OF EDUCATION

Compliance Agreement

AGENCY: Department of Education.

ACTION: Notice of written findings, compliance agreement with the Virgin Islands, and subsequent actions.

SUMMARY: This notice is being published in the **Federal Register** consistent with sections 457(b)(2) and (d) of the General Education Provisions Act (GEPA). Section 457 of GEPA authorizes the U.S. Department of Education (the Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements and for whom the Department determines that full compliance is not feasible until a future date. Section 457(b)(2) requires the Department to publish written findings leading to a compliance agreement, with a copy of the compliance agreement, in the **Federal Register**. If a recipient fails to comply with the terms and conditions of a compliance agreement, the Secretary may take any action authorized by law with respect to the recipient.

On September 23, 2002, the Department entered into a compliance agreement (Agreement) with the U.S. Virgin Islands (VI) because the Department determined from all available information that the VI would not be able to come into full compliance with applicable Federal regulations for the administration of Department programs until a future date. Notwithstanding the Agreement, and intensive and frequent technical assistance by the Department, when the term of the Agreement ended on September 23, 2005, the VI was substantially in non-compliance with Federal requirements. Therefore, the Department has imposed special conditions and has taken a number of other important measures in its continuing effort to bring the VI into full compliance with all Federal requirements pertaining to the administration of Department programs. Most notably, the special conditions currently in effect require the VI to procure, and maintain, the services of a third-party fiduciary agent to perform the financial management duties required under Federal regulations for all Department grants, which the VI accomplished beginning in August 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Maestri, U.S. Department of Education, Office of the Secretary, 400 Maryland Avenue, SW., room 7E206, Washington, DC 20202–6132. Telephone: (202) 205–3511.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The VI is an insular area that is authorized under 48 U.S.C. 1469a to consolidate formula grant funds allocated to it under various Federal education programs and use those funds for the purposes of one or more programs included in the consolidated grant. See also 34 CFR 76.125–76.137. Under that authority, the Virgin Islands Department of Education (VIDE) has historically consolidated formula grant funds allocated to it under the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Carl D. Perkins Career and Technical Education Act of 2006 (CTE) (formerly the Carl D. Perkins Vocational and Technical Education Act), and the Adult Education and Family Literacy Act (Adult Education) and used those funds to implement three programs: Title V, Part A (formerly Title VI) of the ESEA, CTE, and Adult Education. The VIDE also receives additional funding under the authority of a number of other Department programs. Additionally, VIDE and the Virgin Islands Department of Health (VIDH) carry out programs under Parts B and C of the Individuals with Disabilities Education Act (IDEA); IDEA funds are not subject to the consolidation authority under 48 U.S.C. 1469a and 34 CFR 76.125–76.137. VIDH's IDEA Part C grant funds for fiscal years 2002 through 2007 are subject to special conditions to ensure fiscal accountability. Finally, the Virgin Islands Department of Human Services (VIDHS) also receives Department funds.

Because of longstanding and recurring findings of fiscal and programmatic accountability deficiencies in the administration of Department programs by the VI and several of its departments (as discussed in detail in the following paragraphs), the Department has imposed special conditions, on a Department-wide basis, on all Department grants awarded to the VI. These Department-wide special conditions are different from the fiscal special conditions imposed separately on the IDEA Part C grant and from the programmatic special conditions imposed separately by various Department program offices upon individual grant awards. The need for these Department-wide special conditions stems from the VI's failure to meet the terms of the Agreement, which was executed on September 23, 2002, and expired on September 23, 2005, with the VI still in substantial non-compliance.

The Department entered into the Agreement in 2002 because it had found serious and recurring fiscal and programmatic accountability deficiencies in the administration of Department programs by the VI, VIDE, and other agencies of the government of the VI dating back several years. Specifically, the Department had found deficiencies in key aspects of the VI's procurement process; program planning and implementation; and financial and property management, including, but not limited to, the VI's lack of appropriate record keeping to account for the use of Federal funds and its failure to obligate and draw down funds and liquidate obligations on a timely basis. The VI also had failed to submit timely and sufficient audits. As a result of these major problems, in September 1999, the Department designated the VI as a ''high-risk grantee'' under 34 CFR 80.12(a) and, consistent with that designation, imposed special conditions on a number of grant awards to the VI and its agencies. But, even after the imposition of these special conditions, the VI continued to have significant problems in administering Department grant programs, resulting in continued noncompliance with various programmatic and fiscal requirements applicable to those programs.

In May 2001, officials from the Department met with VI officials to discuss the continuing deficiencies in the administration and implementation by the VI of the Department's programs. The parties reached an agreement on the wide-scale and significant corrective actions that the VI would have to make in order for the Department to continue to provide funds to VI agencies. It was at this time that the Department suggested that the VI and the Department enter into a compliance agreement, pursuant to section 454 of GEPA, to apply to all Department grants awarded to the VI. The purpose of the compliance agreement would be to bring the VI ''into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' [1] 20 U.S.C. 1234f(a). In

[1] Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it

order to enter into a compliance agreement with the VI, the Department had to determine, in written findings, that the VI would not be able to comply until a future date with the applicable program requirements and that a compliance agreement would be a viable means for bringing about such compliance.

In accordance with the requirements of section 457(b) of GEPA, 20 U.S.C 1234f(b), Department officials conducted public hearings in the VI in February 2002. Witnesses representing VIDE, students and parents, and other concerned organizations and individuals testified at these hearings on the question of whether the Department should grant VIDE's request to enter into a compliance agreement. The Department reviewed this testimony and all other relevant materials and concluded that, while the Department had been working closely with VIDE and with other VI agencies to address the major issues that the VI had been facing in administering Department grant programs, it was clear that the problems could not be corrected by the VI immediately and that the VI would need more than one year to correct them. Therefore, in order to remedy that condition, the Department and the VI entered into the Agreement, a comprehensive compliance agreement with a three-year term. The purpose of the Agreement, which incorporated the Department's written findings, was to allow the VI to develop integrated and systemic solutions to problems in managing its Department funds and programs. Under the terms of the Agreement, by the end of the three-year term, the VI was supposed to be in full compliance with the requirements of all programs funded by the Department. The Agreement became effective on September 23, 2002.

In November 2003, officials from the Department conducted a site visit to provide intensive technical assistance and review the VI's progress during the first year of the Agreement. While VIDE had made significant progress in some issue areas identified in the Agreement, the VI had not made progress in many key areas, particularly that of financial management, which significantly affected its ability to manage Department funds and administer Department programs. The Department continued to monitor the VI's compliance with the terms of the Agreement and provided frequent, intensive technical assistance to the VI during the course of its three-year term. In March 2005, the Department notified the VI of its concerns regarding the VI's limited progress in meeting the goals of the Agreement. The Department required the VI to demonstrate why the Department should not begin to take immediate remedial action under the terms of the Agreement. After considering the VI's response, the Department concluded that the VI had failed to meet on a timely basis key terms and conditions of the Agreement that are critical to successful compliance with applicable requirements and that the VI would not be able to meet all of the terms and conditions of the Agreement by its expiration on September 23, 2005. In particular, the Department noted that there was a significant lack of progress on the part of the VI in developing and implementing a credible central financial management system—the cornerstone of the VI's financial management improvements that are critical to its ability to manage Department funds consistent with applicable Federal regulations concerning fiscal accountability and funds management.

Therefore, in accordance with section II.A. of the Agreement, and section 457(d) of GEPA, the Department imposed special conditions on grant awards to the VI, including a requirement that the VI procure, and maintain, the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under Federal regulations for all Department grant awards made to the VI. The VI subsequently published a Request for Proposal and selected a third-party fiduciary agent acceptable to the Department. The Department is currently monitoring the work of this third-party fiduciary agent and the VI's compliance with these special conditions and continues to provide technical assistance and oversight in a continuing effort to bring the VI into full compliance with applicable Federal regulations.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the Agreement (which incorporates the Department's written findings in the section entitled ''Overview of Issues'', and in each ''Issue Description'' section of the Agreement) is included as appendix A of this notice.

determines that a recipient ''is failing to comply substantially with any requirement of law applicable'' to the Federal program funds administered by this agency. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Obtain compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law.

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Authority: 20 U.S.C. 1234c, 1234f.

Dated: October 18, 2007.

Hudson La Force III,

Senior Counselor to the Secretary of Education.

Appendix A—Compliance Agreement Between The U.S. Virgin Islands and the U.S. Department of Education

September 23, 2002.

U.S. Virgin Islands Compliance Agreement

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I. Overview of Issues

As a result of serious and recurring deficiencies in the administration of various Federally funded programs by the government of the U.S. Virgin Islands (VI), the U.S. Department of Education (the Department) has designated VI a ''high-risk grantee'' under 34 CFR § 80.12. The Department has been working closely with the Virgin Islands Department of Education (VIDE) and with other Virgin Islands agencies in recent months to address these major issues, but it is clear that the problems cannot be corrected by the Virgin Islands immediately, and that the Virgin Islands will need more than one year to correct them. Therefore, in order to remedy this condition, the Department has consented to enter into this comprehensive, three-year compliance agreement with VI.

Through this Compliance Agreement, the VI, with assistance from the Department, agrees to develop integrated and systemic solutions to problems in managing Federal education funds and programs. The issues are being carefully examined and addressed from the perspective of every VI agency and local entity with management responsibility for resources or programs that have an impact on education. Solutions may involve re-engineering systems and processes or implementing technology. In addition, solutions must address communication and cooperation among VI Departments, and developing a culture of ''getting the work done right.'' Whatever the solutions the VI chooses to implement, they must ensure the best educational systems possible for the people of the Virgin Islands. It is also understood that by the end of the term of this Agreement, VI must be in full compliance with the requirements of all programs funded by the Department.

The Compliance Agreement is also intended to ensure an effective planning and evaluation process throughout VI programs and initiatives. Planning and evaluation processes are the basis for determining program goals, current status, improvement needs, budgets, resources, effectiveness of results, and other important aspects of effective program management. Through this Agreement, the VI will improve its program planning and evaluation for education programs and use the plans and evaluation results to drive management and resource decisions.

This Compliance Agreement addresses four areas of crosscutting issues: (1) Program Planning, Design and Evaluation, (2) Financial Management, (3) Human Capital, and (4) Property Management and Procurement. The issues are presented as crosscutting because of the impact of other VI agencies on VIDE. Thus, it is critical that these issues be addressed not just in VIDE but across virtually the entire Virgin Islands government. In addition, the issues cannot be addressed in a piecemeal fashion and they must encompass an effective planning and evaluation process.

The Compliance Agreement lists specific action items for each crosscutting issue. However, the Department will not determine the VI's progress in meeting the terms of the Agreement only by assessing completion of listed action steps. Rather, the Department will judge progress by the systemic approaches and degree of integration that the VI brings in designing and implementing solutions to complex problems in each of the crosscutting areas, and by the demonstrated communication, cooperation, and organizational culture change toward ''getting the work done right.'' These approaches should include effective planning and evaluation of resource and management decisions that are designed to produce better educational results.

In making the critical systemic and organizational culture changes required to meet the terms of the Compliance Agreement, it is important to understand that the Agreement is not designed to benefit the Department, VIDE, or the Virgin Islands government. All of the requirements of the Compliance Agreement are directed toward one end: improving education for the students of the Virgin Islands. In the end, the Department and the VI will judge success by determining how well the VI has improved educational programs and met the terms of the Compliance Agreement.

II. Consequences for Not Meeting the Terms and Conditions of the Agreement

A. Mutual Agreements and Understandings Regarding the Terms, Conditions and Enforcement of This Compliance Agreement

Severability

The parties agree that this Compliance Agreement includes terms and conditions that apply to the various Federal programs included in the Agreement (hereafter ''covered Federal programs'') and also terms and conditions that are program specific. To that end, the parties agree that each such term and condition for each covered Federal program may constitute a separate agreement between the Virgin Islands and the Department. For purposes of 20 U.S.C. § 1234f, each such term or condition as to each covered Federal program shall be severable from each other term or condition for each of the covered Federal programs. Unless set out otherwise, a determination by the Department under 20 U.S.C. § 1234f(d) that the Virgin Islands is not meeting the terms and conditions may be specific to such term, condition or program without impacting the continuing obligations under the Agreement. That is, all other terms and conditions for all covered Federal programs or the specific term or condition for other covered Federal programs would remain in place for the duration of the Agreement or until such time as the Department determines failure by the Virgin Islands to meet those terms and conditions.

Alternatively, the parties understand and agree that a determination by the Department under 20 U.S.C. § 1234f(d) that the Virgin Islands has failed to meet any of the terms and conditions shall, at

the Department's discretion, be grounds for finding the Agreement, as to such terms and conditions, no longer in effect and that the Department may take any and all additional actions authorized by law. Some examples of such actions are set out below.

Additional Terms and Conditions Under 34 CFR § 80.12

Under this provision, the Department may apply additional conditions to one or more of the Virgin Islands' grants, having determined that the Virgin Islands is a ''high risk'' grantee (because it has a history of unsatisfactory performance and has not conformed to terms and conditions of previous awards).

Special conditions or restrictions may include, but are not limited to: (1) Payment on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) additional project monitoring; (5) requiring the Territory to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of the Virgin Islands' grants from the Department; or (6) establishing additional prior approvals. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

Under such circumstances the Department would notify the Virgin Islands as early as possible, in writing, of the: (1) Nature of special conditions/restrictions; (2) reason(s) for imposing them; (3) corrective actions which must be taken before they will be removed and time allowed for completing corrective actions; and (4) method of requesting reconsideration of conditions/restrictions imposed.

Judicial Enforcement

1. Cease and Desist Order Under 20 U.S.C. §§ 1234c(a)(2) and 1234e

The Department may seek injunctive relief to compel specific actions or to stop specific actions. Under this process, the Department issues a complaint to the Virgin Islands, describing the factual and legal basis for the Department's belief that the Virgin Islands is failing to comply substantially with a requirement of law including this agreement, and containing a notice of hearing. A hearing before an Administrative Law Judge (ALJ) must occur. The ALJ's report and order, requiring the Virgin Islands to stop specific actions or compelling specific actions, becomes the final agency decision. The Department may enforce the final order by withholding any portion of the Virgin Islands' grant award or certifying the facts to the Attorney General who may bring an appropriate action for enforcement of the order.

2. Referral to Department of Justice for Appropriate Enforcement—20 U.S.C. § 1416

If the Department finds, after reasonable notice and opportunity for hearing to the Virgin Islands, that: (1) There has been a failure by the Virgin Islands to comply substantially with any provision of applicable Federal laws; or (2) there is a failure to comply with any condition of a Local Educational Agency's or the Virgin Islands' eligibility (including terms of Compliance Agreement within timelines specified in Agreement), the Department may, after notifying the Virgin Islands, refer the matter for an appropriate enforcement action, which may include referral to the Department of Justice.

Withholding of Grant Funds—20 U.S.C. §§ 1234c(a)(1), 1234d and § 1416

If the Department finds, after reasonable notice and opportunity for hearing to the recipient, that there has been a failure to comply substantially with a requirement of law, including with this Agreement, the Department may withhold, in whole or in part, future payments to the recipient.

If the Department finds, after reasonable notice and opportunity for hearing to the Virgin Islands, that: (1) there has been a failure by the Virgin Islands to comply substantially with any provision of applicable Federal laws; or (2) there is a failure to comply with any condition of a Local Educational Agency's or the Virgin Islands' eligibility (including terms of Compliance Agreement within timelines specified in Agreement), the Department may, after notifying the Virgin Islands, withhold, in whole or in part, any further payments to the Territory. Department may limit withholding to a particular Local Educational Agency or State agency.

Escrow Account To Fund Third Party

If the Virgin Islands fails to meet a term deemed significant by the Department in the Compliance Agreement, the Department may place an appropriate amount of the Virgin Islands grants into an interest bearing escrow account to fund the duties of a third party fiduciary agent. VI may request a reconsideration of this action.

Recovery of Funds—20 U.S.C. § 1234a

Any funds improperly expended or not properly accounted for are subject to recovery by the Department according to 20 U.S.C. § 1234a.

B. Criteria for Determining Consequences

The Virgin Islands will provide the Department with quarterly progress reports for all of the action steps and performance measures set forth in the Agreement. The Virgin Islands and the Department agree that failure to (1) provide all required reports in a timely manner, (2) show substantial progress in completing all action steps as required, (3) complete critical action steps within the timeframe designated in the Agreement, or (4) achieve critical performance measures as specified in the Agreement, will be considered a failure to meet the terms and conditions of the Agreement.

III. Reporting Requirements

This Compliance Agreement requires regular progress reporting for all issues. VI must provide the Department (1) a description of activities and progress for the issue and its related sub-issues during the reporting period, (2) the status of each action step required to be taken during the reporting period, (3) documentation of action step completion for those steps required to be completed during the reporting period (including explanation of delays for all steps not completed that were scheduled to be completed, and expected completion dates for all unimplemented steps), (4) documentation of measures of performance and results, and (5) other data or documentation as specified within the action steps for each issue or related sub-issue in this Agreement. This information should be transmitted to the Department by updating (at least quarterly) an internet web site developed and maintained by the Virgin Islands Government. The Virgin Islands Office of Management and Budget (VIOMB) will be responsible for tracking, monitoring and reporting progress on all requirements and milestones in this Agreement in a manner that is fully accessible to the Department and the public. Information in the progress tracking web site should be updated continuously, but in any event, no later than 30 days from the last day of each quarter. The first quarterly period will encompass the time from which all parties sign this Agreement through December 31, 2002.

The VI and the Department agree that the following performance measures

apply for each issue and sub-issue, in addition to other performance measures specified throughout this Agreement.

1. All plans, other documents, and reports are timely, complete, accurate, and address the requirements set forth in this Agreement.

2. All action steps are implemented within the timeframes set forth in this Agreement.

3. Implementation of action steps demonstrates progress towards achieving the outcomes or performance measures set forth in this Agreement.

IV. Updated Plans, Action Steps, and Timelines From December 2001 Meeting

Action steps and timelines that the VI developed in December 2001 are included in the issue descriptions throughout this document. The VI will need to assess the action steps and timelines developed in December and determine if (1) the action steps fully meet the requirements of this Agreement, (2) the action steps will move the VI toward achieving the required performance measures, and (3) the timelines need to be modified within the time boundaries set forth in this Agreement. Updating the December action steps and timelines into plans for which the VI will be accountable is a critical action step for each issue and sub-issue. Once the VI develops a plan for each issue or sub-issue, as specified in this Agreement, and the Department agrees to the plan, the action steps and timelines in the plan will become additional requirements of this Agreement and be subject to the reporting requirements and consequences for not meeting terms and conditions as set forth in this Agreement. The Department will assist by consulting with VI to develop reports or reporting formats that shall satisfy the reporting requirements as set forth in this Agreement. The Department will also assist, to the extent that resources are available, the VI with the orientation and training of personnel.

The remainder of this document provides issue descriptions, action steps, and performance measures for (1) Program Planning, Design and Evaluation, (2) Financial Management, (3) Human Capital, and (4) Property Management and Procurement.

V. Issues

Issue 1.0: Program Planning, Design, and Evaluation

Issue Description

Because the stated purpose of this Agreement is to improve education for the students of the VI, it is critical to successfully meeting the terms of this Agreement that the VI use the first year of the next three year period to develop long-term goals, assess the current status of each program receiving Federal assistance, and design coherent programs to bridge the gap between the current status of education in the VI and its educational goals and applicable requirements.

An issue of significant importance to program planning, design, and evaluation is the legal and administrative impact of the organizational structure and legal classification of the various educational agencies in the Virgin Islands. This Compliance Agreement has been drafted in reliance upon the mutual understanding that the Virgin Islands has established and maintains a State educational agency (SEA) and two local educational agencies (LEA), as defined under Federal law. Thus, for purposes of administering its Federal grants, VIDE, as the SEA, must make steady progress towards meeting all Federal requirements that are related to that designation, including where specified, providing LEAs, the St. Thomas/St. John school district and St. Croix school district, the appropriate levels of Federal funding and autonomy required under each Federal program's requirements. Therefore, by entering into this Agreement, the VI acknowledges the Department's reliance upon this designation, agrees to comply with the specific Federal requirements that apply through this designation and agrees not to change this designation during the period of this Agreement without the prior approval of the Department.

Effective planning and design includes the following elements: (1) program goals stated in measurable terms (outcome measures), (2) baseline assessments of current status (baseline measures), (3) comparison of current status to program goals (baseline measures to outcome measures), (4) a report of areas where current programs do not meet goals, (5) a plan to improve current programs to meet goals, (6) a schedule for implementing the plan, (7) measures to determine if the plan implementation is having the intended effect, and (8) options for further modification if implementing the plan is not having the intended effect. Any planning and design process will take into account Federal and State requirements for each program, as well as other applicable professional standards. In addition, the planning process should include citizen and/or customer input and feedback; input is a vital part of the process to set goals, and feedback is equally significant in assessing results. A critically important aspect of the planning and design process is that it is fully integrated as the foundation for other program-related decisions about budgets, financial management, personnel requirements, and other resource needs.

In order to fully implement this process, a comprehensive, school-based, statewide plan will be developed. The Department will provide model comprehensive plans, if appropriate, and referrals to successful jurisdictions for guidance. VI will seek the assistance of expert consultants and other grantees to provide hands-on guidance in completing the comprehensive planning process. Reasonable and necessary expenses for this assistance will be considered allowable costs chargeable to a Department grant to be awarded by September 30, 2002, provided an approvable application is received in a timely manner. The expected outcomes identified in this plan, among other federally and locally identified outcomes, will include:

- Schools gain greater site-based authority to determine needs and apply funding to those needs.
- School site-based management will be enhanced through greater school community involvement and increased awareness of accountability.
- Programs can be implemented that best fit the needs of the individual school population rather than one district approach for all.
- Activities conducted under this plan bring VI into compliance with statutory and regulatory requirements for Department programs.

In general, the comprehensive statewide plan should be based on information derived from individual school plans. These school plans should include, at a minimum, the components listed below.

- A comprehensive needs assessment of the entire school, based on information about student academic achievement.
- Strategies that provide opportunities for all children to meet proficient and advanced levels of academic achievement, use effective methods of instruction that are based on scientific research and address the needs of all children in the school.
- Instruction by highly qualified teachers as defined by the Elementary and Secondary Education Act.
- High quality and ongoing professional development for teachers, principals, and other staff.
- Strategies to attract high-quality teachers in all schools, but with special emphasis on high-need schools.

• Strategies to increase parental involvement.
• Plans for assisting preschool children in the transition from early childhood programs to local elementary school programs.
• Measures to include teachers in decisions about academic assessment.
• Assistance for children who experience difficulty mastering the proficient or advanced levels of academic achievement standards.
• Coordination and integration of Federal, State and local services and programs.
• Annual report cards for the performance of each school as defined by the Elementary and Secondary Education Act.
• All expenditures are allowable under the requirements of each grant and applicable program.

This comprehensive plan for reforming the total instructional program in the school should be developed during the first year period, with the involvement of staff, parents, administrators, and others. The plan must:
• Describe how the school will implement the components summarized above.
• Describe how the school will use resources to implement the components.
• Include a description of Federal, SEA, and LEA programs that will be available in the individual school.
• Describe how the school will provide parents with individual student academic assessment results and other information about the individual schools, including interpretation of the results, in understandable language.

Identification of Long-Term Goals

For each Federal program it is important to identify the desired or required outcomes, so VI can measure improvement for that program by how close it is to achieving these goals as well as maintaining improvement on a continuous basis. Examples of this are:
• For the Title V, Part A program, the law requires states to aim for increased student academic achievement or improved quality of education for all students.
• For the Vocational Education and Adult Education programs, the desired outcomes are defined by the program statutes in terms of the core indicators of performance or additional VI-identified indicators that measure student performance.

Assessment of Current Status of Programs in Terms of Goals

This sub-issue involves an assessment at the VI-wide and school level of each Federal program in terms of the goals identified. It also requires VI to identify a measurement approach (a method for measuring) for each goal or core indicator. Once the measurement approach is identified, VI must establish a baseline that reflects the current status for each goal or indicator. Examples of this include:
• For the Title V, Part A program, VI must identify the current academic levels for the students benefiting from the program, which is the baseline, and establish incremental targets for improvement to reach the goals identified in sub-issue 1.2.
• For the Vocational Education and Adult Education programs, the VI must establish a baseline and levels of performance (incremental targets) for each required core indicator and any VI-identified indicators for each of the subsequent years of this Agreement.

Identification of Educational Program Needs to Meet Goals

Once the VI has identified its baselines in comparison to its goals, it must identify the needs that have to be met to bridge the gap between the baseline (current status) and the goals. The needs must be consistent with the purposes and allowable activities under each program. In developing program activities, VIDE will have as a goal that by the end of the three year period of this agreement, 95% of the Federal education funds will be spent on instructional activities and directly related expenditures.

Development of Program Design and State Plans or Applications That Address Identified Needs

The VI must develop, prepare, and submit to the Department a State application in conformance with the requirements of each program for which funds are being expended and any other requirements set forth in this Agreement. These applications should be based on information gathered from the school-based comprehensive plans developed under this section.

Sub-Issue 1.1: Separation of State and Local Educational Agencies

Sub-Issue Description

In a letter dated August 1, 2001, at the request of the Department and VIDE, the Attorney General of the Virgin Islands provided the legal opinion that under local law, the structure and functions of the various educational agencies in the Virgin Islands were divided into, VIDE, as the SEA, and the St. Thomas/St. John school district and the St. Croix school district, as the two LEAs. This has significant implications for the administration of Federal education programs. For example, under Part B of the Individuals with Disabilities Education Act, the SEA must ensure that eligible LEAs receive subgrants under the formula specified at 34 CFR § 300.712. Additionally, under Title V of ESEA, an LEA is to have complete discretion in deciding how to allocate funds among the allowable Title V program areas, and must ensure that its Title V expenditures carry out the purposes of the program and are used to meet the educational needs in schools within the LEA. The specific terms of this Compliance Agreement contemplate the administrative structure of one SEA and two LEAs.

Performance Measures for Issue 1.0 and 1.1

1. By the end of the three-year period of the Compliance Agreement, VI will be in full compliance with the program requirements of all Department grants for which VI expends funds and any other requirements set forth in this Agreement.

2. VI's implementation of the action steps described below brings it into full compliance with the standards and assessment requirements of Title I, ESEA that all States were required to meet by the end of the 2000–2001 school year, no later than the end of the three-year period of the Compliance Agreement.

3. By the end of the three-year period of the Compliance Agreement, VI must have developed a detailed plan for how it will comply with the requirements of the Elementary and Secondary Education Act, including Title I, Part A of the ESEA as reauthorized by the No Child Left Behind Act. We expect that at the end of the three-year period, VIDE will apply for most or all of the individual programs authorized under the Elementary and Secondary Education Act, the Adult Education and Family Literacy Act rather than consolidating them.

4. By the end of the three-year period of the Compliance Agreement, VI's implementation of the action steps described below must bring its programs into full compliance, with respect to Federal law and with the obligations and responsibilities of a single SEA and two LEAs.

Action Steps Required

Year 1	Year 2	Year 3
1. The VI must submit to the Department within 120 days from the date of the compliance agreement, an approvable action plan that can demonstrate steady progress toward developing a comprehensive statewide plan and fiscal year 2003 consolidated grant application described in items two and three below.	1. In the second year of the Compliance Agreement, the VI will implement the comprehensive, statewide plan and demonstrate that it is achieving the program goals that are required.	1. In the third year of the Compliance Agreement, the VI will implement the comprehensive, statewide plan and demonstrate that it is achieving the program goals that are required.
2. Within the first year of the Compliance Agreement the VI must develop a comprehensive, school-based, statewide action plan for complying with the requirements of various programs funded by the Department including, but not limited to: Title I, Part A of ESEA standards and assessment requirements, Vocational Education State Plan, Occupational and Employment continuation grant, Adult Education, and Title V-A. The plan must include, at a minimum, the following elements: (1) Goals stated in measurable terms (outcome measures) based on program requirements; (2) baseline assessments of the VI's current status (baseline measures); (3) comparison of the VI's current status to the goals including an appropriate needs assessment; (4) a report of areas where current programs do not meet goals; (5) action steps to improve current programs to meet goals; (6) a schedule with clear, reasonable completion dates for implementing the action steps; (7) measures to determine if the plan implementation is having the intended effect; (8) options for further modification if implementing the plan is not having the intended effect; (9) demonstration of citizen and customer input and feedback; and (10) demonstration of its foundation for decisions about budgets, personnel requirements, and other resource needs. Other requirements of the plan are included in section 1.0 above and applicable laws and regulations.	2. In the second year of the Compliance Agreement, the VI will demonstrate steady progress towards meeting all Federal requirements related to the designation of a single SEA and two LEAs and is ready to meet all requirements.	2. In the third year of the Compliance Agreement, the VI will meet all Federal requirements related to the designation of a single SEA and two LEAs and is ready to meet all requirements.
3. Within the first year of the Compliance Agreement the VI must include in the development of a comprehensive, school-based, statewide action plan such action steps that will show steady progress in meeting the requirements of Department grants with respect to separate SEA/LEA issues described in sub-issue 1.1 above.	3. The VI will prepare and make public annual report cards for the performance of each school as defined by the No Child Left Behind Act.	3. By the end of the three-year period of the Compliance Agreement, VI will have submitted a detailed plan for how it will comply with the requirements of the No Child Left Behind Act, including Title I, Part A of the ESEA as reauthorized by the No Child Left Behind Act.
4. Prepare and submit semi-annual expenditure report that includes certification that all expenditures are for allowable purposes (the reports will include the detail required in the FY 2000 special conditions).	4. The VI will prepare and submit semi-annual expenditure report that includes certification that all expenditures are for allowable purposes (the reports will include the detail required in the FY 2000 special conditions).	4. The VI will prepare and make public annual report cards for the performance of each school as defined by the No Child Left Behind Act. 5. The VI will prepare and submit semi-annual expenditure report that includes certification that all expenditures are for allowable purposes (the reports will include the detail required in the FY 2000 special conditions).

Issue 2.0: Financial Management

Issue Description

It is critical to successfully meeting the terms of this Agreement that the VI use the next three years to develop a credible central financial management system (FMS). In brief, such a system would provide the correct amount of funds, in the correct accounts, in a timely manner, all the time. Credible financial management includes systems, policies, and procedures that (1) provide access to accurate information when needed, (2) account appropriately for funds, (3) ensure timely deposits or draw down of funds, (4) ensure timely and accurate payments, and (5) otherwise enable and support generally accepted government financial management and accounting standards and requirements. In addition, VIDE, VIDF and other VI Departments must demonstrate improved communication and cooperation to develop an FMS that meets needs across the VI.

Through the terms of this Agreement, financial management systems will be integrated with one another (i.e., across departments) and with other management systems (including budget, human resource management, property and procurement, and planning and

evaluation). One example of the integration required includes connecting financial management policies and systems with time and attendance systems to ensure appropriate payment and accounting for staff time. It is especially important for the purposes of this Agreement that the VI financial management system is effectively integrated with all management systems and procedures in VIDE.

All of the action steps to address the financial management issue are important, but it is a critical factor for success that the VI improve its cash management function immediately. The cash management function must be able to provide timely and accurate information about each draw down of funds from the Department. Inability to track drawn down funds will be considered a failure to meet the terms and conditions of this Agreement.

In addition to the overall requirement to develop a credible central FMS, this Compliance Agreement also addresses issues related to (1) indirect costs, and (2) obligation of funds and disbursement of obligations. Both issues are closely tied to a credible FMS and the Department will assess progress in meeting the terms of this Agreement by the systemic approaches and degree of integration that the VI brings in designing and implementing solutions to all of its longstanding problems in the financial management area.

Sub-Issue 2.1: Credible Financial Management System

Issue Description

This sub-issue involves many areas that must be systemically addressed. In December 2001, VI staff identified a series of action items related to addressing the FMS issues, including information flow, adjustments, system improvements, training, payroll, reporting systems, draw downs, and other areas. Department staff have further supplemented VI's list. One example of the FMS issue was illustrated in the 2000 single audit findings: the auditors are still using different Department (e.g., VIDE) accounting records to compare with Department of Finance records. Invariably, the cash accounts show shortages in terms of amounts drawn from Federal agencies as compared to VI Departments' records.

To satisfy the requirements of this Agreement, the VI will develop a credible central FMS in which records account for all draws and expenditures of Federal education funds. VI agencies and single auditors will be able to rely on the central FMS as an accurate system of record. In the short term, any differences between the Department of Finance and VIDE will be reconciled concurrently, but at the end of three years, VI agencies should no longer need separate accounting systems.

Performance Measures for Issue 2.0 and 2.1

1. Within one month of the inception of this Agreement, appropriate VIDE, VIDH, VIOMB and VIDF staff members will be provided with access to the Department's GAPS system to monitor draw downs.

2. By December 31, 2002, the VIDF will complete a vision document for the implementation of a credible central FMS.

3. By March 31, 2003, the VIDF will complete a plan for developing and implementing a credible central FMS.

4. From the inception of this Compliance Agreement, all transactions for draws and disbursements, as well as any required adjustments for Federal education programs' funds will be timely and accurately recorded in the VIDF accounting system as they occur according to generally accepted accounting standards. Inability to track drawn down funds will be considered a failure to meet the terms and conditions of this Agreement.

5. By the conclusion of the third year of the Compliance Agreement, VI will conduct monthly reconciliation of draws and expenditures, resolve any differences, and record appropriate adjustments.

6. By the conclusion of the second year of the Compliance Agreement, the VI will institute an independent internal audit function within VIDE that will abide by the standards for internal audit prescribed by the Institute of Internal Auditors (IIA).

7. By the conclusion of the Compliance Agreement, VI agencies will no longer need separate accounting systems.

8. By the conclusion of the Compliance Agreement, single auditors will be able to rely on the FMS as the accurate system of record for the financial statement audit.

Action Steps Required

Year 1	Year 2	Year 3
1. Within one month of the inception of this Agreement, appropriate VIDE and VIDF staff members will be provided access to the Department's GAPS system to monitor draw downs.	1. Twice during the 2003–2004 school year, the VI will publicize the U.S. Department of Education Office of Inspector General Hotline telephone number 1–800–MISUSED and the Department of Interior OIG Hotline (1–800–424–5081) to all schools, teachers, parents of students in schools, participants in adult education and vocational education programs, VIDE employees, and the public and encourage anyone with any knowledge of misuse of Federal education program dollars to call the Hotlines.	1. VI will conduct quarterly reconciliation between GAPS, VIDE, and VIDF draws and expenditures, resolve any differences, and record appropriate adjustments within 30 days.

Year 1	Year 2	Year 3
2. By December 31, 2002 the VIDF will create a vision document of a credible central FMS. The vision document will specifically describe how the system would (1) provide access to accurate information when needed, (2) account appropriately for funds, (3) ensure timely deposits or draw down of funds, (4) ensure timely and accurate payments, (5) ensure, prior to archiving any financial data, the capacity to retrieve that data in the future, and (6) otherwise enable and support generally accepted government financial management and accounting standards and requirements. The vision document will also describe how the central FMS would serve as an accurate system of record that would no longer require separate accounting systems in different agencies. The document will also provide a detailed diagram of each function of the system and how it would integrate with other related systems or processes, (including, but not limited to, program planning, grant administration, budget, property and procurement management, time and attendance, human resource management, and payroll). The vision document and plan (see #3 below) will be based on an independent party performing a needs assessment for the financial management system.	2. By the conclusion of the second year of the Compliance Agreement, the VI will institute an independent internal audit function within VIDE that will abide by the standards for internal audit prescribed by the Institute of Internal Auditors (IIA). In this regard, VIDE will create an independent Audit Committee that will make all audit resolution decisions for the VIDE and to whom the internal auditor will report.	2. Twice during the 2004–2005 school year, the VI will publicize the Federal Education Office of Inspector General Hotline telephone number 1–800-MISUSED and the Department of Interior OIG Hotline (1–800–424–5081) to all schools, teachers, parents of students in schools, participants in adult education and vocational education programs, VIDE employees, and the public and encourage anyone with any knowledge of misuse of Federal education program dollars to call the Hotlines.
3. By March 31, 2003, the VIDF will create a plan for how it will develop and implement the credible central FMS described in the vision document. The plan will also include resource requirements for implementing the plan, with action steps and timelines, and identify how the resources will be obtained. The vision document (see #2 above) and plan will be based on an independent party performing a needs assessment for the financial management system.	3. VI will conduct quarterly reconciliation between GAPS, VIDE, and VIDF draws and expenditures, resolve any differences, and record appropriate adjustments within 30 days.	
4. During the first year of the compliance agreement, VI will conduct semi-annual reconciliation between GAPS, VIDE, and VIDF draws and expenditures, resolve any differences, and record appropriate adjustments within 30 days. These reconciliations will be provided on a semi-annual basis to the Department for review with evidence that all adjustments have been made.		
5. Twice during the 2002–2003 school year, the VI will publicize the Federal education Office of Inspector General (OIG) Hotline telephone number 1–800-MISUSED, and the Department of Interior OIG Hotline (1–800–424–5081) to all schools, teachers, parents of students in schools, participants in adult education and vocational education programs, VIDE employees, and the public and encourage anyone with any knowledge of misuse of Federal education program dollars to call the Hotline.		

Sub-Issue 2.2: Indirect Costs

Sub-Issue Description

The indirect cost issue relates to the manner in which the indirect costs associated with Federal funds are distributed within VI. OMB Circular A–87 specifies indirect cost requirements. In December 2001, officials from ED, VI and other Federal agencies developed and agreed on a three-phase process to address the indirect cost issue. Phase I of the process outlines steps for indirect cost determination and distribution; Phase II outlines steps for making rate application corrections, and Phase III outlines steps for preparing a new rate proposal. The VI will implement the agreed upon steps of the process in a timely manner and report progress to ED.

Performance Measures for Issue 2.2

1. As described below, steps to determine indirect costs and distribute indirect cost reimbursement between the VIDE and the VI will be fully

implemented by OCTOBER 1, 2002 in accordance with VIOMB's new policy. The new OMB policy will provide for a pro rata allocation that segregates central service indirect costs from agency level or departmental indirect costs.

2. By the beginning of Fiscal Year (FY) 2003, the VI and the Department must have agreed on an indirect cost rate to use for FY 2003.

3. Starting April 1, 2003, unused leave for separating employees will not be charged directly to Federal programs, but allocated only as indirect costs.

4. All of the underlying problems having to do with indirect costs will be eliminated by FY 2004, so that audits and other monitoring procedures will have minimal findings related to indirect rates in FY 2003, and no findings related to indirect rates in FY 2004 and 2005.

5. By the conclusion of the Compliance Agreement, there will be 100 percent application of the correct, current indirect cost rate in education programs.

Action Steps Required

Officials from VI, the Department and other Federal agencies agreed in December 2001 about three phases of action steps to address the indirect cost issue. The phases, related steps, and agreed upon time lines are listed in the table below. (Steps listed in bold were added by the Department staff members after the December 2001 meeting.)

Year 1	Year 2	Year 3
1. If the steps or timelines listed in this table are no longer valid, the VI will ask the Department to consider a revised plan of action steps and timeline by October 1, 2002. 2. In addition to other requirements set forth in the Reporting Requirements section of this document, the quarterly reports for this sub-issue will include a copy of the products developed for each step of the process. Phase I: Indirect Cost Determination and Distribution • DOI IG will submit letter to the Legislature and Governor outlining the indirect cost fund sharing issue. • Develop cost policy statement regarding Indirect Cost Fund Sharing. • OMB will submit policy change recommendation and potential changes to the existing legislation on the indirect cost fund, if necessary, to the Legislature with copies to the U.S. Department of Interior (DOI) and the Department. • ED indirect cost staff transmit cost policy template to VI OMB. • VIDE will provide cost policy statements to the Department and DOI by September 30, 2002. • Cost policy statements will be amended as appropriate to account for the LEA/SEA relationship. • OMB will provide agencies with account codes for receipt and expenditure of indirect cost funds. Any shortfalls will be absorbed by VIDE, not VIDE programs. • VIDF will propose accounting changes to implement new indirect cost policy for review by the Department and DOI by September 30, 2002. The policy must address unused leave for separating employees. • Training needs will be identified. • Training will be planned and scheduled. • Training will be implemented. Phase II: Rate Application Corrections • Determine and correct current rates, as necessary. • As needed, correct the rate table and apply correct rates to current grant programs. • Review FY 2002 indirect cost rates on FMS versus current rates on indirect rate plan. • Review the prior year indirect costs applied to grants and prepare necessary adjustments. • Develop a procedure to report indirect cost rate application errors to VIDF. Phase III: New Rate • Obtain three-year rate proposal with the following steps:. • Issue RFP for 2003–2005. • P& P issue invitations for bids. • P& P review bid packages. • Contract sent to Justice. • Justice reviews contract and forwards to Governor's legal counsel. • Contract executed. • Contract work performed. • Submit rate proposal to IG. • Submit draft agreements to agencies for review and approval/signature. • Agencies implement new rates.		

Sub-Issue 2.3: Obligation of Funds/ Disbursement of Obligation

Sub-Issue Description

Federal education funds in the VI must be obligated and disbursed in a manner that ensures that programs are appropriately managed. Specifically, application for funds should be based on program plans, and funds disbursement should occur as the program plans dictate and be tied to specific activities. In addition, funds should be spent in a timely manner based on resource requirements for activities specified in the program plans. Under the terms of this Agreement, the VI will develop a grant application process and subsequent spending process that ensures that grant awards are based on specified program plans and spent on the programs in a timely manner. The grants systems will be integrated with the central FMS.

The outcome measures for this issue are that (1) program plans are the basis for application and disbursement, (2) disbursements are tied to actions specified in program plans, (3) all funds are spent for allowable purposes under

the statutes, and (4) no funds are lost due to lapsing obligation periods.

Performance Measures for Issue 2.3

1. The VI will complete an analysis of past problems with program planning, obligation, and disbursement by September 30, 2002.
2. The VI will develop a plan to re-engineer its grants application, planning, and disbursement by March 31, 2003.
3. The VI will fully implement the plan to re-engineer its grants application, planning, and disbursement by March 31, 2004.
4. Within one month after the Compliance Agreement is signed, the VI will put in place a system of safeguards to assure that lapses of funds will be minimized.
5. No lapses of funds will occur after March 31, 2003. Funds lapse when the deadline allowed by law to obligate Federal grant awards has passed and funds remain that have not been properly obligated. These funds are no longer available to VI for use.
6. In the final year of the Compliance Agreement, (1) program plans will be the basis for application and disbursement, (2) all disbursements will be tied to actions specified on program plans, (3) all funds are spent for allowable purposes under the statutes, and (4) no funds will be lost due to lapsing obligations periods.
7. The grant application, planning, obligation, and disbursement functions will be fully integrated with the FMS by the conclusion of this Compliance Agreement.
8. At the end of the three-year period, VI will liquidate obligations on a timely basis and not need extensions in the liquidation period.

Action Steps Required

In December 2001, VI staff members developed the action items listed below to address the obligation of funds/disbursement of funds issue. Although the action items are an important first step, they do not go far enough in ensuring a grant application, award, and spending system that ensures that needed funds are received and fully spent to support programs. The table below provides further required action steps.

Receipt of Grant Award

- All DOE grant awards and extension approvals should go to the VIDE Commissioner with a copy to VIDE Federal Grants Office who will distribute copies to the Board of Education, VIOMB and VIDF.
- Access to GAPS system to review all grant awards as an extra check on grants.

Grant Periods

- Extensions should be requested by program managers in writing 60 days prior to the expiration date of the grant to justify the reason for the extension. For all grants to the VI government, extensions apply ONLY to liquidation of expenses that were obligated during the Federal funding period specified in the grant award.
- Quarterly performance meetings to evaluate reported expenditures against the spending plan.
- Develop a grant tracking system.
- Quarterly prepare lists of expiring grants to be provided to the Commissioner, which include the percent of funds expended.
- Document the rules about obligation and extension dates.

Year 1	Year 2	Year 3
1. Within one month after the Compliance Agreement is signed, the VIDE will implement a policy statement delineating the procedure for reviewing and processing sub grantee awards to expedite allocations and disbursement of Federal funds to eligible applicants within five days of receipt from the LEA program office. Applications not approved for funding will be returned to the Program Office originating the proposal within the five working day period. If the timeline requirement is not met, the Commissioner will submit a letter of explanation to the funding agency within ED, with a copy to the affected program. 2. Within 45 days after the Compliance Agreement is signed, the VI will put in place a system of safeguards to assure that lapses of funds will be minimized. 3. By September 30, 2002, the VI will provide the Department with (1) a list of Federal requirements for program planning, obligation, and disbursement of funds, and (2) an analysis of the VI's education grants for the past fiscal year that specifies where problems in meeting requirements occurred in program planning, obligation and disbursement, and why the problems occurred.	1. The plan to re-engineer the grant application, planning, obligation, and disbursement functions will be fully implemented by March 31, 2004.	1. The grant application, planning, obligation, and disbursement functions will be fully integrated with the FMS by the conclusion of this Compliance Agreement.

Year 1	Year 2	Year 3
4. Based on the analysis of requirements and past problems, the VI will develop and provide the Department with a plan, by March 31, 2003, to re-engineer its grant application, planning, obligation, and disbursement functions. The plan will include policies, procedures, and systems to ensure that (1) program plans are the basis for application and disbursement, (2) disbursements are tied to actions specified in program plans, and (3) no funds are lost due to lapsing obligation periods. 5. By March 31, 2003, the VI will create a common template and timetable for all program plans. Such a template and timetable will structure planning information and provide a structure for activity-based disbursement plans and decisions.		

Issue 3.0: Human Capital

Issue Description

The human capital issue area encompasses two significant sub-issues: (1) Recruiting and hiring, and (2) time and attendance accounting and supplanting. The recruiting and hiring issue involves ensuring that qualified teachers and related service personnel are available for students in every classroom. The time and attendance accounting and supplanting issue deals with ensuring that personnel paid by Federal education funds are in fact performing the appropriate jobs in the programs they were funded to work in.

Timelines or action items under this Compliance Agreement do not replace and/or exclude any requirements of previous Compliance Agreements. For example, the VIDE IDEA—Part B Compliance Agreement states: ''By 12/01 VIDE is to have hired qualified personnel to fill 85% of any vacancies (related to special education vacancies) that occurred after 10/99.'' That requirement, and all others under the previous Compliance Agreement will remain in force.

Sub-Issue 3.1: Recruiting and Hiring

Sub-Issue Description

Ensuring that there is a highly qualified teacher in every classroom is critical to improving education in the VI and to complying with Federal education requirements. Through this Agreement, the VI will address the human capital issue in the immediate, short, and long terms. In the immediate term, the VI will develop a policy for class coverage that ensures that adults are supervising every classroom at all times that students are present. In the short term, the VI needs to determine how many highly qualified teachers they currently have in the schools and how many they need, and develop a plan to hire or otherwise engage the services of the teachers or other qualified personnel that they need over each of the next three school years and beyond. In the longer term (although these actions are not covered under this Compliance Agreement), the VI will create initiatives to encourage young people to take up teaching as a career and to prepare them for such careers.

The VI will re-engineer its hiring process so that teachers and related personnel can be moved into the schools quickly, and receive their first paycheck on a reasonable time schedule.

In December 2001, VI staff members identified action steps to address recruiting and hiring concerns. However, the VI needs to consider a much fuller range of options for getting qualified teachers and related personnel into classrooms, and it must do so quickly. Students cannot easily regain educational opportunities lost to them for each year that they do not have a qualified teacher.

Performance Measures for Issue 3.0 and 3.1

1. VIDE will immediately implement its expedited hiring authority and use the authority in hiring qualified teaching staff.

2. VI will develop hiring goals and priorities for five years by March 31, 2003.

3. VI will meet its hiring goals for the 2003–2004 school year.

4. VI will meet its hiring goals for the 2004–2005 school year.

5. In the 2002–2003 school year and beyond, there will be no instances of classes or students without adult supervision.

6. By the beginning of the 2003–2004 school year, all newly recruited staff will be deployed within one month of acceptance of an employment offer and will receive their first paycheck within one month of starting work (with respect to Special Education, the terms of the MOA shall apply.)

Action Steps Required

Year 1	Year 2	Year 3
1. By OCTOBER 31, 2002, the VI will develop policies and procedures for class coverage (i.e., by using substitute teachers, administrators, supervisors, principals, etc.), in the event that a teacher is unable to be in the classroom when students are present.	1. VI will meet its hiring goals for the 2003–2004 school year. In addition to the items set forth in the ''Reporting Requirements'' section of this Agreement, quarterly reports will also include each person's date of hire, date of entry into the personnel system, date of arrival on the job, and the date of receipt of first paycheck. The report should include contact information for each new hire so that the Department staff can confirm the personnel data reports with staff members.	1. VI will meet its hiring goals for the 2004–2005 school year. In addition to the items set forth in the ''Reporting Requirements'' section of this Agreement, quarterly reports will also include each person's date of hire, date of entry into the personnel system, date of arrival on the job, and the date of receipt of first paycheck. The report should include contact information for each new hire so that the Department staff can confirm the personnel data reports with staff members.
2. By DECEMBER 31, 2002, the VI will determine the percentage of classes conducted by highly qualified teachers as defined in The No Child Left Behind Act of 2001.	2. By the beginning of the 2003–2004 school year, the VI will have implemented a process to re-engineer its personnel system and related payroll process so that all new staff hired for education programs can be deployed to classrooms within one month of being hired and receive their first paycheck within one month of starting work.	
3. By DECEMBER 31, 2002, VIDE will establish a plan to increase recruitment of specialized personnel, such as speech pathologists, physical therapists, occupational therapists, etc. VIDE will prepare and work with VIDH to establish a memorandum of agreement between VIDH and VIDE to jointly recruit and share needed specialized personnel, such as speech pathologists, physical therapists, occupational therapists, etc. The terms of such agreement need not require that either agency share personnel during any periods of time when either of the agencies is fully utilizing all of its personnel in order to meet the needs of the infants, toddlers, or children with disabilities as required under Federal law and the sharing of personnel would cause one of the agencies to be out of compliance.		
4. By DECEMBER 31, 2002, the VI will determine how many highly qualified teachers it needs per program to employ to achieve the goal of having a qualified teacher in every classroom within 5 school years. In determining the number of teachers it needs, the VI will ensure ratios comparable to similar sized school districts for the (1) average number of students per teacher, (2) average number of administrators per student, and (3) percentage of Federal dollars spent directly for classroom instruction and related expenses. In addition, the VI will assign priorities to the types of teachers needed. For example, based on the previous Compliance Agreement, special education programs are currently an immediate priority for filling vacancies. As another example, high school teachers are also an immediate priority so that the VI high schools can regain accreditation.		
5. By MARCH 31, 2003, and based on the total number of qualified teachers needed over five years and the priorities for types of vacancies to fill first, the VI will set specific goals for employing qualified teachers in specific classrooms each year. The yearly goal should equal 20% of the total number of qualified teachers needed within 5 years (i.e., yearly goal = total # qualified teachers needed over 5 years/5).		

Year 1	Year 2	Year 3
6. By APRIL 30, 2003, VI will develop an action plan to revise as necessary the action steps to improve the hiring process, including the use of current legislative authority for VIDE to bypass the personnel office, and expedite the hiring process. 7. The VI will work with the Board of Education to expedite the teacher certification process, including alternative certification approaches. 8. The VI will work with the Board of Vocational Education to expedite setting standards for teacher certifications, including alternative certification approaches.		

Sub-Issue 3.2: Inadequate Time Accounting and Supplanting

Sub-Issue Description

VIDE currently cannot adequately demonstrate that employees paid out of Federal education funds are performing work in the programs they are paid to support. This is especially an issue where employees split their time between Federal and other programs, or between more than one Federal program. Supplanting is also an issue, which involves, simply stated, using Federal funds to pay for personnel that the State should pay. The time and attendance accounting issue is one that will be integrated across all management systems. Planning will determine which employees will work in which programs and for how much time. Budgeting will ensure that funds are appropriately available, and financial management and accounting systems will ensure that funds are appropriately spent and accounted for. Human resource information systems will be able to accurately reflect and report how employees spent their time. Although this issue is covered here, with other human capital issues, it is important that plans and actions to address the problem be developed and implemented at a systemic level and integrated with other management systems.

The objectives of addressing this issue are to ensure that (1) the salaries of employees who work under more than one Federal program are properly allocated among those programs, in accordance with accurate time distribution records, and (2) that Federal funds are not paying for personnel that the State should pay.

Performance Measures for Issue 3.2

1. By March 30, 2003, all payroll registers will reflect the appropriate percentage split of time for staff funded by Federal programs.

2. By the final year of the Compliance Agreement, all time and attendance records will be computer-based and accurate.

3. By the final year of the Compliance Agreement, audits will find no instances of supplanting.

Action Steps Required

The following items were developed by VI staff at the December 2001 planning session and are presented here as action steps for inclusion in the plan to be developed under Action Step 1, Year 1 below.

Time Distribution

- Develop a policy & procedure in the assignment of time distribution percentage utilizing OMB Circular A–87. Make systematic adjustments as required.
- Establish process to manage Quarterly Fluctuations to ensure adequate allocation of time distribution and employee certifications.
- Conduct Job Analysis to determine allocations.
- Policy and procedures created.
- Policy approved and distributed.
- Pre-audit test to determine compliance and adjustments needed.
- Training and implementation of time distribution policy and procedure.
- Ensure that the Department and Department of Interior (DOI) approve the system and all related forms.
- Accounting system will be changed to permit quarterly adjustment between budgeted and actual effort.
- The Department and DOI will approve PAR and semi-annual certification forms.
- Target an area selected for a pilot.
- Train employees and supervisors in the target area.
- Implement the program in the pilot area piloted and evaluate it.
- Revise training and forms and accounting program based on the pilot evaluation.
- Phase in other areas.

Time and Attendance

- Review and record current procedures relative to the documentation of time and attendance within VIDE to identify inconsistent applications of procedures.
- Analyze result of review and recommend changes and/or improvements to current process to ensure the proper retrieval of time and attendance documents.
- Activate system enhancement program to scan source document and payroll records to minimize record bulk and to facilitate the location of time and attendance documents and make recommendations regarding system upgrade for VI government.
- Implement conversion to enhance system that will guarantee adequate documentation over employee time and attendance. (VIDE—Pilot Programs)

Supplanting

- Meeting/training between OMB, VIDE, the Department and auditors on specific program issues to identify maintenance of effort requirements and funding levels. Identify which positions are paid from which fund. Define basic service levels and optional programs in order to prevent supplanting issues.
- Develop policy and procedures in accordance with OMB Circulars that would ensure that positions paid out of Federal funds would not reveal instances of supplanting.
- Provide training regarding the implementation of procedures.
- Implement policy.

Year 1	Year 2	Year 3
1. By March 30, 2003, the VI will submit a revised plan to address issues related to time and attendance accounting and supplanting. The plan will specifically state how the time and attendance accounting procedures will be integrated with program related budgeting, financial management, planning, and personnel processes. At a minimum, the system will (1) be computer-based and territory-wide, (2) allocate time and attendance to specific programs, (3) ensure that maintenance of effort and supplanting prohibitions in each statute are met and (4) personnel records are properly archived and readily accessible. As part of the plan, the VI will benchmark other States' (such as Florida) systems and develop a time and attendance system that can accurately reflect time distribution across various programs.	1. The time and attendance accounting plan will be implemented by March 30, 2004.	1. Management reports showing all staff members paid with Federal funds and the distribution of their time by funding source will be submitted to the Department quarterly.
2. By September 30, 2002, the VI will develop an accurate list of employees whose time is paid in any part with Federal education funds. The list will identify each employee and the percentage of his/her time that is paid for by each Federal program. The list will be provided to the Department and to each supervisor of staff whose time is so paid.	2. Management reports showing all staff members paid with Federal funds and the distribution of their time by funding source will be submitted to the Department quarterly for the duration of the Compliance Agreement beginning for the quarter ending June 30, 2004.	
3. By September 30, 2002, each supervisor of staff whose time is paid with Federal funds will inform the staff member about how his/her time is to be allocated and accounted for. The supervisor and the staff member will both sign a document that clearly states the time allocation for the staff member. A copy of each document will be provided to the Department as part of the first Compliance Agreement quarterly report.		

Issue 4.0: Property Management and Procurement

Issue Description

Procurement and property management are related issues that result in students, and teachers not having the supplies and equipment that they need. Procurement is a problem because the process takes significant time and vendors have not been paid in a timely manner. As a result, vendors have been unwilling to do business with the VI, resulting in an inability to obtain needed supplies and equipment for students and teachers. Property management is a concern because purchased items do not get to classrooms in a timely manner, if at all. Property cannot be effectively tracked and may remain in warehouses, be delivered to incorrect locations, or be stolen rather than benefiting students and teachers in classrooms. The VI will develop and implement effective procurement and property management policies and systems that ensure (1) delivery of ordered inventory within specified timeframes for type of supply and location of vendor, (2) payment to vendors within 30 days of invoice receipt, (3) delivery of supplies and equipment, that have been tagged and entered into a tracking system, to classrooms within 3 days of inventory receipt, and (4) security of property and supplies.

Sub-Issue 4.1: Property Management

Sub-Issue Description

The VI needs to improve its property inventory and repair/maintenance system. This is a major reason that classrooms are under equipped. Also, better security measures are needed to prevent the theft of vehicles, supplies and equipment. Through this Compliance Agreement, VI's manner of managing inventory will be such that items purchased with Federal program funds can be tracked, are distributed timely, and are used for the benefit of students. This system will comply with Federal regulations, to include tagging and tracking of inventory and prompt delivery of property purchased with Federal funds to the appropriate location, so that items may be used for the purposes of the program under which they were purchased. The inventory policy will include an established procedure for replacement or payback of any items in the inventory that cannot be located, consistent with Federal regulations. In addition, the inventory policy and system will ensure that the Property and Procurement, Finance, and Education Departments act as an integrated team on procurement issues. They will delineate between responsibilities of individual Departments (including at the local and State levels), ensure efficiency and eliminate duplication of effort, and make provisions for emergency needs to ensure students' health and safety. At a minimum, the inventory management system will reflect when items are ordered, when ordered items arrive, when items are logged into the system, and when they are delivered to the intended location. In addition, the VI will ensure that inappropriate use of equipment (for example, vehicles or computers) is penalized and that the Department is reimbursed when equipment damage results from such use.

Performance Measures for Issue 4.0 and 4.1

1. The VI will provide the Department with an inventory policy and implementation plan of the inventory management system by June 30, 2003.

2. The VI will take immediate action to the extent possible to secure all property, in warehouses, schools, and other locations from larcenous behavior or inappropriate or unauthorized use. By June 30, 2003, the VI will complete all reasonable steps to secure all property, in warehouses, schools, and other locations from larcenous behavior or inappropriate or unauthorized use.

3. An inventory policy and system will be fully implemented by December 30, 2004. The policy and system will include that all property purchased with Federal program funds will be tagged, entered into a tracking system, and delivered to the appropriate location within 3 calendar days of receipt.

4. By March 31, 2005, all unaccounted-for items will either be returned to their intended locations, or their full value will be reimbursed to the Department.

5. By the end of the second year of the Compliance Agreement, the inventory management system will reflect minimal losses due to theft.

6. By the end of the Compliance Agreement, audits will show minimal unaccounted-for property.

Action Steps Required

In December 2001, VI staff members identified the action steps and timelines listed below to address inventory management issues. The table below provides further required action steps.

• Issue memorandum from the Governor setting deadline and priority for all Departments to comply with WIN ASSETS Personal Property Inventory System.

• VIDPP to issue supplemental guidance memorandum setting default values.

• VIDPP to provide technical support for WIN ASSET SYSTEM.

• Determine and seek funding for human and other resources needed to establish, maintain, inspect, test and reconcile data in WIN ASSETS System.

• Determine individual departmental compliance with WIN ASSETS Personal Property Inventory System implementation deadline. By

• Convert individual Department inventories to WIN ASSETS format (where necessary) and upload departmental data to VIDPP system. By

• VIDPP to conduct meetings with individual Departments about the process for maintaining government-wide inventories on the WIN ASSETS system.

• VIDPP to issue Inventory Management Procedures Manual. (Establishes ongoing procedures and timing for reporting acquisitions and dispositions—point at which assets are added to inventory, mandatory minimum fields for data entry, tagging and tracking assets, reconciling physical inventories to departmental purchase orders.) Ongoing.

• Department of Finance to provide quarterly record of 25600 capital outlay expenditure reports.

• VIDPP to reconcile FMS expenditures to WIN ASSETS inventory acquisitions quarterly.

• VIDPP to conduct on site tests and tagging of personal property inventories submitted by individual Departments. Ongoing.

• VIDPP MIS to periodically upload departmental inventories, analytically review data base for various governmental purposes and to test accuracy, modify program for departmental and program needs, maintain codes and data classification for changes in legislation and governmental reorganizations. Ongoing and quarterly.

• VIDPP to conduct training on WIN ASSETS and inventory procedures for designated individuals from all Departments.

Year 1	Year 2	Year 3
1. The VI will revise the steps and timelines of the plan above as they deem necessary and provide the Department with an inventory policy and implementation plan of the inventory management system by June 30, 2003. The VI will benchmark other States' inventory management policies and systems, or engage a consultant, to ensure that their planned policy and system will deliver intended results and that their implementation time lines are reasonable.	1. By December 31, 2003, the VI will begin collecting data on items purchased with Federal funds from ED. On March 30, 2004 and every six months thereafter until the conclusion of the Compliance Agreement, the VI will provide the Department with management reports that show, at a minimum, all items ordered, when the items were ordered, when ordered items arrive, when the items were logged into the system, and when the items were delivered to the intended locations. Documents to verify the management reports, including copies of equipment and supply orders, vendor delivery statements, tracking data, and signed receipts showing delivery to schools, will accompany the management reports until the Department deems that such verification data are no longer necessary..	
2. By June 30, 2003, the VI will secure all property, in warehouses, schools, and other locations from larcenous behavior or inappropriate or unauthorized use. Such steps will include controlling access to school buildings, property supply houses, and official vehicle parking lots, and controlling and tracking access to specific equipment. The VI may wish to benchmark inventory security procedures with other States, or to engage a contractor to supply or consult on security issues.	2. Within three months after full deployment of the new inventory management system (and no later than December 31, 2004), the VI will provide the Department with a list of items paid for with Federal funds that are not in service in classrooms (i.e., lost, stolen, or improperly deployed items).	

Year 1	Year 2	Year 3
	3. Within 6 months after full deployment of the new inventory management system (and no later than March 31, 2005), the VI will (1) return improperly deployed, lost, or stolen items to their intended locations as possible, (2) provide the Department with a report of items and their values that are still not properly in service in intended locations, and (3) reimburse the Department for the items that have not been returned properly to service. The VI may wish to post a lost property notice in media outlets, and/or offer rewards for information leading to return of property. 4. The inventory management system will be fully implemented by December 30, 2004.	

Sub-Issue 4.2: Competitive Procurement (Improved Process)

Sub-Issue Description

The current competitive procurement and contract process takes too long and does not ensure that vendors (contractors) for school services are hired and are paid on time. The VI will develop a new competitive procurement policy and process that ensures that school services, supplies, equipment and other necessary resources are provided and in classrooms when they are needed. The policy and process will also ensure that vendors are paid within 30 days of invoice receipt. In addition to the items noted above, the procurement management process will include procedures for flexible, timely contractual arrangements, sole source contracts, contract closeout activity, including receipt of goods certification, contracts release, and review of final payment.

In December 2001, VI staff developed the time lines listed in the table below for procurement, vendor payments, and delivery of supplies or equipment to end users. The procurement policy and process will ensure that the time lines are met in all instances by the conclusion of the Compliance Agreement

Procurements

- Department of Education from central supply sources in 2 days—1 week.
- On island purchases < $5,000 in 2 weeks.
- On island purchases > $5,000 in 3 weeks after receipt by the Department of Property and Procurement.
- Off island purchases < 3–4 weeks after receipt by the Department of Property and Procurement.
- Off island delivery of purchased items < 2 months.

Payment of Invoices

- Payment of invoices after receipt of acceptable goods or services in 20—30 days.

Delivery of Supplies or Equipment

- Delivery of received items to school, activity center, or school district in 3 days from receipt.

Performance Measures for Issue 4.2

1. The VI will provide the Department with a procurement policy and implementation plan of the procurement management process by June 30, 2003.
2. A procurement policy and process will be fully implemented by September 30, 2004.
3. By September 30, 2003, the VI will revise the system of requiring 3 bids for each and every item submitted on a requisition to reduce the time needed to obtain required items to meet the procurement time lines noted above.
4. By September 30, 2003, the VI will develop and maintain a short-term emergency by-pass authority/option for items that cost less than $10,000.
5. By the conclusion of the Compliance Agreement, the VI will receive all procurements purchased with Federal education program funds within the timeframes listed in the table above.
6. By the conclusion of the Compliance Agreement, the VI will pay vendors for all procurements related to education program within 30 days of receipt of the vendor's invoice.

Action Steps Required

In December 2001, VI staff members identified the following action steps and timelines to address competitive procurement issues and to meet the timelines listed in the table above.

- Flow chart new process.
- List key players and produce directory.
- Convene working committee meetings (all stakeholders). Monthly and ongoing.
- Develop effective document transmittal process, standardized forms, system changes specified, record retention policy, competition requirements, vendor certification and representations including eligibility, responsibilities redefined, personnel analysis, and reallocation recommendation.
- Prepare new government policies, procedures, and regulations.
- Review and approval of new policies, procedures and regulations.
- Distribute and provide orientation to stakeholders on new policies, procedures, and regulations.
- Establish improved interagency communication and commitment.
- Hire needed personnel.
- Train all stakeholders and responsible personnel.
- Build accountability and timelines into personnel system.
- Pilot implementation of new policies, procedures, & regulations.
- Full implementation of new policies, procedures & regulations.
- Fully automate requisition, purchase order, and contract writing process.
- Conduct periodic process review, identifying deficiencies and implementing continuous improvement actions. Ongoing.
- Full and effective implementation of new process. Ongoing.
- Establish review protocol for contracts such that VIOG and VIDJ review only selected contracts.

Year 1	Year 2	Year 3
1. The VI will revise the steps and timelines of the December 2001 plan as they deem necessary and provide the Department with a procurement policy and implementation plan of the procurement management process by September 30, 2003. 2. At the start of the Compliance Agreement, the VI will begin collecting data on items procured for education programs to develop baseline measures of the procurement process.	1. The procurement management process will be fully implemented by September 30, 2004. 2. By June 30, 2003, the VI will revise the system of requiring 3 bids for each and every item submitted on a requisition to reduce the time needed to obtain required items to meet the procurement time lines noted above. 3. By June 30, 2003, the VI will develop and maintain a short-term emergency by-pass authority/option for items that cost less than $10,000.	1. VI's procurement policy and process will meet the time lines for procurement, vendor payments, and delivery of supplies or equipment to end users by the conclusion of the Compliance Agreement.

The parties agree to faithfully carry out the terms of this compliance agreement as set forth above.

For the U.S. Virgin Islands:

Dated: September 5, 2002.

_____/s/_____

Noreen Michael, PhD

Commissioner, Department of Education

Dated: September 6, 2002.

_____/s/_____

Mavis L. Matthew, MD, MPH

Commissioner, Department of Health

Dated: September 5, 2002.

_____/s/_____

Bernice A. Turnbull

Commissioner, Department of Finance

Dated: September 4, 2002.

_____/s/_____

Ira Mills

Director, Office of Management and Budget

Dated: September 6, 2002.

_____/s/_____

Marc A. Biggs

Commissioner, Department of Property and Procurement

Dated: September 4, 2002.

_____/s/_____

Joanne U. Barry

Director, Division of Personnel

Dated: September 6, 2002.

_____/s/_____

Jorge A. Galiber, M.D.

Virgin Islands Board of Education

Dated: September 6, 2002.

_____/s/_____

Eddie Williams

Virgin Islands Board of Vocational Education

Dated: September 6, 2002.

_____/s/_____

Charles W. Turnbull

Governor of the Virgin Islands

Approved as to legal sufficiency at the V.I. Department of Justice:

Dated: September 3, 2002.

_____/s/_____

Iver A. Stridiron

Attorney General

For the U.S. Department of Education:

Dated: September 23, 2002.

Office of the Chief Financial Officer

_____/s/_____

Jack Martin,

Chief Financial Officer

Office of Special Education and Rehabilitative Services

_____/s/_____

Robert H. Pasternack, PhD

Assistant Secretary

Office of Vocational and Adult Education

_____/s/_____

Carol D'Amico,

Assistant Secretary

Office of Elementary and Secondary Education

_____/s/_____

Susan B. Neuman, EdD

Assistant Secretary

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students

_____/s/_____

Maria Hernandez Ferrier, EdD

Director

[FR Doc. E7–20847 Filed 10–22–07; 8:45 am]

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Federal Register

Tuesday,
October 23, 2007

Part VII

The President

Executive Order 13448—Blocking Property and Prohibiting Certain Transactions Related to Burma

Federal Register
Vol. 72, No. 204
Tuesday, October 23, 2007

Presidential Documents

Title 3—

The President

Executive Order 13448 of October 18, 2007

Blocking Property and Prohibiting Certain Transactions Related to Burma

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Burmese Freedom and Democracy Act of 2003 (Public Law 108–61, as amended, 50 U.S.C. 1701 note), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma,

I, GEORGE W. BUSH, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13047 of May 20, 1997, and relied upon for additional steps taken in Executive Order 13310 of July 28, 2003, finding that the Government of Burma's continued repression of the democratic opposition in Burma, manifested most recently in the violent response to peaceful demonstrations, the commission of human rights abuses related to political repression, and engagement in public corruption, including by diverting or misusing Burmese public assets or by misusing public authority, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and I hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, Public Law 106–387), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex attached and made a part of this order; and

(b) any person determined by the Secretary of the Treasury, after consultation with the Secretary of State:

(i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing;

(ii) to be responsible for, or to have participated in, human rights abuses related to political repression in Burma;

(iii) to be engaged, or to have engaged, in activities facilitating public corruption by senior officials of the Government of Burma;

(iv) to have materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, any successor entity to any of the foregoing, any senior official of any of the foregoing, or any person whose property and interests in property are blocked pursuant to Executive Order 13310 or section 1(b)(i)-(v) of this order;

(v) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13310 or section 1(b)(i)-(v) of this order; or

(vi) to be a spouse or dependent child of any person whose property and interests in property are blocked pursuant to this order or Executive Order 13310.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term ''Government of Burma'' means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

Sec. 4. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, persons whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, and relied upon for additional steps taken in Executive Order 13310, and expanded in this order, and hereby prohibit such donations as provided by section 1 of this order.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, and relied upon for additional steps taken in Executive Order 13310, and expanded in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 6. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and section 4 of the Burmese Freedom and Democracy Act of 2003 as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 7. The Secretary of the Treasury, after consultation with the Secretary of State, is authorized to determine, subsequent to the effective date of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 8. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on October 19, 2007.

THE WHITE HOUSE,

October 18, 2007.

Billing code 3195–01–P

Annex

Individuals

1. Tay ZA; Managing Director, Htoo Trading Company Limited; Chairman, Air Bagan Holdings Pte. Limited (d.b.a. Air Bagan); Managing Director, Pavo Trading Pte. Ltd.; DOB Jul 18, 1967; nationality, Burma
2. Pye Phyo Tay ZA; DOB Jan 29, 1987; nationality, Burma
3. Thidar ZAW; DOB Feb 24, 1962; nationality, Burma
4. Htay MYINT; Chairman, Yuzana Company Limited; DOB Feb 6, 1955; nationality, Burma
5. Khin SHWE; President, Zay Gabar Company; DOB Jan 21, 1952; nationality, Burma

Entities

1. Htoo Trading Company Limited; Yangon, Burma
2. Pavo Trading Pte. Ltd.; Singapore
3. Air Bagan Holdings Pte Ltd. (d.b.a. Air Bagan); Singapore
4. Air Bagan Limited (d.b.a. Air Bagan); Burma
5. Htoo Wood Products Pte. Limited; Singapore; Yangon, Burma
6. Yuzana Company Limited (a.k.a. Yuzana Construction); Yangon, Burma
7. Zay Gabar Company (a.k.a. Zaykabar Company); Burma

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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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 474/P.L. 110–95

To award a congressional gold medal to Michael Ellis DeBakey, M.D. (Oct. 16, 2007; 121 Stat. 1008)

S. 1612/P.L. 110–96

International Emergency Economic Powers Enhancement Act (Oct. 16, 2007; 121 Stat. 1011)

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